



# OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

**PHONE**  
**(405) 319-8550**

**FACSIMILE**  
**(405) 601-7144**

**PHYSICAL ADDRESS**  
**First National Center**  
**120 North Robinson, 20th Floor**  
**Oklahoma City, OK**

**OFFICE OF THE GENERAL COUNSEL**

**MAILING ADDRESS**  
**First National Center**  
**120 North Robinson, Suite 2000W**  
**Oklahoma City, Oklahoma 73102-7801**

May 27, 2014

*Via U.S. Mail*



Re: Letter Ruling Request— [REDACTED] File No. LR-14-003

Dear [REDACTED]

This letter is in response to your email received in the Office of the General Counsel on February 21, 2014, in which you requested a letter ruling on behalf of yourself concerning your eligibility to claim the income tax Credit for Employees in the Aerospace Sector afforded by 68 O.S. 2011, § 2357.304.

This letter ruling is based upon the facts presented by you in your original email and the undersigned's examination of the Form 564 "Credit for Employees in the Aerospace Sector" attached to your 2013 Oklahoma income tax return, and are as follows:

You received a Bachelor's degree in engineering from [REDACTED] on May 7, 2011. That same year you became employed by [REDACTED] which is a public entity whose principal business is in the aerospace sector.

You first claimed the credit on your 2011 income tax return and have claimed it for the 2012 and 2013 tax years. For 2012 and 2013, you carried forward a remainder of the available credit on your returns for those years. None of these returns have been the subject of an examination and adjustment by the Oklahoma Tax Commission.

You have requested a letter ruling concerning the manner in which the excess credit is carried over from the year for which it was claimed to subsequent years. Specifically, you ask whether the excess credit for each separate tax year carries over to its own subsequent five-year period?

The terms of 68 O.S. 2011, § 2357.304 provide in pertinent part:

A. Except as provided in subsection D of this section, for taxable years beginning after December 31, 2008, **and ending before January 1, 2015**, a qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of this title of up to Five Thousand Dollars (\$5,000.00) per year **for a period of time not to exceed five (5) years**.

B. The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

C. Any credit claimed, but not used, **may be carried over, in order, to each of the five (5) subsequent taxable years**.

(Emphasis added.)

The terms of 68 O.S.2011, § 2357.301(5) provide the following definition of “qualified employee”:

“Qualified employee” means any person employed by or contracting with a qualified employer on or after January 1, 2009, who has been awarded an undergraduate or graduate degree from a qualified program by an institution, and who was not employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer[.]

Based on the undersigned’s examination of the Form 564, and only for purposes of answering the questions in your letter ruling request, you are a “qualified employee” under the terms of Section 2357.301(5).

Each tax year for which the credit has been claimed has its own five (5) year carry-forward. Under the plain language of subsection (A) of Section 2357.304, the credit may not be **established** for any tax year after 2014.<sup>1</sup> It may, however, be **used** by way of carry-forward to future years beyond the 2014 tax period. Under the plain language of subsection (C) of Section 2357.304, the credit claimed for a particular year may be carried over **in order** with the credit(s) claimed for other years within the prescribed five (5) year (or fewer) period during which the credit might be available to be claimed. A credit claimed for 2010 could be carried forward until exhaustion until the end of the 2015 tax period, a credit claimed for 2011 could be carried over until exhaustion until the end of the 2016 tax period, and so on. The credit for each year must be used first to satisfy the tax liability for that year. The carry-forward portion must then be applied to satisfy the liability for the immediately succeeding year. The first year’s credit must be used before using the second year’s credit.

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<sup>1</sup> Effective November 1, 2014, the credit has been extended to include tax years through 2017. This change was made by House Bill 2509, which was signed by the Governor on April 9, 2014.

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This letter ruling may generally be relied upon only by the taxpayer to whom it is issued, provided that all facts have been accurately and completely stated, and that there has been no change in applicable law. *See* OKLA. ADMIN. CODE § 710:1-3-73(e). Furthermore, this letter ruling does not preclude the Commission from conducting an audit or examination under 68 O.S. 2011, § 206 of any report or return claiming an exemption for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 O.S. 2011, § 221.

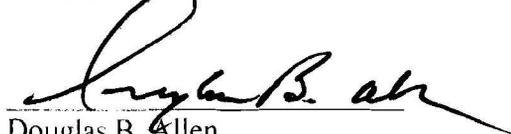
Respectfully,

OKLAHOMA TAX COMMISSION



Sean R. McFarland  
Assistant General Counsel

APPROVED:



Douglas B. Allen  
General Counsel

cc: Tony Mastin, Executive Director; Rick Miller, Director, Tax Policy and Research