

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 57th Legislature (2020)

4   HOUSE BILL 3859

                              By: Wallace and **Lawson** of the  
  House

5   and

6   **Thompson** of the Senate

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9  
10                               AS INTRODUCED

11           An Act relating to revenue and taxation; amending 68  
12           O.S. 2011, Section 2357.104, as last amended by  
13           Section 1, Chapter 7, 2nd Extraordinary Session,  
14           O.S.L. 2018 (68 O.S. Supp. 2019, Section 2357.104),  
15           which relates to tax credits for railroad  
16           reconstruction and replacement expenditures; limiting  
17           tax years where expenditures are eligible for credit;  
18           modifying calculation of credit limit; eliminating  
19           certain alternative credit limit calculation;  
20           clarifying language; modifying definition;  
21           eliminating certain required reduction provision;  
22           increasing the total annual cap applicable to such  
23           tax credits; and providing an effective date.

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

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

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

7 B. ~~1. Except as provided in paragraph 2 of this subsection,~~  
8 ~~the~~ The amount of the credit shall be limited to the product of ~~Five~~  
9 ~~Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars~~  
10 ~~(\$2,000.00) for tax year 2008 and subsequent tax years~~ Five Thousand  
11 Dollars (\$5,000.00) and the number of miles of railroad track owned  
12 or leased within this state by the eligible taxpayer as of the close  
13 of the taxable year.

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

20 C. The credit allowed pursuant to subsection A of this section  
21 but not used shall be freely transferable, by written agreement, to  
22 subsequent transferees at any time during the five (5) years  
23 following the year of qualification. An eligible transferee shall  
24 be any taxpayer subject to the tax imposed by Section 2355 of this

1 title. The person originally allowed the credit and the subsequent  
2 transferee shall jointly file a copy of the written credit transfer  
3 agreement with the Oklahoma Tax Commission within thirty (30) days  
4 of the transfer. The written agreement shall contain the name,  
5 address and taxpayer identification number of the parties to the  
6 transfer, the amount of credit being transferred, the year the  
7 credit was originally allowed to the transferring person and the tax  
8 year or years for which the credit may be claimed. The Tax  
9 Commission shall promulgate rules to permit verification of the  
10 timeliness of a tax credit claimed upon a tax return pursuant to  
11 this subsection but shall not promulgate any rules which unduly  
12 restrict or hinder the transfers of such tax credit. The Department  
13 of Transportation shall promulgate rules to permit verification of  
14 the eligibility of an eligible taxpayer's expenditures for the  
15 purpose of claiming the credit. The rules shall provide for the  
16 approval of qualified railroad reconstruction or replacement  
17 expenditures prior to commencement of a project and provide a  
18 certificate of verification upon completion of a project that uses  
19 qualified railroad reconstruction or replacement expenditures. The  
20 certificate of verification shall satisfy all requirements of the  
21 Tax Commission pertaining to the eligibility of the person claiming  
22 the credit.

23 D. Any credits allowed pursuant to the provisions of subsection  
24 A of this section but not used in any tax year may be carried over

1 in order to each of the five (5) years following the year of  
2 qualification.

3 E. ~~A taxpayer who elects to increase the limitation on the~~  
4 ~~credit under paragraph 2 of subsection B of this section shall not~~  
5 ~~be granted additional credits under subsection A of this section~~  
6 ~~during the period of such election.~~

7 F. As used in this section:

8 1. "Class II and Class III railroad" means a railroad that is  
9 classified by the United States Surface Transportation Board as a  
10 Class II or Class III railroad;

11 2. "Eligible taxpayer" means any Class II or Class III  
12 railroad; and

13 3. "Qualified railroad reconstruction or replacement  
14 expenditures" means expenditures for:

- 15 a. track maintenance, natural disasters, and  
16 reconstruction or replacement of railroad  
17 infrastructure including track, roadbed, crossings,  
18 bridges, industrial leads and track-related structures  
19 owned or leased by a Class II or Class III railroad as  
20 of January 1, 2006, or
- 21 b. new construction of industrial leads, switches, spurs  
22 and sidings and extensions of existing sidings by a  
23 Class II or Class III railroad.

1       ~~G. No credit otherwise authorized by the provisions of this~~  
2 ~~section may be claimed for any event, transaction, investment,~~  
3 ~~expenditure or other act occurring on or after July 1, 2010, for~~  
4 ~~which the credit would otherwise be allowable. The provisions of~~  
5 ~~this subsection shall cease to be operative on July 1, 2012.~~  
6 ~~Beginning July 1, 2012, the credit authorized by this section may be~~  
7 ~~claimed for any event, transaction, investment, expenditure or other~~  
8 ~~act occurring on or after July 1, 2012, according to the provisions~~  
9 ~~of this section.~~

10       ~~H. The credit otherwise authorized by the provisions of this~~  
11 ~~section shall be reduced by twenty-five percent (25%) for any~~  
12 ~~taxable year which begins on or after January 1, 2016. The~~  
13 ~~provisions of this subsection shall not be applicable to tax credits~~  
14 ~~carried forward from any tax year which began prior to January 1,~~  
15 ~~2016.~~

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

1 percentage adjustment shall be ~~Two Million Dollars (\$2,000,000.00)~~  
2 Five Million Dollars (\$5,000,000.00) divided by the credits claimed  
3 in the second preceding year.

4 ~~J. G.~~ Pursuant to subsection ~~F~~ F of this section, in the event  
5 the total tax credits authorized by this section exceed ~~Two Million~~  
6 ~~Dollars (\$2,000,000.00)~~ Five Million Dollars (\$5,000,000.00) in any  
7 calendar year, the Tax Commission shall permit any excess over ~~Two~~  
8 ~~Million Dollars (\$2,000,000.00)~~ Five Million Dollars (\$5,000,000.00)  
9 but shall factor such excess into the percentage adjustment formula  
10 for subsequent years.

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

12  
13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated  
14 02/17/2020 - DO PASS, As Coauthored.  
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