

1 **SENATE FLOOR VERSION**

2 April 9, 2012

3 As Amended

4 ENGROSSED HOUSE

5 BILL NO. 2621

6 By: Johnson of the House

7 and

8 Mazzei of the Senate

9 [revenue and taxation - amending 6 Sections in Title
10 68 - tax credits - noncodification - emergency]

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

12 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.11, is
13 amended to read as follows:

14 Section 2357.11 A. For purposes of this section, the term
15 "person" means any legal business entity including limited and
16 general partnerships, corporations, sole proprietorships, and
17 limited liability companies, but does not include individuals.

18 B. 1. Except as provided in subsection ~~M~~ K of this section,
19 for tax years beginning on or after January 1, 1993, and ending on
20 or before December 31, 2014, there shall be allowed a credit against
21 the tax imposed by ~~Section 1803 or~~ Section 2355 of this title ~~or~~
22 ~~Section 624 or 628 of Title 36 of the Oklahoma Statutes~~ for every
23 person in this state furnishing water, heat, light or power to the
24 state or its citizens, or for every person in this state burning

1 coal to generate heat, light or power for use in manufacturing
2 operations located in this state.

3 2. For tax years beginning on or after January 1, 1993, and
4 ending on or before December 31, 2005, and for the period of January
5 1, 2006, through June 30, 2006, the credit shall be in the amount of
6 Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal
7 purchased by such person.

8 3. For the period of July 1, 2006 through December 31, 2006,
9 and for tax years beginning on or after January 1, 2007, and ending
10 on or before December 31, 2014, the credit shall be in the amount of
11 Two Dollars and eighty-five cents (\$2.85) per ton for each ton of
12 Oklahoma-mined coal purchased by such person.

13 4. In addition to the credit allowed pursuant to the provisions
14 of paragraph 3 of this subsection, for the period of July 1, 2006,
15 through December 31, 2006, and except as provided in subsection ~~M~~ K
16 of this section, for tax years beginning on or after January 1,
17 2007, and ending on or before December 31, 2014, there shall be
18 allowed a credit in the amount of Two Dollars and fifteen cents
19 (\$2.15) per ton for each ton of Oklahoma-mined coal purchased by
20 such person. The credit allowed pursuant to the provisions of this
21 paragraph may not be claimed or transferred prior to January 1,
22 2008.

23 C. For tax years beginning on or after January 1, 1995, and
24 ending on or before December 31, 2005, and for the period beginning

1 January 1, 2006, through June 30, 2006, there shall be allowed, in
2 addition to the credits allowed pursuant to subsection B of this
3 section, a credit against the tax imposed by ~~Section 1803 or Section~~
4 ~~2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma~~
5 ~~Statutes~~ for every person in this state which:

6 1. Furnishes water, heat, light or power to the state or its
7 citizens, or burns coal to generate heat, light or power for use in
8 manufacturing operations located in this state; and

9 2. Purchases at least seven hundred fifty thousand (750,000)
10 tons of Oklahoma-mined coal in the tax year.

11 The additional credit allowed pursuant to this subsection shall
12 be in the amount of Three Dollars (\$3.00) per ton for each ton of
13 Oklahoma-mined coal purchased by such person.

14 D. Except as otherwise provided in subsection E of this section
15 and in subsection ~~M~~ K of this section, for tax years beginning on or
16 after January 1, 2001, there shall be allowed a credit against the
17 tax imposed by Section 1803 or Section 2355 of this title or Section
18 624 or 628 of Title 36 of the Oklahoma Statutes for every person in
19 this state primarily engaged in mining, producing or extracting
20 coal, and holding a valid permit issued by the Oklahoma Department
21 of Mines. For tax years beginning on or after January 1, 2001, and
22 ending on or before December 31, 2005, and for the period beginning
23 January 1, 2006, through June 30, 2006, the credit shall be in the
24 amount of ninety-five cents (\$0.95) per ton and for the period of

1 July 1, 2006, through December 31, 2006, and for tax years beginning
2 on or after January 1, 2007, the credit shall be in the amount of
3 Five Dollars (\$5.00) for each ton of coal mined, produced or
4 extracted in on, under or through a permit in this state by such
5 person.

6 E. In addition to the credit allowed pursuant to the provisions
7 of subsection D of this section and except as otherwise provided in
8 subsection F of this section, for tax years beginning on or after
9 January 1, 2001, and ending on or before December 31, 2005, and for
10 the period of January 1, 2006, through June 30, 2006, there shall be
11 allowed a credit against the tax imposed by ~~Section 1803 or Section~~
12 ~~2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma~~
13 ~~Statutes~~ for every person in this state primarily engaged in mining,
14 producing or extracting coal, and holding a valid permit issued by
15 the Oklahoma Department of Mines in the amount of ninety-five cents
16 (\$0.95) per ton for each ton of coal mined, produced or extracted
17 from thin seams in this state by such person; provided, the credit
18 shall not apply to such coal sold to any consumer who purchases at
19 least seven hundred fifty thousand (750,000) tons of Oklahoma-mined
20 coal per year.

21 F. In addition to the credit allowed pursuant to the provisions
22 of subsection D of this section and except as otherwise provided in
23 subsection G of this section, for tax years beginning on or after
24 January 1, 2005, and ending on or before December 31, 2005, and for

1 the period of January 1, 2006, through June 30, 2006, there shall be
2 allowed a credit against the tax imposed by ~~Section 1803 or Section~~
3 ~~2355 of this title or that portion of the tax imposed by Section 624~~
4 ~~or 628 of Title 36 of the Oklahoma Statutes, which is actually paid~~
5 ~~to and placed into the General Revenue Fund,~~ in the amount of
6 ninety-five cents (\$0.95) per ton for each ton of coal mined,
7 produced or extracted from thin seams in this state by such person
8 on or after July 1, 2005.

9 G. The credits provided in subsections D and E of this section
10 shall not be allowed for coal mined, produced or extracted in any
11 month in which the average price of coal is Sixty-eight Dollars
12 (\$68.00) or more per ton, excluding freight charges, as determined
13 by the Tax Commission.

14 H. ~~The additional credits allowed pursuant to subsections B, C,~~
15 ~~D and E of this section but not used shall be freely transferable~~
16 ~~after January 1, 2002, by written agreement to subsequent~~
17 ~~transferees at any time during the five (5) years following the year~~
18 ~~of qualification; provided, the additional credits allowed pursuant~~
19 ~~to the provisions of paragraph 4 of subsection B of this section but~~
20 ~~not used shall be freely transferable after January 1, 2008, by~~
21 ~~written agreement to subsequent transferees at any time during the~~
22 ~~five (5) years following the year of qualification. An eligible~~
23 ~~transferee shall be any taxpayer subject to the tax imposed by~~
24 ~~Section 1803 or Section 2355 of this title or Section 624 or 628 of~~

1 ~~Title 36 of the Oklahoma Statutes. The person originally allowed~~
2 ~~the credit and the subsequent transferee shall jointly file a copy~~
3 ~~of the written credit transfer agreement with the Tax Commission~~
4 ~~within thirty (30) days of the transfer. The written agreement~~
5 ~~shall contain the name, address and taxpayer identification number~~
6 ~~of the parties to the transfer, the amount of credit being~~
7 ~~transferred, the year the credit was originally allowed to the~~
8 ~~transferring person and the tax year or years for which the credit~~
9 ~~may be claimed. The Tax Commission may promulgate rules to permit~~
10 ~~verification of the validity and timeliness of a tax credit claimed~~
11 ~~upon a tax return pursuant to this subsection but shall not~~
12 ~~promulgate any rules which unduly restrict or hinder the transfers~~
13 ~~of such tax credit.~~

14 ~~I. The additional credit allowed pursuant to subsection F of~~
15 ~~this section but not used shall be freely transferable on or after~~
16 ~~July 1, 2006, by written agreement to subsequent transferees at any~~
17 ~~time during the five (5) years following the year of qualification.~~
18 ~~An eligible transferee shall be any taxpayer subject to the tax~~
19 ~~imposed by Section 1803 or Section 2355 of this title or Section 624~~
20 ~~or 628 of Title 36 of the Oklahoma Statutes. The person originally~~
21 ~~allowed the credit and the subsequent transferee shall jointly file~~
22 ~~a copy of the written credit transfer agreement with the Tax~~
23 ~~Commission within thirty (30) days of the transfer. The written~~
24 ~~agreement shall contain the name, address and taxpayer~~

1 ~~identification number of the parties to the transfer, the amount of~~
2 ~~credit being transferred, the year the credit was originally allowed~~
3 ~~to the transferring person and the tax year or years for which the~~
4 ~~credit may be claimed. The Tax Commission may promulgate rules to~~
5 ~~permit verification of the validity and timeliness of a tax credit~~
6 ~~claimed upon a tax return pursuant to this subsection but shall not~~
7 ~~promulgate any rules which unduly restrict or hinder the transfers~~
8 ~~of such tax credit.~~

9 ~~J.~~ Any person receiving tax credits pursuant to the provisions
10 of this section shall apply the credits against taxes payable ~~or~~
11 ~~shall transfer the credits~~ as provided in this section. Credits
12 shall not be used to lower the price of any Oklahoma-mined coal sold
13 that is produced by a subsidiary of the person receiving a tax
14 credit under this section to other buyers of the Oklahoma-mined
15 coal.

16 ~~K.~~ I. The credits allowed by subsections B, C, D, E and F of
17 this section, upon election of the taxpayer, shall be treated and
18 may be claimed as a payment of tax, a prepayment of tax or a payment
19 of estimated tax for purposes of Section ~~1803 or~~ 2355 of this title
20 ~~or Section 624 or 628 of Title 36 of the Oklahoma Statutes.~~

21 ~~L.~~ J. Any credits allowed pursuant to the provisions of
22 subsections B, C, D, E and F of this section but not used in any tax
23 year may be carried over in order to each of the five (5) years
24 following the year of qualification.

1 such facilities shall result in no pollution or emissions that are
2 or may be harmful to the environment, pursuant to a determination by
3 the Department of Environmental Quality; and

4 2. "Eligible renewable resources" means resources derived from:

- 5 a. wind,
- 6 b. moving water,
- 7 c. sun, or
- 8 d. geothermal energy.

9 B. For facilities placed in operation on or after January 1,
10 2003, and before January 1, 2007, the electricity generated on or
11 after January 1, 2003, but prior to January 1, 2004, the amount of
12 the credit shall be seventy-five one hundredths of one cent
13 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
14 emission facilities. For electricity generated on or after January
15 1, 2004, but prior to January 1, 2007, the amount of the credit
16 shall be fifty one hundredths of one cent (\$0.0050) per kilowatt-
17 hour for electricity generated by zero-emission facilities. For
18 electricity generated on or after January 1, 2007, but prior to
19 January 1, 2012, the amount of the credit shall be twenty-five one
20 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
21 generated by zero-emission facilities. For facilities placed in
22 operation on or after January 1, 2007, and before January 1, 2016,
23 for the electricity generated by these facilities the amount of the
24

1 credit shall be fifty one hundredths of one cent (\$.0050) for each
2 kilowatt-hour of electricity generated by zero-emission facilities.

3 C. Credits may be claimed with respect to electricity generated
4 on or after January 1, 2003, during a ten-year period following the
5 date that the facility is placed in operation on or after June 4,
6 2001.

7 D. If the credit allowed pursuant to this section exceeds the
8 amount of income taxes due or if there are no state income taxes due
9 on the income of the taxpayer, the amount of the credit allowed but
10 not used in any tax year may be carried forward as a credit against
11 subsequent income tax liability for a period not exceeding ten (10)
12 years.

13 ~~E. Any nontaxable entities, including agencies of the State of~~
14 ~~Oklahoma or political subdivisions thereof, shall be eligible to~~
15 ~~establish a transferable tax credit in the amount provided in~~
16 ~~subsection B of this section. Such tax credit shall be a property~~
17 ~~right available to a state agency or political subdivision of this~~
18 ~~state to transfer or sell to a taxable entity, whether individual or~~
19 ~~corporate, who shall have an actual or anticipated income tax~~
20 ~~liability under Section 2355 of this title. These tax credit~~
21 ~~provisions are authorized as an incentive to the State of Oklahoma,~~
22 ~~its agencies and political subdivisions to encourage the expenditure~~
23 ~~of funds in the development, construction and utilization of~~

24

1 ~~electricity from zero emission facilities as defined in subsection A~~
2 ~~of this section.~~

3 ~~F. The amount of the credit allowed, but not used, shall be~~
4 ~~freely transferable at any time during the ten (10) years following~~
5 ~~the year of qualification. Any person to whom or to which a tax~~
6 ~~credit is transferred shall have only such rights to claim and use~~
7 ~~the credit under the terms that would have applied to the entity by~~
8 ~~whom or by which the tax credit was transferred. The provisions of~~
9 ~~this subsection shall not limit the ability of a tax credit~~
10 ~~transferee to reduce the tax liability of the transferee, regardless~~
11 ~~of the actual tax liability of the tax credit transferor, for the~~
12 ~~relevant taxable period. The transferor initially allowed the~~
13 ~~credit and any subsequent transferees shall jointly file a copy of~~
14 ~~any written transfer agreement with the Oklahoma Tax Commission~~
15 ~~within thirty (30) days of the transfer. The written agreement~~
16 ~~shall contain the name, address and taxpayer identification number~~
17 ~~or social security number of the parties to the transfer, the amount~~
18 ~~of the credit being transferred, the year the credit was originally~~
19 ~~allowed to the transferor, and the tax year or years for which the~~
20 ~~credit may be claimed. The Tax Commission may promulgate rules to~~
21 ~~permit verification of the validity and timeliness of the tax credit~~
22 ~~claimed upon a tax return pursuant to this subsection but shall not~~
23 ~~promulgate any rules that unduly restrict or hinder the transfers of~~
24 ~~such tax credit. The tax credit allowed by this section, upon the~~

1 election of the taxpayer, may be claimed as a payment of tax, a
2 prepayment of tax or a payment of estimated tax for purposes of
3 Section 1803 or Section 2355 of this title.

4 ~~G.~~ F. For electricity generation produced and sold in a
5 calendar year, the tax credit allowed by the provisions of this
6 section, upon election of the taxpayer, shall be treated and may be
7 claimed as a payment of tax, a prepayment of tax or a payment of
8 estimated tax for purposes of Section 2355 of this title on or after
9 July 1 of the following calendar year.

10 ~~H.~~ G. No credit otherwise authorized by the provisions of this
11 section may be claimed for any event, transaction, investment,
12 expenditure or other act occurring on or after July 1, 2010, for
13 which the credit would otherwise be allowable until the provisions
14 of this subsection shall cease to be operative on July 1, 2011.
15 Beginning July 1, 2011, the credit authorized by this section may be
16 claimed for any event, transaction, investment, expenditure or other
17 act occurring on or after July 1, 2010, according to the provisions
18 of this section. Any tax credits which accrue during the period of
19 July 1, 2010, through June 30, 2011, may not be claimed for any
20 period prior to the taxable year beginning January 1, 2012. No
21 credits which accrue during the period of July 1, 2010, through June
22 30, 2011, may be used to file an amended tax return for any taxable
23 year prior to the taxable year beginning January 1, 2012.

24

1 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2357.32B, is
2 amended to read as follows:

3 Section 2357.32B A. Except as otherwise provided by subsection
4 G F of this section, for tax years beginning on or after January 1,
5 2003, and ending on or before December 31, 2012, there shall be
6 allowed a credit against the tax imposed by ~~Section 624 or 628 of~~
7 ~~Title 36 of the Oklahoma Statutes, and actually paid to and placed~~
8 ~~into the General Revenue Fund, or Section 2370 or 2355~~ of this title
9 to Oklahoma manufacturers of advanced small wind turbines. As used
10 in this section:

11 1. "Oklahoma manufacturers" means manufacturers who operate
12 facilities located in this state which have the capability to
13 manufacture small wind turbine products, including rotor blade and
14 alternator fabrication; and

15 2. "Advanced small wind turbines" means upwind, furling wind
16 turbines that meet the following requirements:

- 17 a. have a rated capacity of at least one kilowatt (1 kw)
18 but not greater than fifty kilowatts (50 kw),
- 19 b. incorporate advanced technologies such as new
20 airfoils, new generators, and new power electronics,
21 variable speed,
- 22 c. at least one unit of each model has undergone testing
23 at the US-DOE National Wind Technology Center, and

1 d. comply with appropriate interconnection safety
2 standards of the Institute of Electrical and
3 Electronics Engineers applicable to small wind
4 turbines.

5 B. The amount of the credit shall be based on the square
6 footage of rotor swept area of advanced small wind turbines
7 manufactured in this state. The amount of the credit shall be
8 Twenty-five Dollars (\$25.00) per square foot produced in calendar
9 year 2003, Twelve Dollars and fifty cents (\$12.50) per square foot
10 produced in calendar year 2004, and Twenty-five Dollars (\$25.00) per
11 square foot produced in calendar years 2005 through 2012.

12 C. The companies claiming the credit allowed by this section
13 shall agree in advance to allow their production and claims to be
14 audited by the Oklahoma Tax Commission and they must be able to show
15 that they have made economic development investments in this state
16 over the period of time for which the credit was claimed that exceed
17 the net proceeds from the amount of credit claimed.

18 D. If the amount of the credits allowed pursuant to this
19 section exceeds the amount of income taxes due or if there are no
20 state income taxes due on the income of the taxpayer, the amount of
21 the credit allowed but not used in any taxable year may be carried
22 forward as a credit against subsequent income tax liability for a
23 period not exceeding ten (10) years.

1 ~~E. The amount of the credit allowed but not used shall be~~
2 ~~freely transferable at any time during the ten (10) years following~~
3 ~~the year of qualification. Any person to whom or to which a tax~~
4 ~~credit is transferred shall have only such rights to claim and use~~
5 ~~the credit under the terms that would have applied to the entity by~~
6 ~~whom or by which the tax credit was transferred. The provisions of~~
7 ~~this subsection shall not limit the ability of a tax credit~~
8 ~~transferee to reduce the tax liability of the transferee regardless~~
9 ~~of the actual tax liability of the tax credit transferor for the~~
10 ~~relevant taxable period. The transferor originally allowed the~~
11 ~~credit and the subsequent transferee shall jointly file a copy of~~
12 ~~the written credit transfer agreement with the Tax Commission within~~
13 ~~thirty (30) days of the transfer. The written agreement shall~~
14 ~~contain the name, address and taxpayer identification number of the~~
15 ~~parties to the transfer, the amount of the credit being transferred,~~
16 ~~the year the credit was originally allowed to the transferor and the~~
17 ~~tax year or years for which the credit may be claimed. The Tax~~
18 ~~Commission may promulgate rules to permit verification of the~~
19 ~~validity and timeliness of a tax credit claimed upon a tax return~~
20 ~~pursuant to this subsection but shall not promulgate any rules that~~
21 ~~unduly restrict or hinder the transfers of such tax credit.~~

22 ~~F. For advanced small wind turbines produced in a calendar~~
23 ~~year, the tax credit allowed by the provisions of this section, upon~~
24 ~~election of the taxpayer, shall be treated and may be claimed as a~~

1 payment of tax, a prepayment of tax or a payment of estimated tax
2 for purposes of ~~Section 624 or 628 of Title 36 of the Oklahoma~~
3 ~~Statutes, and actually paid to and placed into the General Revenue~~
4 ~~Fund, or Section 2370 or 2355 of this title on or after July 1 of~~
5 the following calendar year.

6 ~~G.~~ F. No credit otherwise authorized by the provisions of this
7 section may be claimed for any event, transaction, investment,
8 expenditure or other act occurring on or after July 1, 2010, for
9 which the credit would otherwise be allowable. The provisions of
10 this subsection shall cease to be operative on July 1, 2012.
11 Beginning July 1, 2012, the credit authorized by this section may be
12 claimed for any event, transaction, investment, expenditure or other
13 act occurring on or after July 1, 2012, according to the provisions
14 of this section.

15 SECTION 4. AMENDATORY 68 O.S. 2011, Section 2357.41, is
16 amended to read as follows:

17 Section 2357.41 A. Except as otherwise provided by subsection
18 ~~H~~ H of this section, for tax years beginning after December 31,
19 2000, and ending on or before December 31, 2016, there shall be
20 allowed a credit against the tax imposed by ~~Sections~~ Section 2355
21 ~~and 2370 of this title or that portion of the tax imposed by Section~~
22 ~~624 or 628 of Title 36 of the Oklahoma Statutes that would otherwise~~
23 ~~have been apportioned to the General Revenue Fund for qualified~~
24 rehabilitation expenditures incurred in connection with any

1 certified historic hotel or historic newspaper plant building
2 located in an increment or incentive district created pursuant to
3 the Local Development Act or for qualified rehabilitation
4 expenditures incurred after January 1, 2006, in connection with any
5 certified historic structure.

6 B. The amount of the credit shall be one hundred percent (100%)
7 of the federal rehabilitation credit provided for in Section 47 of
8 Title 26 of the United States Code. The credit authorized by this
9 section may be claimed at any time after the relevant local
10 governmental body responsible for doing so issues a certificate of
11 occupancy or other document that is a precondition for the
12 applicable use of the building or structure that is the basis upon
13 which the credit authorized by this section is claimed.

14 C. All requirements with respect to qualification for the
15 credit authorized by Section 47 of Title 26 of the United States
16 Code shall be applicable to the credit authorized by this section.

17 D. If the credit allowed pursuant to this section exceeds the
18 amount of income taxes due or if there are no state income taxes due
19 on the income of the taxpayer, the amount of the credit allowed but
20 not used in any taxable year may be carried forward as a credit
21 against subsequent income tax liability for a period not exceeding
22 ten (10) years following the qualified expenditures.

23 E. All rehabilitation work to which the credit may be applied
24 shall be reviewed by the State Historic Preservation Office which

1 will in turn forward the information to the National Park Service
2 for certification in accordance with 36 C.F.R., Part 67. A
3 certified historic structure may be rehabilitated for any lawful use
4 or uses, including without limitation mixed uses and still retain
5 eligibility for the credit provided for in this section.

6 ~~F. The amount of the credit allowed for any credit claimed for
7 a certified historic hotel or historic newspaper plant building or
8 any certified historic structure, but not used, shall be freely
9 transferable, in whole or in part, to subsequent transferees at any
10 time during the five (5) years following the year of qualification.
11 Any person to whom or to which a tax credit is transferred shall
12 have only such rights to claim and use the credit under the terms
13 that would have applied to the entity by whom or by which the tax
14 credit was transferred. The provisions of this subsection shall not
15 limit the ability of a tax credit transferee to reduce the tax
16 liability of the transferee regardless of the actual tax liability
17 of the tax credit transferor for the relevant taxable period. The
18 transferor of the credit and the transferee shall jointly file a
19 copy of the written credit transfer agreement with the Oklahoma Tax
20 Commission within thirty (30) days of the transfer. Such filing of
21 the written credit transfer agreement with the Oklahoma Tax
22 Commission shall perfect such transfer. The written agreement shall
23 contain the name, address and taxpayer identification number of the
24 parties to the transfer, the amount of credit being transferred, the~~

1 ~~year the credit was originally allowed to the transferor, the tax~~
2 ~~year or years for which the credit may be claimed, and a~~
3 ~~representation by the transferor that the transferor has neither~~
4 ~~claimed for its own behalf nor conveyed such credits to any other~~
5 ~~transferee. The Tax Commission shall develop a standard form for~~
6 ~~use by subsequent transferees of the credit demonstrating~~
7 ~~eligibility for the transferee to reduce its applicable tax~~
8 ~~liabilities resulting from ownership of the credit. The Tax~~
9 ~~Commission shall develop a system to record and track the transfers~~
10 ~~of the credit and certify the ownership of the credit and may~~
11 ~~promulgate rules to permit verification of the validity and~~
12 ~~timeliness of a tax credit claimed upon a tax return pursuant to~~
13 ~~this subsection but shall not promulgate any rules which unduly~~
14 ~~restrict or hinder the transfers of such tax credit.~~

15 ~~G.~~ Notwithstanding any other provisions in this section, on or
16 after January 1, 2009, if a credit allowed pursuant to this section
17 which has been transferred is subsequently reduced as the result of
18 an adjustment by the Internal Revenue Service, Tax Commission, or
19 any other applicable government agency, only the transferor
20 originally allowed the credit and not any subsequent transferee of
21 the credit, shall be held liable to repay any amount of disallowed
22 credit.

23 ~~H.~~ G. As used in this section:
24

1 1. "Certified historic hotel or historic newspaper plant
2 building" means a hotel or newspaper plant building that is listed
3 on the National Register of Historic Places within thirty (30)
4 months of taking the credit pursuant to this section~~;~~;

5 2. "Certified historic structure" means a building that is
6 listed on the National Register of Historic Places within thirty
7 (30) months of taking the credit pursuant to this section or a
8 building located in Oklahoma which is certified by the State
9 Historic Preservation Office as contributing to the historic
10 significance of a certified historic district listed on the National
11 Register of Historic Places, or a local district that has been
12 certified by the State Historic Preservation Office as eligible for
13 listing in the National Register of Historic Places; and

14 3. "Qualified rehabilitation expenditures" means capital
15 expenditures that qualify for the federal rehabilitation credit
16 provided in Section 47 of Title 26 of the United States Code and
17 that were paid after December 31, 2000. Qualified rehabilitation
18 expenditures do not include capital expenditures for nonhistoric
19 additions except an addition that is required by state or federal
20 regulations that relate to safety or accessibility. In addition,
21 qualified rehabilitation expenditures do not include expenditures
22 related to the cost of acquisition of the property.

23 ~~F.~~ H. No credit otherwise authorized by the provisions of this
24 section may be claimed for any event, transaction, investment,

1 expenditure or other act occurring on or after July 1, 2010, for
2 which the credit would otherwise be allowable until the provisions
3 of this subsection shall cease to be operative on July 1, 2012.
4 Beginning July 1, 2012, the credit authorized by this section may be
5 claimed for any event, transaction, investment, expenditure or other
6 act occurring on or after July 1, 2010, according to the provisions
7 of this section. Any tax credits which accrue during the period of
8 July 1, 2010, through June 30, 2012, may not be claimed for any
9 period prior to the taxable year beginning January 1, 2012. No
10 credits which accrue during the period of July 1, 2010, through June
11 30, 2012, may be used to file an amended tax return for any taxable
12 year prior to the taxable year beginning January 1, 2012.

13 SECTION 5. AMENDATORY 68 O.S. 2011, Section 2357.46, is
14 amended to read as follows:

15 Section 2357.46 A. Except as otherwise provided by subsection
16 ~~G~~ F of this section, for tax years beginning after December 31,
17 2005, **and ending on or before December 31, 2016,** there shall be
18 allowed a credit against the tax imposed by Section 2355 of ~~Title 68~~
19 ~~of Oklahoma Statutes~~ this title for eligible expenditures incurred
20 by a contractor in the construction of energy-efficient residential
21 property of two thousand (2,000) square feet or less. The amount of
22 the credit shall be based upon the following:

23 1. For any eligible energy-efficient residential property
24 constructed and certified as forty percent (40%) or more above the

1 International Energy Conservation Code 2003 and any supplement in
2 effect at the time of completion, the amount of the credit shall be
3 equal to the eligible expenses, not to exceed Four Thousand Dollars
4 (\$4,000.00) for the taxpayer who is the contractor; and

5 2. For any eligible energy_efficient residential property
6 constructed and certified as between twenty percent (20%) and
7 thirty-nine percent (39%) above the International Energy
8 Conservation Code 2003 and any supplement in effect at the time of
9 completion, the credit shall be equal to the eligible expenditures,
10 not to exceed Two Thousand Dollars (\$2,000.00) for the taxpayer who
11 is the contractor.

12 B. As used in this section:

13 1. "Eligible expenditure" means any:

- 14 a. energy_efficient heating or cooling system,
- 15 b. insulation material or system which is specifically
16 and primarily designed to reduce the heat gain or loss
17 of a residential property when installed in or on such
18 property,
- 19 c. exterior windows, including skylights,
- 20 d. exterior doors, and
- 21 e. any metal roof installed on a residential property,
22 but only if such roof has appropriate pigmented
23 coatings which are specifically and primarily designed

24

1 to reduce the heat gain of such dwelling unit and
2 which meet Energy Star program requirements;

3 2. "Contractor" means the taxpayer who constructed the
4 residential property or manufactured home, or if more than one
5 taxpayer qualifies as the contractor, the primary contractor; and

6 3. "Eligible energy-efficient residential property" means a
7 newly constructed residential property or manufactured home property
8 which is located in the State of Oklahoma and substantially complete
9 after December 31, 2005, and which is two thousand (2,000) square
10 feet or less:

11 a. for the credit provided pursuant to paragraph 1 of
12 subsection A of this section, which is certified by an
13 accredited Residential Energy Services Network
14 Provider using the Home Energy Rating System to have:

- 15 (1) a level of annual heating and cooling energy
16 consumption which is at least forty percent (40%)
17 below the annual level of heating and cooling
18 energy consumption of a comparable residential
19 property constructed in accordance with the
20 standards of Chapter 4 of the 2003 International
21 Energy Conservation Code, as such code is in
22 effect on the effective date of this act,
23 (2) heating and cooling equipment efficiencies which
24 correspond to the minimum allowed under the

1 regulations established by the Department of
2 Energy pursuant to the National Appliance Energy
3 Conservation Act of 1987 and in effect at the
4 time of construction of the property, and

5 (3) building envelope component improvements which
6 account for at least one-fifth of the reduced
7 annual heating and cooling energy consumption
8 levels,

9 b. for the credit provided pursuant to paragraph 2 of
10 subsection A of this section, which is certified by an
11 accredited Residential Energy Services Network
12 Provider using the Home Energy Rating System to have:

13 (1) a level of annual heating and cooling energy
14 consumption which is between twenty percent (20%)
15 and thirty-nine percent (39%) below the annual
16 level of heating and cooling energy consumption
17 of a comparable residential property constructed
18 in accordance with the standards of Chapter 4 of
19 the 2003 International Energy Conservation Code,
20 as such code is in effect on the effective date
21 of this act,

22 (2) heating and cooling equipment efficiencies which
23 correspond to the minimum allowed under the
24 regulations established by the Department of

1 Energy pursuant to the National Appliance Energy
2 Conservation Act of 1987 and in effect at the
3 time of construction of the property, and

4 (3) building envelope component improvements which
5 account for at least one-third of the reduced
6 annual heating and cooling energy consumption
7 levels.

8 C. The credit provided for in subsection A of this section may
9 only be claimed once for the contractor of any eligible residential
10 energy_efficient property during the taxable year when the property
11 is substantially complete.

12 D. If the credit allowed pursuant to this section exceeds the
13 amount of income taxes due or if there are no state income taxes due
14 on the income of the taxpayer, the amount of credit allowed but not
15 used in any taxable year may be carried forward as a credit against
16 subsequent income tax liability for a period not exceeding four (4)
17 years following the qualified expenditures.

18 E. ~~For credits earned on or after the effective date of this~~
19 ~~act, the credits authorized by this section shall be freely~~
20 ~~transferable to subsequent transferees.~~

21 ~~F.~~ The Oklahoma Tax Commission shall promulgate rules necessary
22 to implement this act.

23 ~~G.~~ F. No credit otherwise authorized by the provisions of this
24 section may be claimed for any event, transaction, investment,

1 expenditure or other act occurring on or after July 1, 2010 for
2 which the credit would otherwise be allowable. The provisions of
3 this subsection shall cease to be operative on July 1, 2012.
4 Beginning July 1, 2012, the credit authorized by this section may be
5 claimed for any event, transaction, investment, expenditure or other
6 act occurring on or after July 1, 2012, according to the provisions
7 of this section.

8 SECTION 6. AMENDATORY 68 O.S. 2011, Section 2357.104, is
9 amended to read as follows:

10 Section 2357.104 A. Except as otherwise provided by subsection
11 G F of this section, for taxable years beginning after December 31,
12 2005, **and ending on or before December 31, 2016,** there shall be
13 allowed a credit against the tax imposed by Section 2355 of this
14 title equal to fifty percent (50%) of an eligible taxpayer's
15 qualified railroad reconstruction or replacement expenditures.

16 B. 1. Except as provided in paragraph 2 of this subsection,
17 the amount of the credit shall be limited to the product of Five
18 Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars
19 (\$2,000.00) for tax year 2008 and subsequent tax years and the
20 number of miles of railroad track owned or leased within this state
21 by the eligible taxpayer as of the close of the taxable year.

22 2. In tax year 2009 and subsequent tax years, a taxpayer may
23 elect to increase the limit provided in paragraph 1 of this
24 subsection to an amount equal to three times the limit specified in

1 paragraph 1 of this subsection for qualified expenditures made in
2 the tax year, provided the taxpayer may only claim one third (1/3)
3 of the credit in any one taxable period.

4 C. ~~The credit allowed pursuant to subsection A of this section~~
5 ~~but not used shall be freely transferable, by written agreement, to~~
6 ~~subsequent transferees at any time during the five (5) years~~
7 ~~following the year of qualification. An eligible transferee shall~~
8 ~~be any taxpayer subject to the tax imposed by Section 2355 of this~~
9 ~~title. The person originally allowed the credit and the subsequent~~
10 ~~transferee shall jointly file a copy of the written credit transfer~~
11 ~~agreement with the Oklahoma Tax Commission within thirty (30) days~~
12 ~~of the transfer. The written agreement shall contain the name,~~
13 ~~address and taxpayer identification number of the parties to the~~
14 ~~transfer, the amount of credit being transferred, the year the~~
15 ~~credit was originally allowed to the transferring person and the tax~~
16 ~~year or years for which the credit may be claimed. The Tax~~
17 ~~Commission shall promulgate rules to permit verification of the~~
18 ~~timeliness of a tax credit claimed upon a tax return pursuant to~~
19 ~~this subsection but shall not promulgate any rules which unduly~~
20 ~~restrict or hinder the transfers of such tax credit. The Department~~
21 ~~of Transportation shall promulgate rules to permit verification of~~
22 ~~the eligibility of an eligible taxpayer's expenditures for the~~
23 ~~purpose of claiming the credit. The rules shall provide for the~~
24 ~~approval of qualified railroad reconstruction or replacement~~

1 ~~expenditures prior to commencement of a project and provide a~~
2 ~~certificate of verification upon completion of a project that uses~~
3 ~~qualified railroad reconstruction or replacement expenditures. The~~
4 ~~certificate of verification shall satisfy all requirements of the~~
5 ~~Tax Commission pertaining to the eligibility of the person claiming~~
6 ~~the credit.~~

7 ~~D.~~ Any credits allowed pursuant to the provisions of subsection
8 A of this section but not used in any tax year may be carried over
9 in order to each of the five (5) years following the year of
10 qualification.

11 ~~E.~~ D. A taxpayer who elects to increase the limitation on the
12 credit under paragraph 2 of subsection B of this section shall not
13 be granted additional credits under subsection A of this section
14 during the period of such election.

15 ~~F.~~ E. As used in this section:

16 1. "Class II and Class III railroad" means a railroad that is
17 classified by the United States Surface Transportation Board as a
18 Class II or Class III railroad;

19 2. "Eligible taxpayer" means any Class II or Class III
20 railroad; and

21 3. "Qualified railroad reconstruction or replacement
22 expenditures" means expenditures for:

23 a. reconstruction or replacement of railroad
24 infrastructure including track, roadbed, bridges,

1 industrial leads and track-related structures owned or
2 leased by a Class II or Class III railroad as of
3 January 1, 2006, or

4 b. new construction of industrial leads, switches, spurs
5 and sidings and extensions of existing sidings by a
6 Class II or Class III railroad.

7 ~~G.~~ F. No credit otherwise authorized by the provisions of this
8 section may be claimed for any event, transaction, investment,
9 expenditure or other act occurring on or after July 1, 2010, for
10 which the credit would otherwise be allowable. The provisions of
11 this subsection shall cease to be operative on July 1, 2012.

12 Beginning July 1, 2012, the credit authorized by this section may be
13 claimed for any event, transaction, investment, expenditure or other
14 act occurring on or after July 1, 2012, according to the provisions
15 of this section.

16 SECTION 7. NEW LAW A new section of law not to be
17 codified in the Oklahoma Statutes reads as follows:

18 A. The amendments made by this act shall not be applicable to
19 any tax credit earned prior to January 1, 2012.

20 B. The amendments made by this act shall not be applicable to
21 any tax credit transferred prior to January 1, 2012.

22 C. The amendments made by this act shall not be applicable to
23 any tax credit that was eligible to be carried forward prior to
24 January 1, 2012, and any such credit may be carried forward based

1 upon the carryforward period in effect at the time the tax credit
2 was earned or transferred.

3 SECTION 8. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

7 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 4-3-12 - DO PASS,
8 As Amended.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24