

THE STATE SENATE  
Wednesday, April 13, 2005

Committee Substitute for  
ENGROSSED  
House Bill No. 1556

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.

[ revenue and taxation - amending 68 O.S., Section 2357.66 -  
tax credits for ethanol facilities - codification -  
effective date ]

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~~

1 ~~act~~ July 1, 2003. The credit shall be in the amount of twenty cents  
2 (\$0.20) per gallon of ethanol produced and shall be allowed for  
3 sixty (60) months beginning with the first month for which the  
4 facility is eligible to receive such credit and ending not later  
5 than December 31, 2010. The credit may only be claimed if the  
6 ethanol facility maintains an average production rate of at least  
7 twenty-five percent (25%) of its name plate design capacity for at  
8 least six (6) months after the first month for which it is eligible  
9 to receive such credit.

10 B. As used in this section:

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

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

17 C. Any ethanol facility eligible for a tax credit under  
18 subsection A of this section shall also receive a credit against the  
19 tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~  
20 this title in the amount of twenty cents (\$0.20) per gallon of  
21 ethanol produced in excess of the original name plate design  
22 capacity which results from expansion of the facility completed on  
23 or after ~~the effective date of this act~~ July 1, 2003, and before

1 December 31, 2006. Such tax credit shall be allowed for sixty (60)  
2 months beginning with the first month for which production from the  
3 expanded facility is eligible to receive such tax credit and ending  
4 not later than December 31, 2010.

5 D. 1. Beginning January 1, 2011, an ethanol facility shall  
6 receive a credit against the tax imposed by Section 2355 of ~~Title 68~~  
7 ~~of the Oklahoma Statutes~~ this title in the amount of seven and one-  
8 half cents (\$0.075) per gallon of ethanol, before denaturing, for  
9 new production for a period not to exceed thirty-six (36)  
10 consecutive months.

11 2. For purposes of this subsection, "new production" means  
12 production which results from a new facility, a facility which has  
13 not received credits prior to January 1, 2011, or the expansion of  
14 the capacity of an existing facility by at least two million  
15 (2,000,000) gallons first placed into service after January 1, 2011,  
16 as certified by the design engineer of the facility to the Oklahoma  
17 Tax Commission.

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

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

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

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

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

22       3. Not more than ten million (10,000,000) gallons of ethanol  
23 produced during any twelve-consecutive-month period at ~~an~~ any single

1 ethanol facility nor more than thirty million (30,000,000) gallons  
2 of ethanol produced annually at all ethanol facilities in this state  
3 shall be eligible for the credit described in subsection D of this  
4 section, and the credit may only be claimed by a producer for the  
5 periods specified in subsection D of this section.

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

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

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

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

1       A. As used in this section:

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

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

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

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

22       D. Each claim for refund filed pursuant to this section shall  
23 be accompanied by such documentation as may be required by the Tax

1 Commission that the retail dealer reduced the retail price for each  
2 gallon of ethyl alcohol which is contained in ethanol sold, and for  
3 which the credit authorized by this section is claimed, by one and  
4 six-tenths cents (\$0.016) and that such cost savings was  
5 economically provided to the purchaser of the ethanol fuel.

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

7 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-5-05 - DO PASS,  
8 As Amended and Coauthored.