STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1556

By: Jackson, Covey, Dorman, Nance, Armes, Deutschendorf, DeWitt, Lindley, McCarter, McMullen, Roggow and Turner of the House

and

Myers, Anderson and Harrison of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending Section 1, Chapter 385, O.S.L. 2003 (68 O.S. Supp. 2004, Section 2357.66), which relates to tax credits for ethanol facilities; modifying taxes against which credit may be claimed; modifying period of time related to eligibility for credit; modifying maximum gallonage eligible for credits; defining terms; authorizing credit against certain motor fuel tax levy; authorizing refund claim; prescribing procedures for refund; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 1, Chapter 385, O.S.L. 2003 (68 O.S. Supp. 2004, Section 2357.66), is amended to read as follows:

Section 2357.66 A. For tax years beginning after December 31, 2003, and before January 1, 2011, there shall be allowed a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title, and against the tax imposed by Section 2370 of this title, and against the taxes imposed by Sections 624 and 628 of Title 36 of the Oklahoma Statutes and actually paid to and placed into the General Revenue Fund for any ethanol facility which is in production at the rate of at least twenty-five percent (25%) of its

name plate design capacity for the production of ethanol, before denaturing, on or before December 31, ~~2006~~ 2008. The completion of the construction of such facilities must be after ~~the date of this act~~ July 1, 2003. The credit shall be in the amount of twenty cents ($0.20) per gallon of ethanol produced and shall be allowed for sixty (60) months beginning with the first month for which the facility is eligible to receive such credit and ending not later than December 31, 2010. The credit may only be claimed if the ethanol facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit.

B. As used in this section:

1. "Ethanol facility" means a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts; and

2. "Name plate design capacity" means the original designed capacity of an ethanol facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year.

C. Any ethanol facility eligible for a tax credit under subsection A of this section shall also receive a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title in the amount of twenty cents ($0.20) per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after ~~the effective date of this act~~ July 1, 2003, and before December 31, 2006. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2010.

D. 1. Beginning January 1, 2011, an ethanol facility shall receive a credit against the tax imposed by Section 2355 of ~~Title 68~~

~~of the Oklahoma Statutes~~ this title in the amount of seven and one-half cents ($0.075) per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six (36) consecutive months.

2. For purposes of this subsection, "new production" means production which results from a new facility, a facility which has not received credits prior to January 1, 2011, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2011, as certified by the design engineer of the facility to the Oklahoma Tax Commission.

3. For expansion of the capacity of an existing facility, "new production" means annual production in excess of twelve times the monthly average of the highest three (3) months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer.

4. No credits shall be allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2011.

5. The amount of a credit granted pursuant to this section based on new production shall be approved by the Tax Commission based on such ethanol production records as may be necessary to reasonably determine the level of new production.

E. 1. The credits described in this section shall be given only for ethanol produced at a plant in this state at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced or sold for use in the production of distilled spirits.

2. Not more than twenty-five million (25,000,000) gallons of ethanol produced annually at ~~an~~ any single ethanol facility nor more than seventy-five million (75,000,000) gallons of ethanol produced annually at all ethanol facilities in this state shall be eligible for the credits in subsections A and C of this section, and the credits may only be claimed by a producer for the periods specified in subsections A and C of this section.

3. Not more than ten million (10,000,000) gallons of ethanol produced during any twelve-consecutive-month period at ~~an~~ any single ethanol facility nor more than thirty million (30,000,000) gallons of ethanol produced annually at all ethanol facilities in this state shall be eligible for the credit described in subsection D of this section, and the credit may only be claimed by a producer for the periods specified in subsection D of this section.

4. Not more than one hundred twenty-five million (125,000,000) gallons of ethanol produced at an ethanol facility by the end of the sixty-month period set forth in subsection A or C of this section shall be eligible for the credit under such subsection. An ethanol facility which receives a credit for ethanol produced under subsection A or C of this section shall not receive a credit under subsection D of this section until its eligibility to receive a credit under subsection A or C of this section has been completed.

~~E.~~ F. The Tax Commission shall prescribe an application form and promulgate rules for claiming credits under this section.

~~F.~~ G. For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 500.10-1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Ethanol" means a blend of gasoline and ethyl alcohol consisting of not more than fifteen percent (15%) ethyl alcohol by volume; and

2. "Retail dealer" means the type of dealer described by paragraph 53 of Section 500.3 of Title 68 of the Oklahoma Statutes.

B. Unless the federal government mandates the use of reformulated fuel in an area within the State of Oklahoma in nonattainment with the National Ambient Air Quality Standards, there shall be allowed as a credit against the tax levy imposed pursuant to paragraph 1 of subsection A of Section 500.4 of Title 68 of the Oklahoma Statutes in the amount of one and six-tenths cents ($0.016) for each gallon of ethyl alcohol which is contained in ethanol sold by a retail dealer.

C. Notwithstanding any other provision of the Oklahoma Motor Fuel Tax Code to the contrary, the retail dealer described by subsection A of this section may make the claim for refund from the Oklahoma Tax Commission. The refund claim process for the credit authorized by this section shall be substantially the same as the refund claims process authorized by the Motor Fuel Tax Code for other refunds provided by law.

D. Each claim for refund filed pursuant to this section shall be accompanied by such documentation as may be required by the Tax Commission that the retail dealer reduced the retail price for each gallon of ethyl alcohol which is contained in ethanol sold, and for which the credit authorized by this section is claimed, by one and six-tenths cents ($0.016) and that such cost savings was economically provided to the purchaser of the ethanol fuel.

SECTION 3. This act shall become effective January 1, 2006.

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