An Act

ENROLLED SENATE
BILL NO. 343

By: Mazzei and Allen of the Senate

and

Hall of the House

An act relating to revenue and taxation; amending 68 O.S. 2011, Sections 2357.11 and 2357.32A, which relate to tax credits; modifying expiration date for credit related to use of coal; providing for expiration date for credit related to production of coal; limiting transferability of certain credits to specified time period; authorizing refund of certain credits under specified circumstances; providing certain exception; 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; clarifying 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.

SUBJECT: Tax credits

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

SECTION 1. AMENDATORY 68 O.S. 2011, 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, ~~2014~~ 2021, 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, ~~2014~~ 2021, 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, ~~2014~~ 2021, 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, 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, <u>but not later than December 31, 2013,</u> 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, <u>but not later than December 31, 2013,</u> 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. ~~The~~ 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. ~~Any~~ 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.

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

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

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

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

a. wind,

b. moving water,

c. sun, or

d. geothermal energy.

B. For facilities placed in operation on or after January 1, 2003, and before January 1, 2007, the amount of the credit for the electricity generated on or after January 1, 2003, but prior to January 1, 2004, ~~the amount of the credit~~ shall be seventy-five one-hundredths of one cent ($0.0075) for each kilowatt-hour of electricity generated by zero-emission facilities. For electricity generated on or after January 1, 2004, but prior to January 1, 2007, the amount of the credit shall be fifty one-hundredths of one cent ($0.0050) per kilowatt-hour for electricity generated by zero-emission facilities. For electricity generated on or after January 1, 2007, but prior to January 1, 2012, the amount of the credit shall be twenty-five one-hundredths of one cent ($0.0025) per kilowatt-hour of electricity generated by zero-emission facilities. For facilities placed in operation on or after January 1, 2007, and before January 1, ~~2016~~ 2021, the amount of the credit for the electricity generated ~~by these facilities the amount of the credit~~ on or after January 1, 2007, shall be fifty one-hundredths of one cent ($0.0050) for each kilowatt-hour of electricity generated by zero-emission facilities.

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

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

2. For credits generated, but not used, on or after January 1, 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's election, 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, but shall not be available to any entities falling within the provisions of subsection E of this section. 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.

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

F. ~~The~~ For credits generated prior to January 1, 2014, the amount of the credit allowed, but not used, shall be freely transferable at any time during the ten (10) years following the year of qualification. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee, regardless of the actual tax liability of the tax credit transferor, for the relevant taxable period. The transferor initially allowed the credit and any subsequent transferees shall jointly file a copy of any written

transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number or social security number of the parties to the transfer, the amount of the credit being transferred, the year the credit was originally allowed to the transferor, 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 the tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules that unduly restrict or hinder the transfers of such tax credit. The tax credit allowed by this section, upon the election of the taxpayer, may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 1803 or Section 2355 of this title.

G. For electricity generation produced and sold in a calendar year, the tax credit allowed by the provisions 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 2355 of this title on or after July 1 of the following calendar year.

H. 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 until the provisions of this subsection shall cease to be operative on July 1, 2011. Beginning July 1, 2011, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, according to the provisions of this section. Any tax credits which accrue during the period of July 1, 2010, through June 30, 2011, may not be claimed for any period prior to the taxable year beginning January 1, 2012. No credits which accrue during the period of July 1, 2010, through June 30, 2011, may be used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2012.

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

Passed the Senate the 23rd day of May, 2013.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2013.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 24th

day of May, 20 13, at 10:18 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 29th

day of May, 20 13, at 4:05 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 29th

day of May, 20 13, at 5:25 o'clock P. M.

By: Chris Bowers