

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1441

By: McMullen

AS INTRODUCED

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; expanding credit to include certain biofuel facilities; defining term; 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 for any ~~ethanol~~ qualified 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, or a biofuel derived from oil seed, on or before December 31, 2006. The completion of the construction of such facilities must be after the date of this act. The credit shall be in the amount of twenty cents (\$0.20) per gallon of ethanol or biofuel 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~~ qualified 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~~ Qualified facility" means a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts or in the production of a biofuel derived from oil seed; and

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

3. "Biofuel" means a fuel made from combustible oils produced by plants.

C. Any ~~ethanol~~ qualified 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 in the amount of twenty cents (\$0.20) per gallon of ethanol or biofuel 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 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~~ a qualified facility shall receive a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes in the amount of seven and one-half cents (\$0.075) per gallon of ethanol, before denaturing, or biofuel 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 or biofuel production at ~~an ethanol~~ a qualified 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 or biofuel 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 or biofuel 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 or biofuel produced annually at ~~an ethanol~~ a qualified facility 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 or biofuel produced during any twelve-consecutive-month period at ~~an ethanol~~ a qualified facility 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 or biofuel produced at ~~an ethanol~~ a qualified 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~~ A qualified facility which receives a credit for ethanol or biofuel 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.

~~F.~~ 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. This act shall become effective January 1, 2006.

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