

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 305

By: Bergstrom

4  
5  
6 AS INTRODUCED

7 An Act relating to income tax credit; amending 68  
8 O.S. 2021, Section 2357.4, which relates to tax  
9 credit for investments in qualified depreciable  
10 property and a net increase in full-time-equivalent  
11 employees; limiting certain credit to certain tax  
12 years; limiting certain tax credit to property placed  
13 in service before certain date; limiting requirement  
14 to provide satisfactory proof to certain years;  
15 limiting carry forward of certain credits to certain  
16 years; providing for carry forward of certain  
17 credits; requiring submission of claim to carry  
18 forward credit; requiring submission and approval of  
19 application to claim certain credit; requiring the  
20 Oklahoma Department of Commerce to prescribe certain  
21 form; requiring the Department to notify Oklahoma Tax  
22 Commission of application approval; and providing an  
23 effective date.  
24

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

19 SECTION 1. AMENDATORY 68 O.S. 2021, Section 2357.4, is  
20 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

1 shall be allowed a credit against the tax imposed by Section 2355 of  
2 this title for:

3 1. Investment in qualified depreciable property placed in  
4 service during those years for use in a manufacturing operation, as  
5 defined in Section 1352 of this title, which has received a  
6 manufacturer exemption permit pursuant to the provisions of Section  
7 1359.2 of this title or a qualified aircraft maintenance or  
8 manufacturing facility as defined in Section 1357 of this title in  
9 this state or a qualified web search portal as defined in Section  
10 1357 of this title; or

11 2. A For tax years 1988 through 2023, a net increase in the  
12 number of full-time-equivalent employees in a manufacturing  
13 operation, as defined in Section 1352 of this title, which has  
14 received a manufacturer exemption permit pursuant to the provisions  
15 of Section 1359.2 of this title or a qualified aircraft maintenance  
16 or manufacturing facility defined in Section 1357 of this title in  
17 this state or in a qualified web search portal as defined in Section  
18 1357 of this title including employees engaged in support services.

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

1 1. Investment in qualified depreciable property with a total  
2 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)  
3 within three (3) years from the date of initial qualifying  
4 expenditure and placed in service in this state during those years  
5 for use in the manufacture of products described by any Industry  
6 Number contained in Division D of Part I of the Standard Industrial  
7 Classification (SIC) Manual, latest revision; or

8 2. A For property placed in service before January 1, 2024, a  
9 net increase in the number of full-time-equivalent employees in this  
10 state engaged in the manufacture of any goods identified by any  
11 Industry Number contained in Division D of Part I of the Standard  
12 Industrial Classification (SIC) Manual, latest revision, if the  
13 total cost of qualified depreciable property placed in service by  
14 the business entity within the state equals or exceeds Forty Million  
15 Dollars (\$40,000,000.00) within three (3) years from the date of  
16 initial qualifying expenditure.

17 C. The For property placed in service before January 1, 2024,  
18 the business entity may claim the credit authorized by subsection B  
19 of this section for expenditures incurred or for a net increase in  
20 the number of full-time-equivalent employees after the business  
21 entity provides proof satisfactory to the Oklahoma Tax Commission  
22 that the conditions imposed pursuant to paragraph 1 or paragraph 2  
23 of subsection B of this section have been satisfied.

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

9 E. The credit provided for in subsection A of this section, if  
10 based upon investment in qualified depreciable property, shall not  
11 be allowed unless the investment in qualified depreciable property  
12 is at least Fifty Thousand Dollars (\$50,000.00). The credit  
13 provided for in subsection A or B of this section shall not be  
14 allowed if the applicable investment is the direct cause of a  
15 decrease in the number of full-time-equivalent employees. Qualified  
16 property shall be limited to machinery, fixtures, equipment,  
17 buildings, or substantial improvements thereto, placed in service in  
18 this state during the taxable year. The taxable years for which the  
19 credit may be allowed if based upon investment in qualified  
20 depreciable property shall be measured from the year in which the  
21 qualified property is placed in service. If the credit provided for  
22 in subsection A or B of this section is calculated on the basis of  
23 the cost of the qualified property, the credit shall be allowed in  
24 each of the four (4) subsequent years. If the qualified property on

1 which a credit has previously been allowed is acquired from a  
2 related party, the date such property is placed in service by the  
3 transferor shall be considered to be the date such property is  
4 placed in service by the transferee, for purposes of determining the  
5 aggregate number of years for which credit may be allowed.

6 F. The credit provided for in subsection A or B of this  
7 section, if based upon an increase in the number of full-time-  
8 equivalent employees, shall be allowed in each of the four (4)  
9 subsequent years only if the level of new employees is maintained in  
10 the subsequent year. In calculating the credit by the number of new  
11 employees, only those employees whose paid wages or salary were at  
12 least Seven Thousand Dollars (\$7,000.00) during each year the credit  
13 is claimed shall be included in the calculation. Provided, that the  
14 first year a credit is claimed for a new employee, such employee may  
15 be included in the calculation notwithstanding paid wages of less  
16 than Seven Thousand Dollars (\$7,000.00) if the employee was hired in  
17 the last three quarters of the tax year, has wages or salary which  
18 will result in annual paid wages in excess of Seven Thousand Dollars  
19 (\$7,000.00) and the taxpayer submits an affidavit stating that the  
20 employee's position will be retained in the following tax year and  
21 will result in the payment of wages in excess of Seven Thousand  
22 Dollars (\$7,000.00). The number of new employees shall be  
23 determined by comparing the monthly average number of full-time  
24 employees subject to Oklahoma income tax withholding for the final

1 quarter of the taxable year with the corresponding period of the  
2 prior taxable year, as substantiated by such reports as may be  
3 required by the Tax Commission.

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

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

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

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

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

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

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

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

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

6 2. ~~To~~ For property placed in service before January 1, 2024, or  
7 a net increase in the number of full-time-equivalent employees in a  
8 manufacturing operation, to the extent not used in those years in  
9 order to each of the fifteen (15) years following the initial five-  
10 year period;

11 3. If a C corporation that otherwise qualified for the credits  
12 under subsection A of this section subsequently changes its  
13 operating status to that of a pass-through entity which is being  
14 treated as the same entity for federal tax purposes, the credits  
15 will continue to be available as if the pass-through entity had  
16 originally qualified for the credits subject to the limitations of  
17 this section;

18 4. To the extent not used in paragraphs 1 and 2 of this  
19 subsection, such credits from qualified depreciable property placed  
20 in service on or after January 1, 2000 and before January 1, 2024,  
21 may be utilized in any subsequent tax years after the initial  
22 twenty-year period; ~~and~~

23 5. To the extent not used in paragraph 1 of this subsection,  
24 credits from qualified depreciable property placed in service on or  
25

1 after January 1, 2024, may be carried forward in order to each of  
2 the seven (7) years, following the initial five-year period, upon  
3 the filing of a claim on a form prescribed by the Tax Commission for  
4 each year the credit is carried forward. The form prescribed shall  
5 require the claimant to attest whether the property is still in use;  
6 and

7 6. Provided, for tax years beginning on or after January 1,  
8 2016, and ending on or before December 31, 2018, the amount of  
9 credits available as an offset in a taxable year shall be limited to  
10 the percentage calculated by the Tax Commission pursuant to the  
11 provisions of subsection L of this section.

12 J. No credit otherwise authorized by the provisions of this  
13 section may be claimed for any event, transaction, investment,  
14 expenditure, or other act occurring on or after July 1, 2010, for  
15 which the credit would otherwise be allowable until the provisions  
16 of this subsection shall cease to be operative on July 1, 2012.  
17 Beginning July 1, 2012, the credit authorized by this section may be  
18 claimed for any event, transaction, investment, expenditure, or  
19 other act occurring on or after July 1, 2010, according to the  
20 provisions of this section; provided, credits accrued during the  
21 period from July 1, 2010, through June 30, 2012, shall be limited to  
22 a period of two (2) taxable years. The credit shall be limited in  
23 each taxable year to fifty percent (50%) of the total amount of the  
24 accrued credit. Any tax credits which accrue during the period of



1 July 1, 2010, through June 30, 2012, may not be claimed for any  
2 period prior to the taxable year beginning January 1, 2012. No  
3 credits which accrue during the period of July 1, 2010, through June  
4 30, 2012, may be used to file an amended tax return for any taxable  
5 year prior to the taxable year beginning January 1, 2012.

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

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

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

7 N. The credit provided for in subsections A and B of this  
8 section, for qualified depreciable property placed in service on or  
9 after January 1, 2024, shall not be claimed unless an application  
10 for the credit is approved by the Oklahoma Department of Commerce.  
11 The application shall be submitted to the Department on a form  
12 prescribed by the Department within sixty (60) days of the property  
13 placement in service. The Department shall notify the Tax  
14 Commission upon approval of the application that the taxpayer is  
15 eligible to claim the credit.

16 SECTION 2. This act shall become effective November 1, 2023.

17  
18 59-1-168 QD 1/12/2023 5:54:42 PM  
19  
20  
21  
22  
23  
24  
25