

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 885

By: Daniels

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5
6 AS INTRODUCED

7 An Act relating to tax credits; amending 68 O.S.
8 2011, Section 2357.11, as last amended by Section 1,
9 Chapter 390, O.S.L. 2016 (68 O.S. Supp. 2017, Section
10 2357.11), which relates to credits for production and
11 purchase of coal; limiting time period during which
12 credits are refundable; and declaring an emergency.

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

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

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

21 B. 1. Except as provided in subsection M of this section, for
22 tax years beginning on or after January 1, 1993, and ending on or
23 before December 31, 2021, there shall be allowed a credit against
24 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

1 person in this state furnishing water, heat, light or power to the
2 state or its citizens, or for every person in this state burning
3 coal to generate heat, light or power for use in manufacturing
4 operations located in this state.

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

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

16 4. In addition to the credit allowed pursuant to the provisions
17 of paragraph 3 of this subsection, for the period of July 1, 2006,
18 through December 31, 2006, and except as provided in subsections M
19 and N of this section, for tax years beginning on or after January
20 1, 2007, and ending on or before December 31, 2021, there shall be
21 allowed a credit in the amount of Two Dollars and fifteen cents
22 (\$2.15) per ton for each ton of Oklahoma-mined coal purchased by
23 such person. The credit allowed pursuant to the provisions of this
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1 paragraph may not be claimed or transferred prior to January 1,
2 2008.

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

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

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

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

18 D. Except as otherwise provided in subsection E of this section
19 and in subsection M of this section, for tax years beginning on or
20 after January 1, 2001, and ending on or before December 31, 2021,
21 there shall be allowed a credit against the tax imposed by Section
22 1803 or Section 2355 of this title or Section 624 or 628 of Title 36
23 of the Oklahoma Statutes for every person in this state primarily
24 engaged in mining, producing or extracting coal, and holding a valid

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

11 E. 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 F of this section, for tax years beginning on or after
14 January 1, 2001, 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 Section 624 or 628 of Title 36 of the Oklahoma
18 Statutes for every person in this state primarily engaged in mining,
19 producing or extracting coal, and holding a valid permit issued by
20 the Oklahoma Department of Mines in the amount of ninety-five cents
21 (\$0.95) per ton for each ton of coal mined, produced or extracted
22 from thin seams in this state by such person; provided, the credit
23 shall not apply to such coal sold to any consumer who purchases at
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1 least seven hundred fifty thousand (750,000) tons of Oklahoma-mined
2 coal per year.

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

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

20 H. The additional credits allowed pursuant to subsections B, C,
21 D and E of this section but not used shall be freely transferable
22 after January 1, 2002, but not later than December 31, 2013, by
23 written agreement to subsequent transferees at any time during the
24 five (5) years following the year of qualification; provided, the

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

21 I. The additional credit allowed pursuant to subsection F of
22 this section but not used shall be freely transferable on or after
23 July 1, 2006, but not later than December 31, 2013, by written
24 agreement to subsequent transferees at any time during the five (5)

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

16 J. Any person receiving tax credits pursuant to the provisions
17 of this section shall apply the credits against taxes payable or,
18 subject to the limitation that credits earned after December 31,
19 2013, shall not be transferred, shall transfer the credits as
20 provided in this section or, for credits earned on or after January
21 1, 2014, and before January 1, 2019, shall receive a refund pursuant
22 to the provisions of subsection L of this section. Credits shall
23 not be used to lower the price of any Oklahoma-mined coal sold that
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1 is produced by a subsidiary of the person receiving a tax credit
2 under this section 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 and before January 1, 2019, the Oklahoma Tax Commission shall, at
18 the taxpayer's election, refund directly to the taxpayer eighty-five
19 percent (85%) of the face amount of such credits. The direct refund
20 of the credits pursuant to this paragraph shall be available to all
21 taxpayers, including, without limitation, pass-through entities and
22 taxpayers subject to Section 2355 of this title. The amount of any
23 direct refund of credits actually received at the eighty-five
24 percent (85%) level by the taxpayer pursuant to this paragraph shall

1 not be subject to the tax imposed by Section 2355 of this title. If
2 the pass-through entity does not file a claim for a direct refund,
3 the pass-through entity shall allocate the credit to one or more of
4 the 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 any credits calculated pursuant to paragraphs 3 or 4 of
24 subsection B or subsection D of this section for activities

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

4 SECTION 2. It being immediately necessary for the preservation
5 of the public peace, health or safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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