

1 ENGROSSED HOUSE
2 BILL NO. 3859

By: Wallace, Lawson, Hilbert,
Ortega, Sanders, Humphrey,
Newton and Pfeiffer of the
House

4 and

5 Thompson of the Senate

6
7 [revenue and taxation - tax credits for railroad
8 reconstruction and replacement expenditures -
9 modifying calculation of credit limit - increasing
10 the total annual cap applicable to such tax credits
11 - effective date]
12
13

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

15 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.104, as
16 last amended by Section 1, Chapter 7, 2nd Extraordinary Session,
17 O.S.L. 2018 (68 O.S. Supp. 2019, Section 2357.104), is amended to
18 read as follows:

19 Section 2357.104 A. Except as otherwise provided by this
20 section, for taxable years beginning on or after ~~December 31, 2005~~
21 January 1, 2020, and ending on or before December 31, 2024, there
22 shall be allowed a credit against the tax imposed by Section 2355 of
23 this title equal to fifty percent (50%) of an eligible taxpayer's
24 qualified railroad reconstruction or replacement expenditures.

1 B. ~~1. Except as provided in paragraph 2 of this subsection,~~
2 ~~the~~ The amount of the credit shall be limited to the product of ~~Five~~
3 ~~Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars~~
4 ~~(\$2,000.00) for tax year 2008 and subsequent tax years~~ Five Thousand
5 Dollars (\$5,000.00) and the number of miles of railroad track owned
6 or leased within this state by the eligible taxpayer as of the close
7 of the taxable year.

8 ~~2. In tax year 2009 and subsequent tax years, a taxpayer may~~
9 ~~elect to increase the limit provided in paragraph 1 of this~~
10 ~~subsection to an amount equal to three times the limit specified in~~
11 ~~paragraph 1 of this subsection for qualified expenditures made in~~
12 ~~the tax year; provided, the taxpayer may only claim one-third (1/3)~~
13 ~~of the credit in any one taxable period.~~

14 C. The credit allowed pursuant to subsection A of this section
15 but not used shall be freely transferable, by written agreement, to
16 subsequent transferees at any time during the five (5) years
17 following the year of qualification. An eligible transferee shall
18 be any taxpayer subject to the tax imposed by Section 2355 of this
19 title. The person originally allowed the credit and the subsequent
20 transferee shall jointly file a copy of the written credit transfer
21 agreement with the Oklahoma Tax Commission within thirty (30) days
22 of the transfer. The written agreement shall contain the name,
23 address and taxpayer identification number of the parties to the
24 transfer, the amount of credit being transferred, the year the

1 credit was originally allowed to the transferring person and the tax
2 year or years for which the credit may be claimed. The Tax
3 Commission shall promulgate rules to permit verification of the
4 timeliness of a tax credit claimed upon a tax return pursuant to
5 this subsection but shall not promulgate any rules which unduly
6 restrict or hinder the transfers of such tax credit. The Department
7 of Transportation shall promulgate rules to permit verification of
8 the eligibility of an eligible taxpayer's expenditures for the
9 purpose of claiming the credit. The rules shall provide for the
10 approval of qualified railroad reconstruction or replacement
11 expenditures prior to commencement of a project and provide a
12 certificate of verification upon completion of a project that uses
13 qualified railroad reconstruction or replacement expenditures. The
14 certificate of verification shall satisfy all requirements of the
15 Tax Commission pertaining to the eligibility of the person claiming
16 the credit.

17 D. Any credits allowed pursuant to the provisions of subsection
18 A of this section but not used in any tax year may be carried over
19 in order to each of the five (5) years following the year of
20 qualification.

21 E. ~~A taxpayer who elects to increase the limitation on the~~
22 ~~credit under paragraph 2 of subsection B of this section shall not~~
23 ~~be granted additional credits under subsection A of this section~~
24 ~~during the period of such election.~~

1 ~~F.~~ As used in this section:

2 1. "Class II and Class III railroad" means a railroad that is
3 classified by the United States Surface Transportation Board as a
4 Class II or Class III railroad;

5 2. "Eligible taxpayer" means any Class II or Class III
6 railroad; and

7 3. "Qualified railroad reconstruction or replacement
8 expenditures" means expenditures for:

- 9 a. track maintenance, natural disasters, and
10 reconstruction or replacement of railroad
11 infrastructure including track, roadbed, crossings,
12 bridges, industrial leads and track-related structures
13 owned or leased by a Class II or Class III railroad as
14 of January 1, 2006, or
- 15 b. new construction of industrial leads, switches, spurs
16 and sidings and extensions of existing sidings by a
17 Class II or Class III railroad.

18 ~~G. No credit otherwise authorized by the provisions of this~~
19 ~~section may be claimed for any event, transaction, investment,~~
20 ~~expenditure or other act occurring on or after July 1, 2010, for~~
21 ~~which the credit would otherwise be allowable. The provisions of~~
22 ~~this subsection shall cease to be operative on July 1, 2012.~~
23 ~~Beginning July 1, 2012, the credit authorized by this section may be~~
24 ~~claimed for any event, transaction, investment, expenditure or other~~

1 ~~act occurring on or after July 1, 2012, according to the provisions~~
2 ~~of this section.~~

3 ~~H. The credit otherwise authorized by the provisions of this~~
4 ~~section shall be reduced by twenty-five percent (25%) for any~~
5 ~~taxable year which begins on or after January 1, 2016. The~~
6 ~~provisions of this subsection shall not be applicable to tax credits~~
7 ~~carried forward from any tax year which began prior to January 1,~~
8 ~~2016.~~

9 ~~I.~~ F. For tax years beginning on or after January 1, ~~2018~~ 2020,
10 the total amount of credits authorized by this section used to
11 offset tax shall be adjusted annually to limit the annual amount of
12 credits to ~~Two Million Dollars (\$2,000,000.00)~~ Five Million Dollars
13 (\$5,000,000.00). The Tax Commission shall annually calculate and
14 publish a percentage by which the credits authorized by this section
15 shall be reduced so the total amount of credits used to offset tax
16 does not exceed ~~Two Million Dollars (\$2,000,000.00)~~ Five Million
17 Dollars (\$5,000,000.00) per year. The formula to be used for the
18 percentage adjustment shall be ~~Two Million Dollars (\$2,000,000.00)~~
19 Five Million Dollars (\$5,000,000.00) divided by the credits claimed
20 in the second preceding year.

21 ~~J.~~ G. Pursuant to subsection ~~F~~ F of this section, in the event
22 the total tax credits authorized by this section exceed ~~Two Million~~
23 ~~Dollars (\$2,000,000.00)~~ Five Million Dollars (\$5,000,000.00) in any
24 calendar year, the Tax Commission shall permit any excess over ~~Two~~

1 ~~Million Dollars (\$2,000,000.00)~~ Five Million Dollars (\$5,000,000.00)

2 but shall factor such excess into the percentage adjustment formula
3 for subsequent years.

4 SECTION 2. This act shall become effective January 1, 2020.

5 Passed the House of Representatives the 2nd day of March, 2020.

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8 Presiding Officer of the House
of Representatives

9 Passed the Senate the ____ day of _____, 2020.

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12 Presiding Officer of the Senate