

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1513

By: DeWitt, Dorman, Jackson,
Covey, Jett, Liebmann,
Luttrell and Walker of the
House

7 and

8 Myers, Barrington and
9 Schulz of the Senate

10
11
12 CONFERENCE COMMITTEE SUBSTITUTE

13 An Act relating to revenue and taxation; amending
14 Section 1, Chapter 385, O.S.L. 2003, as amended by
15 Section 1, Chapter 294, O.S.L. 2005 (68 O.S. Supp.
16 2006, Section 2357.66), which relates to tax credit
17 for ethanol production; modifying expiration date of
18 credit; amending Section 1, Chapter 287, O.S.L. 2005
19 (68 O.S. Supp. 2006, Section 2357.67), which relates
20 to tax credit for biodiesel production; modifying
21 expiration date of credit; and providing an effective
22 date.

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

24 SECTION 1. AMENDATORY Section 1, Chapter 385, O.S.L.
2003, as amended by Section 1, Chapter 294, O.S.L. 2005 (68 O.S.
Supp. 2006, Section 2357.66), is amended to read as follows:

1 Section 2357.66 A. For tax years beginning after December 31,
2 2003, and before January 1, ~~2011~~ 2013, there shall be allowed a
3 credit against the tax imposed by Section 2355 of this title, and
4 against the tax imposed by Section 2370 of this title, and against
5 the taxes imposed by Sections 624 and 628 of Title 36 of the
6 Oklahoma Statutes and actually paid to and placed into the General
7 Revenue Fund for any ethanol facility which is in production at the
8 rate of at least twenty-five percent (25%) of its name plate design
9 capacity for the production of ethanol, before denaturing, on or
10 before December 31, ~~2008~~ 2010. The completion of the construction
11 of such facilities must be after July 1, 2003. The credit shall be
12 in the amount of twenty cents (\$0.20) per gallon of ethanol produced
13 and shall be allowed for up to sixty (60) months beginning with the
14 first month for which the facility is eligible to receive such
15 credit and ending not later than December 31, ~~2010~~ 2012. The credit
16 may only be claimed if the ethanol facility maintains an average
17 production rate of at least twenty-five percent (25%) of its name
18 plate design capacity for at least six (6) months after the first
19 month for which it is eligible to receive such credit.

20 B. As used in this section:

21 1. "Ethanol facility" means a plant or facility primarily
22 engaged in the production of ethanol or ethyl alcohol derived from
23 grain components, coproducts, or byproducts; and
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1 2. "Name plate design capacity" means the original designed
2 capacity of an ethanol facility. Capacity may be specified as
3 bushels of grain ground or gallons of ethanol produced per year.

4 C. Any ethanol facility eligible for a tax credit under
5 subsection A of this section shall also receive a credit against the
6 tax imposed by Section 2355 of this title in the amount of twenty
7 cents (\$0.20) per gallon of ethanol produced in excess of the
8 original name plate design capacity which results from expansion of
9 the facility completed on or after July 1, 2003, and before December
10 31, ~~2006~~ 2008. Such tax credit shall be allowed for up to sixty
11 (60) months beginning with the first month for which production from
12 the expanded facility is eligible to receive such tax credit and
13 ending not later than December 31, ~~2010~~ 2012.

14 D. 1. Beginning January 1, ~~2011~~ 2013, an ethanol facility
15 shall receive a credit against the tax imposed by Section 2355 of
16 this title in the amount of seven and one-half cents (\$0.075) per
17 gallon of ethanol, before denaturing, for new production for a
18 period not to exceed thirty-six (36) consecutive months.

19 2. For purposes of this subsection, "new production" means
20 production which results from a new facility, a facility which has
21 not received credits prior to January 1, ~~2011~~ 2013, or the expansion
22 of the capacity of an existing facility by at least two million
23 (2,000,000) gallons first placed into service after January 1, ~~2011~~
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1 2013, as certified by the design engineer of the facility to the
2 Oklahoma Tax Commission.

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

9 4. No credits shall be allowed under this subsection for
10 expansion of the capacity of an existing facility until production
11 is in excess of twelve times the three-month average amount
12 determined under this subsection during any twelve-consecutive-month
13 period beginning no sooner than January 1, ~~2011~~ 2013.

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

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

23 2. Not more than twenty-five million (25,000,000) gallons of
24 ethanol produced annually at any single ethanol facility nor more

1 than seventy-five million (75,000,000) gallons of ethanol produced
2 annually at all ethanol facilities in this state shall be eligible
3 for the credits in subsections A and C of this section, and the
4 credits may only be claimed by a producer for the periods specified
5 in subsections A and C of this section.

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

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

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

23 G. For purposes of ascertaining the correctness of any
24 application for claiming a credit provided in this section, the Tax

1 Commission may examine or cause to have examined, by any agent or
2 representative designated for that purpose, any books, papers,
3 records, or memoranda bearing upon such matters.

4 SECTION 2. AMENDATORY Section 1, Chapter 287, O.S.L.
5 2005 (68 O.S. Supp. 2006, Section 2357.67), is amended to read as
6 follows:

7 Section 2357.67 A. For tax years beginning after December 31,
8 2004, and before January 1, ~~2012~~ 2013, there shall be allowed a
9 credit against the tax imposed by Section 2355 of ~~Title 68 of the~~
10 ~~Oklahoma Statutes~~ this title for any biodiesel facility which is in
11 production at the rate of at least twenty-five percent (25%) of its
12 name plate design capacity for the production of biodiesel, on or
13 before December 31, ~~2007~~ 2008. The completion of the construction
14 of such facilities must be after the date of this act. The credit
15 shall be in the amount of twenty cents (\$0.20) per gallon of
16 biodiesel produced and shall be allowed for sixty (60) months
17 beginning with the first month for which the facility is eligible to
18 receive such credit and ending not later than December 31, ~~2011~~
19 2012. The credit may only be claimed if the biodiesel facility
20 maintains an average production rate of at least twenty-five percent
21 (25%) of its name plate design capacity for at least six (6) months
22 after the first month for which it is eligible to receive such
23 credit.

24 B. As used in this section:

1 1. "Biodiesel facility" means a plant or facility located
2 within the State of Oklahoma and primarily engaged in the production
3 of biodiesel derived from animal fats, grain components, coproducts,
4 or byproducts; and

5 2. "Name plate design capacity" means the original designed
6 capacity of a biodiesel facility. Capacity may be specified as
7 gallons of biodiesel produced per year.

8 C. Any biodiesel facility eligible for a tax credit under
9 subsection A of this section shall also receive a credit against the
10 tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~
11 this title in the amount of twenty cents (\$0.20) per gallon of
12 biodiesel produced in excess of the original name plate design
13 capacity which results from expansion of the facility completed on
14 or after the effective date of this act and before December 31, ~~2007~~
15 2008. Such tax credit shall be allowed for sixty (60) months
16 beginning with the first month for which production from the
17 expanded facility is eligible to receive such tax credit and ending
18 not later than December 31, ~~2011~~ 2012.

19 D. 1. Beginning January 1, ~~2012~~ 2013, a biodiesel facility
20 shall receive a credit against the tax imposed by Section 2355 of
21 ~~Title 68 of the Oklahoma Statutes~~ this title in the amount of seven
22 and one-half cents (\$0.075) per gallon of biodiesel, for new
23 production for a period not to exceed thirty-six (36) consecutive
24 months.

1 2. For purposes of this subsection, "new production" means
2 production which results from a new facility, a facility which has
3 not received credits prior to January 1, ~~2012~~ 2013, or the expansion
4 of the capacity of an existing facility by at least two million
5 (2,000,000) gallons first placed into service after January 1, ~~2012~~
6 2013, as certified by the design engineer of the facility to the
7 Oklahoma Tax Commission.

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

14 4. No credits shall be allowed under this subsection for
15 expansion of the capacity of an existing facility until production
16 is in excess of twelve times the three-month average amount
17 determined under this subsection during any twelve-consecutive-month
18 period beginning no sooner than January 1, ~~2012~~ 2013.

19 5. The amount of a credit granted pursuant to this section
20 based on new production shall be approved by the Tax Commission
21 based on such biodiesel production records as may be necessary to
22 reasonably determine the level of new production.
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1 E. 1. The credits described in this section shall be given
2 only for biodiesel produced at a plant in this state at which all
3 biodiesel esterification takes place.

4 2. Not more than twenty-five million (25,000,000) gallons of
5 biodiesel produced annually at a biodiesel facility shall be
6 eligible for the credits in subsections A and C of this section, and
7 the credits may only be claimed by a producer for the periods
8 specified in subsections A and C of this section.

9 3. Not more than ten million (10,000,000) gallons of biodiesel
10 produced during any twelve-consecutive-month period at a biodiesel
11 facility shall be eligible for the credit described in subsection D
12 of this section, and the credit may only be claimed by a producer
13 for the periods specified in subsection D of this section.

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

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

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

6 SECTION 3. This act shall become effective November 1, 2007.

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8 51-1-8028 CJB 05/08/07

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