

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 745

By: Bergstrom

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6 AS INTRODUCED

7 An Act relating to income tax credits; amending 68  
8 O.S. 2011, Section 2357.4, as last amended by Section  
9 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp. 2018,  
10 Section 2357.4), which relates to credits for capital  
11 investment and new jobs; establishing certain  
12 requirement for credits claimed after specified date;  
13 requiring certain determination and providing  
14 methodology therefor; defining terms; requiring  
15 assistance by specified agency; and providing an  
16 effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.4, as  
19 last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp.  
20 2018, Section 2357.4), is amended to read as follows:

21 Section 2357.4. A. Except as otherwise provided in subsection  
22 F of Section 3658 of this title and in subsections J and K of this  
23 section, for taxable years beginning after December 31, 1987, there  
24 shall be allowed a credit against the tax imposed by Section 2355 of  
25 this title for:

26 1. Investment in qualified depreciable property placed in  
27 service during those years for use in a manufacturing operation, as

1 defined in Section 1352 of this title, which has received a  
2 manufacturer exemption permit pursuant to the provisions of Section  
3 1359.2 of this title or a qualified aircraft maintenance or  
4 manufacturing facility as defined in Section 1357 of this title in  
5 this state or a qualified web search portal as defined in Section  
6 1357 of this title; or

7 2. A net increase in the number of full-time-equivalent  
8 employees in a manufacturing operation, as defined in Section 1352  
9 of this title, which has received a manufacturer exemption permit  
10 pursuant to the provisions of Section 1359.2 of this title or a  
11 qualified aircraft maintenance or manufacturing facility defined in  
12 Section 1357 of this title in this state or in a qualified web  
13 search portal as defined in Section 1357 of this title including  
14 employees engaged in support services.

15 B. Except as otherwise provided in subsection F of Section 3658  
16 of this title and in subsections J and K of this section, for  
17 taxable years beginning after December 31, 1998, there shall be  
18 allowed a credit against the tax imposed by Section 2355 of this  
19 title for:

20 1. Investment in qualified depreciable property with a total  
21 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)  
22 within three (3) years from the date of initial qualifying  
23 expenditure and placed in service in this state during those years  
24 for use in the manufacture of products described by any Industry

1 Number contained in Division D of Part I of the Standard Industrial  
2 Classification (SIC) Manual, latest revision; or

3 2. A net increase in the number of full-time-equivalent  
4 employees in this state engaged in the manufacture of any goods  
5 identified by any Industry Number contained in Division D of Part I  
6 of the Standard Industrial Classification (SIC) Manual, latest  
7 revision, if the total cost of qualified depreciable property placed  
8 in service by the business entity within the state equals or exceeds  
9 Forty Million Dollars (\$40,000,000.00) within three (3) years from  
10 the date of initial qualifying expenditure.

11 C. The business entity may claim the credit authorized by  
12 subsection B of this section for expenditures incurred or for a net  
13 increase in the number of full-time-equivalent employees after the  
14 business entity provides proof satisfactory to the Oklahoma Tax  
15 Commission that the conditions imposed pursuant to paragraph 1 or  
16 paragraph 2 of subsection B of this section have been satisfied.

17 D. If a business entity fails to expend the amount required by  
18 paragraph 1 or paragraph 2 of subsection B of this section within  
19 the time required, the business entity may not claim the credit  
20 authorized by subsection B of this section but shall be allowed to  
21 claim a credit pursuant to subsection A of this section if the  
22 requirements of subsection A of this section are met with respect to  
23 the investment in qualified depreciable property or net increase in  
24 the number of full-time-equivalent employees.

1 E. The credit provided for in subsection A of this section, if  
2 based upon investment in qualified depreciable property, shall not  
3 be allowed unless the investment in qualified depreciable property  
4 is at least Fifty Thousand Dollars (\$50,000.00). The credit  
5 provided for in subsection A or B of this section shall not be  
6 allowed if the applicable investment is the direct cause of a  
7 decrease in the number of full-time-equivalent employees. Qualified  
8 property shall be limited to machinery, fixtures, equipment,  
9 buildings or substantial improvements thereto, placed in service in  
10 this state during the taxable year. The taxable years for which the  
11 credit may be allowed if based upon investment in qualified  
12 depreciable property shall be measured from the year in which the  
13 qualified property is placed in service. If the credit provided for  
14 in subsection A or B of this section is calculated on the basis of  
15 the cost of the qualified property, the credit shall be allowed in  
16 each of the four (4) subsequent years. If the qualified property on  
17 which a credit has previously been allowed is acquired from a  
18 related party, the date such property is placed in service by the  
19 transferor shall be considered to be the date such property is  
20 placed in service by the transferee, for purposes of determining the  
21 aggregate number of years for which credit may be allowed.

22 F. The credit provided for in subsection A or B of this  
23 section, if based upon an increase in the number of full-time-  
24 equivalent employees, shall be allowed in each of the four (4)

1 subsequent years only if the level of new employees is maintained in  
2 the subsequent year. In calculating the credit by the number of new  
3 employees, only those employees whose paid wages or salary were at  
4 least Seven Thousand Dollars (\$7,000.00) during each year the credit  
5 is claimed shall be included in the calculation. Provided, that the  
6 first year a credit is claimed for a new employee, such employee may  
7 be included in the calculation notwithstanding paid wages of less  
8 than Seven Thousand Dollars (\$7,000.00) if the employee was hired in  
9 the last three quarters of the tax year, has wages or salary which  
10 will result in annual paid wages in excess of Seven Thousand Dollars  
11 (\$7,000.00) and the taxpayer submits an affidavit stating that the  
12 employee's position will be retained in the following tax year and  
13 will result in the payment of wages in excess of Seven Thousand  
14 Dollars (\$7,000.00). The number of new employees shall be  
15 determined by comparing the monthly average number of full-time  
16 employees subject to Oklahoma income tax withholding for the final  
17 quarter of the taxable year with the corresponding period of the  
18 prior taxable year, as substantiated by such reports as may be  
19 required by the Tax Commission.

20 G. The credit allowed by subsection A of this section shall be  
21 the greater amount of either:

22 1. One percent (1%) of the cost of the qualified property in  
23 the year the property is placed in service; or  
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1           2. Five Hundred Dollars (\$500.00) for each new employee. No  
2 credit shall be allowed in any taxable year for a net increase in  
3 the number of full-time-equivalent employees if such increase is a  
4 result of an investment in qualified depreciable property for which  
5 an income tax credit has been allowed as authorized by this section.

6           H. The credit allowed by subsection B of this section shall be  
7 the greater amount of either:

8           1. Two percent (2%) of the cost of the qualified property in  
9 the year the property is placed in service; or

10           2. One Thousand Dollars (\$1,000.00) for each new employee.

11           No credit shall be allowed in any taxable year for a net  
12 increase in the number of full-time-equivalent employees if such  
13 increase is a result of an investment in qualified depreciable  
14 property for which an income tax credit has been allowed as  
15 authorized by this section.

16           I. Except as provided by subsection G of Section 3658 of this  
17 title, any credits allowed but not used in any taxable year may be  
18 carried over in order as follows:

19           1. To each of the four (4) years following the year of  
20 qualification;

21           2. To the extent not used in those years in order to each of  
22 the fifteen (15) years following the initial five-year period;

23           3. If a C corporation that otherwise qualified for the credits  
24 under subsection A of this section subsequently changes its  
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1 operating status to that of a pass-through entity which is being  
2 treated as the same entity for federal tax purposes, the credits  
3 will continue to be available as if the pass-through entity had  
4 originally qualified for the credits subject to the limitations of  
5 this section;

6 4. To the extent not used in paragraphs 1 and 2 of this  
7 subsection, such credits from qualified depreciable property placed  
8 in service on or after January 1, 2000, may be utilized in any  
9 subsequent tax years after the initial twenty-year period; and

10 5. Provided, for tax years beginning on or after January 1,  
11 2016, and ending on or before December 31, 2018, the amount of  
12 credits available as an offset in a taxable year shall be limited to  
13 the percentage calculated by the Tax Commission pursuant to the  
14 provisions of subsection L of this section.

15 J. No credit otherwise authorized by the provisions of this  
16 section may be claimed for any event, transaction, investment,  
17 expenditure or other act occurring on or after July 1, 2010, for  
18 which the credit would otherwise be allowable until the provisions  
19 of this subsection shall cease to be operative on July 1, 2012.  
20 Beginning July 1, 2012, the credit authorized by this section may be  
21 claimed for any event, transaction, investment, expenditure or other  
22 act occurring on or after July 1, 2010, according to the provisions  
23 of this section; provided, credits accrued during the period from  
24 July 1, 2010, through June 30, 2012, shall be limited to a period of

1 two (2) taxable years. The credit shall be limited in each taxable  
2 year to fifty percent (50%) of the total amount of the accrued  
3 credit. Any tax credits which accrue during the period of July 1,  
4 2010, through June 30, 2012, may not be claimed for any period prior  
5 to the taxable year beginning January 1, 2012. No credits which  
6 accrue during the period of July 1, 2010, through June 30, 2012, may  
7 be used to file an amended tax return for any taxable year prior to  
8 the taxable year beginning January 1, 2012.

9 K. Beginning January 1, 2017, except with respect to tax  
10 credits allowed from investment or job creation occurring prior to  
11 January 1, 2017, the credits authorized by this section shall not be  
12 allowed for investment or job creation in electric power generation  
13 by means of wind as described by the North American Industry  
14 Classification System, No. 221119.

15 L. For tax years beginning on or after January 1, 2016, and  
16 ending on or before December 31, 2018, the total amount of credits  
17 authorized by this section used to offset tax shall be adjusted  
18 annually to limit the annual amount of credits to Twenty-five  
19 Million Dollars (\$25,000,000.00). The Tax Commission shall annually  
20 calculate and publish a percentage by which the credits authorized  
21 by this section shall be reduced so the total amount of credits used  
22 to offset tax does not exceed Twenty-five Million Dollars  
23 (\$25,000,000.00) per year. The formula to be used for the  
24 percentage adjustment shall be Twenty-five Million Dollars



1 (\$25,000,000.00) divided by the credits used to offset tax in the  
2 second preceding year.

3 M. Pursuant to subsection L of this section, in the event the  
4 total tax credits authorized by this section exceed Twenty-five  
5 Million Dollars (\$25,000,000.00) in any calendar year, the Tax  
6 Commission shall permit any excess over Twenty-five Million Dollars  
7 (\$25,000,000.00) but shall factor such excess into the percentage  
8 adjustment formula for subsequent years.

9 N. In addition to any other requirements or limitations  
10 provided in this section, for any credits claimed for tax years  
11 beginning on or after January 1, 2020, no credits shall be allowed  
12 unless a determination is made that the credits have a revenue  
13 neutral effect, as determined by the Oklahoma Tax Commission, for  
14 the tax year in which credits are being claimed. A revenue neutral  
15 effect shall occur if the estimated direct state benefits of the  
16 capital investment or new jobs, for which the credit is being  
17 claimed pursuant to this section, exceed the estimated direct state  
18 costs. For purposes of this section, "estimated direct state  
19 benefits" means the tax revenues projected to accrue to the state as  
20 a result of capital investment or new jobs and "estimated direct  
21 state costs" means the costs projected to accrue to the state as a  
22 result of capital investment or new jobs. The Oklahoma Department  
23 of Commerce shall provide such assistance as may be necessary to the  
24 Oklahoma Tax Commission in the determination of revenue neutrality.

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SECTION 2. This act shall become effective in accordance with  
the provisions of Section 58 of Article V of the Oklahoma  
Constitution.

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