

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1615

By: Roggow

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; modifying taxes against which credits claimable; allowing for transfer of credit; requiring transfer agreement to be filed with Oklahoma Tax Commission; allowing for promulgation of rules; providing an effective date; and declaring an emergency.

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~~ 2005, 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 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. 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 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. The amount of the credit allowed but not used shall be freely transferable to subsequent transferees at any time during the five (5) years following the year of qualification. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period. The transferor originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferor and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules which unduly restrict or hinder the transfers of such tax credit.

C. 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.~~ D. 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 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 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.~~ E. 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 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.~~ F. 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 ethanol facility shall be eligible for the credits in subsections A and ~~E~~ D of this section, and the credits may only be claimed by a producer or an eligible transferee for the periods specified in subsections A and ~~E~~ D of this section.

3. Not more than ten million (10,000,000) gallons of ethanol produced during any twelve-consecutive-month period at an ethanol facility shall be eligible for the credit described in subsection ~~D~~ E of this section, and the credit may only be claimed by a producer or an eligible transferee for the periods specified in subsection ~~D~~ E 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 ~~E~~ D 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 ~~E~~ D of this section shall not receive a credit under

subsection ~~D~~ E of this section until its eligibility to receive a credit under subsection A or ~~C~~ D of this section has been completed.

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

~~F.~~ H. 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 July 1, 2005.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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