STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 745 By: Bergstrom

AS INTRODUCED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. The credit provided for in subsection A or B of this section, if based upon an increase in the number of full-time-equivalent employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars ($7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars ($7,000.00) if the employee was hired in the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars ($7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars ($7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

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

1. One percent (1%) of the cost of the qualified property in the year the property is placed in service; or

2. Five Hundred Dollars ($500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

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

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

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

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

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

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

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

3. If a C corporation that otherwise qualified for the credits under subsection A of this section subsequently changes its

operating status to that of a pass-through entity which is being treated as the same entity for federal tax purposes, the credits will continue to be available as if the pass-through entity had originally qualified for the credits subject to the limitations of this section;

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

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

J. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, for which the credit would otherwise be allowable until the provisions of this subsection shall cease to be operative on July 1, 2012. Beginning July 1, 2012, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, according to the provisions of this section; provided, credits accrued during the period from July 1, 2010, through June 30, 2012, shall be limited to a period of two (2) taxable years. The credit shall be limited in each taxable year to fifty percent (50%) of the total amount of the accrued credit. Any tax credits which accrue during the period of July 1, 2010, through June 30, 2012, may not be claimed for any period prior to the taxable year beginning January 1, 2012. No credits which accrue during the period of July 1, 2010, through June 30, 2012, may be used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2012.

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

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

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

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

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

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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