STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1613 By: Jolley and Treat of the Senate

and

Sears and Casey of the House

AS INTRODUCED

An Act relating to tax credits; amending 68 O.S. 2011, Section 2357.11, as amended by Section 1, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2015, Section 2357.11), which relates to credits for production and purchase of coal; limiting time period during which credits are allowed; clarifying application of limit; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.11, as amended by Section 1, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2015, Section 2357.11), is amended to read as follows:

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

B. 1. Except as provided in subsection M of this section, for tax years beginning on or after January 1, 1993, and ending on or before ~~December 31, 2021~~ December 31, 2015, there shall be allowed a credit against the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for every person in this state furnishing water, heat, light or power to the state or its citizens, or for every person in this state burning coal to generate heat, light or power for use in manufacturing operations located in this state.

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

3. For the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007, and ending on or before ~~December 31, 2021~~ December 31, 2016, the credit shall be in the amount of Two Dollars and eighty-five cents ($2.85) per ton for each ton of Oklahoma-mined coal purchased by such person.

4. In addition to the credit allowed pursuant to the provisions of paragraph 3 of this subsection, for the period of July 1, 2006, through December 31, 2006, and except as provided in subsection M of this section, for tax years beginning on or after January 1, 2007, and ending on or before ~~December 31, 2021~~ December 31, 2016, there

shall be allowed a credit in the amount of Two Dollars and fifteen cents ($2.15) per ton for each ton of Oklahoma-mined coal purchased by such person. The credit allowed pursuant to the provisions of this paragraph may not be claimed or transferred prior to January 1, 2008.

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

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

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

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

D. Except as otherwise provided in subsection E of this section and in subsection M of this section, for tax years beginning on or after January 1, 2001, and ending on or before ~~December 31, 2021~~ December 31, 2016, there shall be allowed a credit against the tax

imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for every person in this state primarily engaged in mining, producing or extracting coal, and holding a valid permit issued by the Oklahoma Department of Mines. For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2005, and for the period beginning January 1, 2006, through June 30, 2006, the credit shall be in the amount of ninety-five cents ($0.95) per ton and for the period of July 1, 2006, through December 31, 2006, and for tax years beginning on or after January 1, 2007, the credit shall be in the amount of Five Dollars ($5.00) for each ton of coal mined, produced or extracted in on, under or through a permit in this state by such person.

E. In addition to the credit allowed pursuant to the provisions of subsection D of this section and except as otherwise provided in subsection F of this section, for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2005, and for the period of January 1, 2006, through June 30, 2006, there shall be allowed a credit against the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for every person in this state primarily engaged in mining, producing or extracting coal, and holding a valid permit issued by the Oklahoma Department of Mines in the amount of ninety-five cents ($0.95) per ton for each ton of coal mined, produced or extracted from thin seams in this state by such person; provided, the credit

shall not apply to such coal sold to any consumer who purchases at least seven hundred fifty thousand (750,000) tons of Oklahoma-mined coal per year.

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

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

H. The additional credits allowed pursuant to subsections B, C, D and E of this section but not used shall be freely transferable after January 1, 2002, but not later than December 31, 2013, by written agreement to subsequent transferees at any time during the

five (5) years following the year of qualification; provided, the additional credits allowed pursuant to the provisions of paragraph 4 of subsection B of this section but not used shall be freely transferable after January 1, 2008, but not later than December 31, 2013, by written agreement to subsequent transferees at any time during the five (5) years following the year of qualification. An eligible transferee shall be any taxpayer subject to the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes. The person originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the 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 transferring person 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.

I. The additional credit allowed pursuant to subsection F of this section but not used shall be freely transferable on or after July 1, 2006, but not later than December 31, 2013, by written

agreement to subsequent transferees at any time during the five (5) years following the year of qualification. An eligible transferee shall be any taxpayer subject to the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes. The person originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the 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 transferring person 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.

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

subsidiary of the person receiving a tax credit under this section to other buyers of the Oklahoma-mined coal.

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

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

2. With respect to credits allowed pursuant to the provisions of subsections B, C, D, E and F of this section which are earned but not used, based upon activity occurring on or after January 1, 2014, the Oklahoma Tax Commission shall, at the taxpayer's election, refund directly to the taxpayer eighty-five percent (85%) of the face amount of such credits. The direct refund of the credits pursuant to this paragraph shall be available to all taxpayers, including, without limitation, pass-through entities and taxpayers subject to Section 2355 of this title. The amount of any direct refund of credits actually received at the eighty-five percent (85%) level by the taxpayer pursuant to this paragraph shall not be

subject to the tax imposed by Section 2355 of this title. If the pass-through entity does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits refunded or allocated shall not exceed the amount of the credit or refund to which the pass-through entity is entitled. For the purposes of this paragraph, "pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation under the Internal Revenue Code of 1986, as amended, general partnership, limited partnership, limited liability partnership, trust or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

M. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, for which the credit would otherwise be allowable. The provisions of this subsection shall cease to be operative on July 1, 2012. Beginning July 1, 2012, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2012, according to the provisions of this section.

N. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment,

expenditure or other act occurring on or after January 1, 2017, for which the credit would otherwise be allowable.

SECTION 2. This act shall become effective November 1, 2016.

55-2-3400 JCR 5/16/2016 6:34:29 PM