

1 (2ND EXTRAORDINARY SESSION)

ENGROSSED HOUSE

2 BILL NO. 1034

By: Wallace and Casey of the
House

3
4 and

5 David and Fields of the
Senate

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7
8 An Act relating to revenue and taxation; amending 68
9 O.S. 2011, Section 2357.11, as last amended by
10 Section 1, Chapter 390, O.S.L. 2016 (68 O.S. Supp.
2017, Section 2357.11), which relates to income tax
11 credits for coal production; imposing cap;
12 prescribing formula for computation of cap amount;
providing for certain carryover amounts; and
providing an effective date.

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

16 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.11, as
17 last amended by Section 1, Chapter 390, O.S.L. 2016 (68 O.S. Supp.
18 2017, Section 2357.11), is amended to read as follows:

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

23 B. 1. Except as otherwise provided ~~in subsection M of~~ by this
24 section, for tax years beginning on or after January 1, 1993, and

1 ending on or before December 31, 2021, there shall be allowed a
2 credit against the tax imposed by Section 1803 or Section 2355 of
3 this title or Section 624 or 628 of Title 36 of the Oklahoma
4 Statutes for every person in this state furnishing water, heat,
5 light or power to the state or its citizens, or for every person in
6 this state burning coal to generate heat, light or power for use in
7 manufacturing operations located in this state.

8 2. For tax years beginning on or after January 1, 1993, and
9 ending on or before December 31, 2005, and for the period of January
10 1, 2006, through June 30, 2006, the credit shall be in the amount of
11 Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal
12 purchased by such person.

13 3. For the period of July 1, 2006, through December 31, 2006,
14 and, except as provided in subsection N of this section, for tax
15 years beginning on or after January 1, 2007, and ending on or before
16 December 31, 2021, the credit shall be in the amount of Two Dollars
17 and eighty-five cents (\$2.85) per ton for each ton of Oklahoma-mined
18 coal purchased by such person.

19 4. In addition to the credit allowed pursuant to the provisions
20 of paragraph 3 of this subsection, for the period of July 1, 2006,
21 through December 31, 2006, and except as provided in subsections M
22 and N of this section, for tax years beginning on or after January
23 1, 2007, and ending on or before December 31, 2021, there shall be
24 allowed a credit in the amount of Two Dollars and fifteen cents

1 (\$2.15) per ton for each ton of Oklahoma-mined coal purchased by
2 such person. The credit allowed pursuant to the provisions of this
3 paragraph may not be claimed or transferred prior to January 1,
4 2008.

5 C. For tax years beginning on or after January 1, 1995, and
6 ending on or before December 31, 2005, and for the period beginning
7 January 1, 2006, through June 30, 2006, there shall be allowed, in
8 addition to the credits allowed pursuant to subsection B of this
9 section, a credit against the tax imposed by Section 1803 or Section
10 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma
11 Statutes for every person in this state which:

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

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

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

20 D. Except as otherwise provided ~~in subsection E of this section~~
21 ~~and in subsection M of~~ by this section, for tax years beginning on
22 or after January 1, 2001, and ending on or before December 31, 2021,
23 there shall be allowed a credit against the tax imposed by Section
24 1803 or Section 2355 of this title or Section 624 or 628 of Title 36

1 of the Oklahoma Statutes for every person in this state primarily
2 engaged in mining, producing or extracting coal, and holding a valid
3 permit issued by the Oklahoma Department of Mines. For tax years
4 beginning on or after January 1, 2001, and ending on or before
5 December 31, 2005, and for the period beginning January 1, 2006,
6 through June 30, 2006, the credit shall be in the amount of ninety-
7 five cents (\$0.95) per ton and for the period of July 1, 2006,
8 through December 31, 2006, and for tax years beginning on or after
9 January 1, 2007, except as provided in subsection N of this section,
10 the credit shall be in the amount of Five Dollars (\$5.00) for each
11 ton of coal mined, produced or extracted in on, under or through a
12 permit in this state by such person.

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

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

4 F. In addition to the credit allowed pursuant to the provisions
5 of subsection D of this section and except as otherwise provided in
6 subsection G of this section, for tax years beginning on or after
7 January 1, 2005, and ending on or before December 31, 2005, and for
8 the period of January 1, 2006, through June 30, 2006, there shall be
9 allowed a credit against the tax imposed by Section 1803 or Section
10 2355 of this title or that portion of the tax imposed by Section 624
11 or 628 of Title 36 of the Oklahoma Statutes, which is actually paid
12 to and placed into the General Revenue Fund, in the amount of
13 ninety-five cents (\$0.95) per ton for each ton of coal mined,
14 produced or extracted from thin seams in this state by such person
15 on or after July 1, 2005.

16 G. The credits provided in subsections D and E of this section
17 shall not be allowed for coal mined, produced or extracted in any
18 month in which the average price of coal is Sixty-eight Dollars
19 (\$68.00) or more per ton, excluding freight charges, as determined
20 by the Tax Commission.

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

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

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

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

17 J. Any person receiving tax credits pursuant to the provisions
18 of this section shall apply the credits against taxes payable or,
19 subject to the limitation that credits earned after December 31,
20 2013, shall not be transferred, shall transfer the credits as
21 provided in this section or, for credits earned on or after January
22 1, 2014, shall receive a refund pursuant to the provisions of
23 subsection L of this section. Credits shall not be used to lower
24 the price of any Oklahoma-mined coal sold that is produced by a

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

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

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

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

1 subject to the tax imposed by Section 2355 of this title. If the
2 pass-through entity does not file a claim for a direct refund, the
3 pass-through entity shall allocate the credit to one or more of the
4 shareholders, partners or members of the pass-through entity;
5 provided, the total of all credits refunded or allocated shall not
6 exceed the amount of the credit or refund to which the pass-through
7 entity is entitled. For the purposes of this paragraph, "pass-
8 through entity" means a corporation that for the applicable tax year
9 is treated as an S corporation under the Internal Revenue Code of
10 1986, as amended, general partnership, limited partnership, limited
11 liability partnership, trust or limited liability company that for
12 the applicable tax year is not taxed as a corporation for federal
13 income tax purposes.

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

23 N. ~~For~~ Except as otherwise provided by this section, any
24 credits calculated pursuant to paragraphs 3 or 4 of subsection B or

1 subsection D of this section for activities occurring on or after
2 January 1, 2016, the amount of credit allowed shall be equal to
3 seventy-five percent (75%) of the amount otherwise provided.

4 O. For tax years beginning on or after January 1, 2018, the
5 total amount of credits authorized by this section used to offset
6 tax or paid as a refund shall be adjusted annually to limit the
7 annual amount of credits to Five Million Dollars (\$5,000,000.00).
8 The Tax Commission shall annually calculate and publish a percentage
9 by which the credits authorized by this section shall be reduced so
10 the total amount of credits used to offset tax or paid as a refund
11 does not exceed Five Million Dollars (\$5,000,000.00) per year. The
12 formula to be used for the percentage adjustment shall be Five
13 Million Dollars (\$5,000,000.00) divided by the credits claimed in
14 the second preceding year.

15 P. Pursuant to subsection O of this section, in the event the
16 total tax credits authorized by this section exceed Five Million
17 Dollars (\$5,000,000.00) in any calendar year, the Tax Commission
18 shall permit any excess over Five Million Dollars (\$5,000,000.00)
19 but shall factor such excess into the percentage adjustment formula
20 for subsequent years.

21 Q. Any credits authorized by this section not used or unable to
22 be used because of the provisions of subsection O or P of this
23 section may be carried over until such credits are fully used.

24 SECTION 2. This act shall become effective January 1, 2018.

1 Passed the House of Representatives the 26th day of February,
2 2018.

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4 Presiding Officer of the House
5 of Representatives

6 Passed the Senate the ____ day of _____, 2018.

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8 Presiding Officer of the Senate