

HB1416 CCR A
HB1416 CCR (A)
HOUSE CONFEREES

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HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1416

By: Hall of the House and Mazzei of the Senate

Title: Tax credits; coal and zero emission facilities; limiting transfer; refund. Effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1416

By: Hall, Hoskin and Sherrer of
the House

and

Mazzei, Loveless and
Brinkley of the Senate

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11 CONFERENCE COMMITTEE SUBSTITUTE

12 An act relating to revenue and taxation; amending 68
13 O.S. 2011, Sections 2357.11 and 2357.32A, which
14 relate to tax credits; modifying expiration date for
15 credit related to use of coal; providing for
16 expiration date for credit related to production of
17 coal; limiting transferability of certain credits to
18 specified time period; authorizing refund of certain
19 credits under specified circumstances; providing
20 certain exception; providing for amount of refund;
21 specifying entities to whom credit may be refunded
22 and procedures related thereto; exempting refund
23 amounts from income tax; defining term; clarifying
24 language; modifying expiration date for credit
related to zero-emission facilities; providing
limitation on ability to carry credit forward;
authorizing refund of certain credits under specified
circumstances; providing for amount of refund;
specifying entities to whom credit may be refunded
and procedures related thereto; exempting refund
amounts from income tax; defining term; limiting
ability to transfer credit after certain date; and
providing an effective date.

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

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

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

8 B. 1. Except as provided in subsection M of this section, for
9 tax years beginning on or after January 1, 1993, and ending on or
10 before December 31, ~~2014~~ 2021, there shall be allowed a credit
11 against the tax imposed by Section 1803 or Section 2355 of this
12 title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for
13 every person in this state furnishing water, heat, light or power to
14 the state or its citizens, or for every person in this state burning
15 coal to generate heat, light or power for use in manufacturing
16 operations located in this state.

17 2. For tax years beginning on or after January 1, 1993, and
18 ending on or before December 31, 2005, and for the period of January
19 1, 2006, through June 30, 2006, the credit shall be in the amount of
20 Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal
21 purchased by such person.

22 3. For the period of July 1, 2006 through December 31, 2006,
23 and for tax years beginning on or after January 1, 2007, and ending
24 on or before December 31, ~~2014~~ 2021, the credit shall be in the

1 amount of Two Dollars and eighty-five cents (\$2.85) per ton for each
2 ton of Oklahoma-mined coal purchased by such person.

3 4. In addition to the credit allowed pursuant to the provisions
4 of paragraph 3 of this subsection, for the period of July 1, 2006,
5 through December 31, 2006, and except as provided in subsection M of
6 this section, for tax years beginning on or after January 1, 2007,
7 and ending on or before December 31, ~~2014~~ 2021, there shall be
8 allowed a credit in the amount of Two Dollars and fifteen cents
9 (\$2.15) per ton for each ton of Oklahoma-mined coal purchased by
10 such person. The credit allowed pursuant to the provisions of this
11 paragraph may not be claimed or transferred prior to January 1,
12 2008.

13 C. For tax years beginning on or after January 1, 1995, and
14 ending on or before December 31, 2005, and for the period beginning
15 January 1, 2006, through June 30, 2006, there shall be allowed, in
16 addition to the credits allowed pursuant to subsection B of this
17 section, a credit against the tax imposed by Section 1803 or Section
18 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma
19 Statutes for every person in this state which:

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

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

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

4 D. Except as otherwise provided in subsection E of this section
5 and in subsection M of this section, for tax years beginning on or
6 after January 1, 2001, and ending on or before December 31, 2021,
7 there shall be allowed a credit against the tax imposed by Section
8 1803 or Section 2355 of this title or Section 624 or 628 of Title 36
9 of the Oklahoma Statutes for every person in this state primarily
10 engaged in mining, producing or extracting coal, and holding a valid
11 permit issued by the Oklahoma Department of Mines. For tax years
12 beginning on or after January 1, 2001, and ending on or before
13 December 31, 2005, and for the period beginning January 1, 2006,
14 through June 30, 2006, the credit shall be in the amount of ninety-
15 five cents (\$0.95) per ton and for the period of July 1, 2006,
16 through December 31, 2006, and for tax years beginning on or after
17 January 1, 2007, the credit shall be in the amount of Five Dollars
18 (\$5.00) for each ton of coal mined, produced or extracted in on,
19 under or through a permit in this state by such person.

20 E. In addition to the credit allowed pursuant to the provisions
21 of subsection D of this section and except as otherwise provided in
22 subsection F of this section, for tax years beginning on or after
23 January 1, 2001, and ending on or before December 31, 2005, and for
24 the period of January 1, 2006, through June 30, 2006, there shall be

1 allowed a credit against the tax imposed by Section 1803 or Section
2 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma
3 Statutes for every person in this state primarily engaged in mining,
4 producing or extracting coal, and holding a valid permit issued by
5 the Oklahoma Department of Mines in the amount of ninety-five cents
6 (\$0.95) per ton for each ton of coal mined, produced or extracted
7 from thin seams in this state by such person; provided, the credit
8 shall not apply to such coal sold to any consumer who purchases at
9 least seven hundred fifty thousand (750,000) tons of Oklahoma-mined
10 coal per year.

11 F. In addition to the credit allowed pursuant to the provisions
12 of subsection D of this section and except as otherwise provided in
13 subsection G of this section, for tax years beginning on or after
14 January 1, 2005, and ending on or before December 31, 2005, and for
15 the period of January 1, 2006, through June 30, 2006, there shall be
16 allowed a credit against the tax imposed by Section 1803 or Section
17 2355 of this title or that portion of the tax imposed by Section 624
18 or 628 of Title 36 of the Oklahoma Statutes, which is actually paid
19 to and placed into the General Revenue Fund, in the amount of
20 ninety-five cents (\$0.95) per ton for each ton of coal mined,
21 produced or extracted from thin seams in this state by such person
22 on or after July 1, 2005.

23 G. The credits provided in subsections D and E of this section
24 shall not be allowed for coal mined, produced or extracted in any

1 month in which the average price of coal is Sixty-eight Dollars
2 (\$68.00) or more per ton, excluding freight charges, as determined
3 by the Tax Commission.

4 H. The additional credits allowed pursuant to subsections B, C,
5 D and E of this section but not used shall be freely transferable
6 after January 1, 2002, but not later than December 31, 2013, by
7 written agreement to subsequent transferees at any time during the
8 five (5) years following the year of qualification; provided, the
9 additional credits allowed pursuant to the provisions of paragraph 4
10 of subsection B of this section but not used shall be freely
11 transferable after January 1, 2008, but not later than December 31,
12 2013, by written agreement to subsequent transferees at any time
13 during the five (5) years following the year of qualification. An
14 eligible transferee shall be any taxpayer subject to the tax imposed
15 by Section 1803 or Section 2355 of this title or Section 624 or 628
16 of Title 36 of the Oklahoma Statutes. The person originally allowed
17 the credit and the subsequent transferee shall jointly file a copy
18 of the written credit transfer agreement with the Tax Commission
19 within thirty (30) days of the transfer. The written agreement
20 shall contain the name, address and taxpayer identification number
21 of the parties to the transfer, the amount of credit being
22 transferred, the year the credit was originally allowed to the
23 transferring person and the tax year or years for which the credit
24 may be claimed. The Tax Commission may promulgate rules to permit

1 verification of the validity and timeliness of a tax credit claimed
2 upon a tax return pursuant to this subsection but shall not
3 promulgate any rules which unduly restrict or hinder the transfers
4 of such tax credit.

5 I. The additional credit allowed pursuant to subsection F of
6 this section but not used shall be freely transferable on or after
7 July 1, 2006, but not later than December 31, 2013, by written
8 agreement to subsequent transferees at any time during the five (5)
9 years following the year of qualification. An eligible transferee
10 shall be any taxpayer subject to the tax imposed by Section 1803 or
11 Section 2355 of this title or Section 624 or 628 of Title 36 of the
12 Oklahoma Statutes. The person originally allowed the credit and the
13 subsequent transferee shall jointly file a copy of the written
14 credit transfer agreement with the Tax Commission within thirty (30)
15 days of the transfer. The written agreement shall contain the name,
16 address and taxpayer identification number of the parties to the
17 transfer, the amount of credit being transferred, the year the
18 credit was originally allowed to the transferring person and the tax
19 year or years for which the credit may be claimed. The Tax
20 Commission may promulgate rules to permit verification of the
21 validity and timeliness of a tax credit claimed upon a tax return
22 pursuant to this subsection but shall not promulgate any rules which
23 unduly restrict or hinder the transfers of such tax credit.

24

1 J. Any person receiving tax credits pursuant to the provisions
2 of this section shall apply the credits against taxes payable or,
3 subject to the limitation that credits earned after December 31,
4 2013, shall not be transferred, shall transfer the credits as
5 provided in this section or, for credits earned on or after January
6 1, 2014, shall receive a refund pursuant to the provisions of
7 subsection L of this section. Credits shall not be used to lower
8 the price of any Oklahoma-mined coal sold that is produced by a
9 subsidiary of the person receiving a tax credit under this section
10 to other buyers of the Oklahoma-mined coal.

11 K. ~~The~~ Except as provided by paragraph 2 of subsection L of
12 this section, the credits allowed by subsections B, C, D, E and F of
13 this section, upon election of the taxpayer, shall be treated and
14 may be claimed as a payment of tax, a prepayment of tax or a payment
15 of estimated tax for purposes of Section 1803 or 2355 of this title
16 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.

17 L. ~~Any~~ 1. With respect to credits allowed pursuant to the
18 provisions of subsections B, C, D, E and F of this section earned
19 prior to January 1, 2014, but not used in any tax year may be
20 carried over in order to each of the five (5) years following the
21 year of qualification.

22 2. With respect to credits allowed pursuant to the provisions
23 of subsections B, C, D, E and F of this section which are earned but
24 not used, based upon activity occurring on or after January 1, 2014,

1 the Oklahoma Tax Commission shall, at the taxpayer's election,
2 refund directly to the taxpayer eighty-five percent (85%) of the
3 face amount of such credits. The direct refund of the credits
4 pursuant to this paragraph shall be available to all taxpayers,
5 including, without limitation, pass-through entities and taxpayers
6 subject to Section 2355 of this title. The amount of any direct
7 refund of credits actually received at the eighty-five percent (85%)
8 level by the taxpayer pursuant to this paragraph shall not be
9 subject to the tax imposed by Section 2355 of this title. If the
10 pass-through entity does not file a claim for a direct refund, the
11 pass-through entity shall allocate the credit to one or more of the
12 shareholders, partners or members of the pass-through entity;
13 provided, the total of all credits refunded or allocated shall not
14 exceed the amount of the credit or refund to which the pass-through
15 entity is entitled. For the purposes of this paragraph, "pass-
16 through entity" means a corporation that for the applicable tax year
17 is treated as an S corporation under the Internal Revenue Code of
18 1986, as amended, general partnership, limited partnership, limited
19 liability partnership, trust or limited liability company that for
20 the applicable tax year is not taxed as a corporation for federal
21 income tax purposes.

22 M. No credit otherwise authorized by the provisions of this
23 section may be claimed for any event, transaction, investment,
24 expenditure or other act occurring on or after July 1, 2010, for

1 which the credit would otherwise be allowable. The provisions of
2 this subsection shall cease to be operative on July 1, 2012.

3 Beginning July 1, 2012, the credit authorized by this section may be
4 claimed for any event, transaction, investment, expenditure or other
5 act occurring on or after July 1, 2012, according to the provisions
6 of this section.

7 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2357.32A, is
8 amended to read as follows:

9 Section 2357.32A A. Except as otherwise provided in subsection
10 H of this section, for tax years beginning on or after January 1,
11 2003, there shall be allowed a credit against the tax imposed by
12 Section 2355 of this title to a taxpayer for the taxpayer's
13 production and sale to an unrelated person of electricity generated
14 by zero-emission facilities located in this state. As used in this
15 section:

16 1. "Electricity generated by zero-emission facilities" means
17 electricity that is exclusively produced by any facility located in
18 this state with a rated production capacity of one megawatt (1 mw)
19 or greater, constructed for the generation of electricity and placed
20 in operation after June 4, 2001, which utilizes eligible renewable
21 resources as its fuel source. The construction and operation of
22 such facilities shall result in no pollution or emissions that are
23 or may be harmful to the environment, pursuant to a determination by
24 the Department of Environmental Quality; and

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

- 2 a. wind,
- 3 b. moving water,
- 4 c. sun, or
- 5 d. geothermal energy.

6 B. For facilities placed in operation on or after January 1,
7 2003, and before January 1, 2007, the amount of the credit for the
8 electricity generated on or after January 1, 2003, but prior to
9 January 1, 2004, ~~the amount of the credit~~ shall be seventy-five one-
10 hundredths of one cent (\$0.0075) for each kilowatt-hour of
11 electricity generated by zero-emission facilities. For electricity
12 generated on or after January 1, 2004, but prior to January 1, 2007,
13 the amount of the credit shall be fifty one-hundredths of one cent
14 (\$0.0050) per kilowatt-hour for electricity generated by zero-
15 emission facilities. For electricity generated on or after January
16 1, 2007, but prior to January 1, 2012, the amount of the credit
17 shall be twenty-five one-hundredths of one cent (\$0.0025) per
18 kilowatt-hour of electricity generated by zero-emission facilities.
19 For facilities placed in operation on or after January 1, 2007, and
20 before January 1, ~~2016~~ 2021, the amount of the credit for the
21 ~~electricity generated by these facilities the amount of the credit~~
22 on or after January 1, 2007, shall be fifty one-hundredths of one
23 cent (\$0.0050) for each kilowatt-hour of electricity generated by
24 zero-emission facilities.

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

5 D. ~~If~~ 1. For credits generated prior to January 1, 2014, if
6 the credit allowed pursuant to this section exceeds the amount of
7 income taxes due or if there are no state income taxes due on the
8 income of the taxpayer, the amount of the credit allowed but not
9 used in any tax year may be carried forward as a credit against
10 subsequent income tax liability for a period not exceeding ten (10)
11 years.

12 2. For credits generated, but not used, on or after January 1,
13 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
14 election, directly to the taxpayer eighty-five percent (85%) of the
15 face amount of such credits. The direct refund of the credits
16 pursuant to this paragraph shall be available to all taxpayers,
17 including, without limitation, pass-through entities and taxpayers
18 subject to Section 2355 of this title, but shall not be available to
19 any entities falling within the provisions of subsection E of this
20 section. The amount of any direct refund of credits actually
21 received at the eighty-five percent (85%) level by the taxpayer
22 pursuant to this paragraph shall not be subject to the tax imposed
23 by Section 2355 of this title. If the pass-through entity does not
24 file a claim for a direct refund, the pass-through entity shall

1 allocate the credit to one or more of the shareholders, partners or
2 members of the pass-through entity; provided, the total of all
3 credits refunded or allocated shall not exceed the amount of the
4 credit or refund to which the pass-through entity is entitled. For
5 the purposes of this paragraph, "pass-through entity" means a
6 corporation that for the applicable tax year is treated as an S
7 corporation under the Internal Revenue Code of 1986, as amended,
8 general partnership, limited partnership, limited liability
9 partnership, trust or limited liability company that for the
10 applicable tax year is not taxed as a corporation for federal income
11 tax purposes.

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

1 F. ~~The~~ For credits generated prior to January 1, 2014, the
2 amount of the credit allowed, but not used, shall be freely
3 transferable at any time during the ten (10) years following the
4 year of qualification. Any person to whom or to which a tax credit
5 is transferred shall have only such rights to claim and use the
6 credit under the terms that would have applied to the entity by whom
7 or by which the tax credit was transferred. The provisions of this
8 subsection shall not limit the ability of a tax credit transferee to
9 reduce the tax liability of the transferee, regardless of the actual
10 tax liability of the tax credit transferor, for the relevant taxable
11 period. The transferor initially allowed the credit and any
12 subsequent transferees shall jointly file a copy of any written
13 transfer agreement with the Oklahoma Tax Commission within thirty
14 (30) days of the transfer. The written agreement shall contain the
15 name, address and taxpayer identification number or social security
16 number of the parties to the transfer, the amount of the credit
17 being transferred, the year the credit was originally allowed to the
18 transferor, and the tax year or years for which the credit may be
19 claimed. The Tax Commission may promulgate rules to permit
20 verification of the validity and timeliness of the tax credit
21 claimed upon a tax return pursuant to this subsection but shall not
22 promulgate any rules that unduly restrict or hinder the transfers of
23 such tax credit. The tax credit allowed by this section, upon the
24 election of the taxpayer, may be claimed as a payment of tax, a

1 prepayment of tax or a payment of estimated tax for purposes of
2 Section 1803 or Section 2355 of this title.

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

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

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1 SECTION 3. This act shall become effective January 1, 2014.

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3 54-1-8085 MAH 05/14/13

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