

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2979

By: Dank

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Section 2357.11, which relates to tax  
9 credits for certain transactions related to coal  
10 production; amending 68 O.S. 2011, Section 2357.32A,  
11 which relates to tax credits related to certain zero  
12 emission facilities; amending 68 O.S. 2011, Section  
13 2357.32B, which relates to tax credits for  
14 manufacturers of small wind turbines; amending 68  
15 O.S. 2011, Section 2357.41, which relates to tax  
16 credits for certain qualified historic rehabilitation  
17 expenditures; amending 68 O.S. 2011, Section 2357.46,  
18 which relates to tax credits for construction of  
19 certain energy-efficient residences; amending 68 O.S.  
20 2011, Section 2357.104, which relates to tax credits  
21 for certain railroad reconstruction expenditures;  
22 modifying provisions related to transferability of  
23 tax credits; providing credits not transferable;  
24 providing for effect of amendatory provisions of  
enactment with respect to tax credits earned or  
transferred prior to specified date; providing for  
effect of amendatory provisions of enactment with  
respect to carryover periods; providing for  
noncodification; and declaring an emergency.

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:

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

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

14 2. For tax years beginning on or after January 1, 1993, and  
15 ending on or before December 31, 2005, and for the period of January  
16 1, 2006, through June 30, 2006, the credit shall be in the amount of  
17 Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal  
18 purchased by such person.

19 3. For the period of July 1, 2006 through December 31, 2006,  
20 and for tax years beginning on or after January 1, 2007, and ending  
21 on or before December 31, 2014, the credit shall be in the amount of  
22 Two Dollars and eighty-five cents (\$2.85) per ton for each ton of  
23 Oklahoma-mined coal purchased by such person.

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

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

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

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

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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 K of this section, for tax years beginning on or  
6 after January 1, 2001, there shall be allowed a credit against the  
7 tax imposed by Section 1803 or Section 2355 of this title or Section  
8 624 or 628 of Title 36 of the Oklahoma Statutes for every person in  
9 this state primarily engaged in mining, producing or extracting  
10 coal, and holding a valid permit issued by the Oklahoma Department  
11 of Mines. For tax years beginning on or after January 1, 2001, and  
12 ending on or before December 31, 2005, and for the period beginning  
13 January 1, 2006, through June 30, 2006, the credit shall be in the  
14 amount of ninety-five cents (\$0.95) per ton and for the period of  
15 July 1, 2006, through December 31, 2006, and for tax years beginning  
16 on or after January 1, 2007, the credit shall be in the amount of  
17 Five Dollars (\$5.00) for each ton of coal mined, produced or  
18 extracted in on, under or through a permit in this state by such  
19 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, by written agreement to subsequent~~  
7 ~~transferees at any time during the five (5) years following the year~~  
8 ~~of qualification; provided, the additional credits allowed pursuant~~  
9 ~~to the provisions of paragraph 4 of subsection B of this section but~~  
10 ~~not used shall be freely transferable after January 1, 2008, by~~  
11 ~~written agreement to subsequent transferees at any time during the~~  
12 ~~five (5) years following the year of qualification. An eligible~~  
13 ~~transferee shall be any taxpayer subject to the tax imposed by~~  
14 ~~Section 1803 or Section 2355 of this title or Section 624 or 628 of~~  
15 ~~Title 36 of the Oklahoma Statutes. The person originally allowed~~  
16 ~~the credit and the subsequent transferee shall jointly file a copy~~  
17 ~~of the written credit transfer agreement with the Tax Commission~~  
18 ~~within thirty (30) days of the transfer. The written agreement~~  
19 ~~shall contain the name, address and taxpayer identification number~~  
20 ~~of the parties to the transfer, the amount of credit being~~  
21 ~~transferred, the year the credit was originally allowed to the~~  
22 ~~transferring person and the tax year or years for which the credit~~  
23 ~~may be claimed. The Tax Commission may promulgate rules to permit~~  
24 ~~verification of the validity and timeliness of a tax credit claimed~~

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

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

23 ~~J. Any person receiving tax credits pursuant to the provisions~~  
24 ~~of this section shall apply the credits against taxes payable or~~

1 ~~shall transfer the credits~~ as provided in this section. Credits  
2 shall not be used to lower the price of any Oklahoma-mined coal sold  
3 that is produced by a subsidiary of the person receiving a tax  
4 credit under this section to other buyers of the Oklahoma-mined  
5 coal.

6 ~~K.~~ I. The credits allowed by subsections B, C, D, E and F of  
7 this section, upon election of the taxpayer, shall be treated and  
8 may be claimed as a payment of tax, a prepayment of tax or a payment  
9 of estimated tax for purposes of Section ~~1803 or~~ 2355 of this title  
10 ~~or Section 624 or 628 of Title 36 of the Oklahoma Statutes.~~

11 ~~H.~~ J. Any credits allowed pursuant to the provisions of  
12 subsections B, C, D, E and F of this section but not used in any tax  
13 year may be carried over in order to each of the five (5) years  
14 following the year of qualification.

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

24

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

3 Section 2357.32A A. Except as otherwise provided in subsection  
4 ~~H~~ G of this section, for tax years beginning on or after January 1,  
5 2003, there shall be allowed a credit against the tax imposed by  
6 Section 2355 of this title to a taxpayer for the taxpayer's  
7 production and sale to an unrelated person of electricity generated  
8 by zero-emission facilities located in this state. As used in this  
9 section:

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

19 2. "Eligible renewable resources" means resources derived from:  
20 a. wind,  
21 b. moving water,  
22 c. sun, or  
23 d. geothermal energy.

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1 B. For facilities placed in operation on or after January 1,  
2 2003, and before January 1, 2007, the electricity generated on or  
3 after January 1, 2003, but prior to January 1, 2004, the amount of  
4 the credit shall be seventy-five one hundredths of one cent  
5 (\$0.0075) for each kilowatt-hour of electricity generated by zero-  
6 emission facilities. For electricity generated on or after January  
7 1, 2004, but prior to January 1, 2007, the amount of the credit  
8 shall be fifty one hundredths of one cent (\$0.0050) per kilowatt-  
9 hour for electricity generated by zero-emission facilities. For  
10 electricity generated on or after January 1, 2007, but prior to  
11 January 1, 2012, the amount of the credit shall be twenty-five one  
12 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity  
13 generated by zero-emission facilities. For facilities placed in  
14 operation on or after January 1, 2007, and before January 1, 2016,  
15 for the electricity generated by these facilities the amount of the  
16 credit shall be fifty one hundredths of one cent (\$0.0050) for each  
17 kilowatt-hour of electricity generated by zero-emission facilities.

18 C. Credits may be claimed with respect to electricity generated  
19 on or after January 1, 2003, during a ten-year period following the  
20 date that the facility is placed in operation on or after June 4,  
21 2001.

22 D. If the credit allowed pursuant to this section exceeds the  
23 amount of income taxes due or if there are no state income taxes due  
24 on the income of the taxpayer, the amount of the credit allowed but

1 not used in any tax year may be carried forward as a credit against  
2 subsequent income tax liability for a period not exceeding ten (10)  
3 years.

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

17 ~~F. The amount of the credit allowed, but not used, shall be~~  
18 ~~freely transferable at any time during the ten (10) years following~~  
19 ~~the year of qualification. Any person to whom or to which a tax~~  
20 ~~credit is transferred shall have only such rights to claim and use~~  
21 ~~the credit under the terms that would have applied to the entity by~~  
22 ~~whom or by which the tax credit was transferred. The provisions of~~  
23 ~~this subsection shall not limit the ability of a tax credit~~  
24 ~~transferee to reduce the tax liability of the transferee, regardless~~

1 ~~of the actual tax liability of the tax credit transferor, for the~~  
2 ~~relevant taxable period. The transferor initially allowed the~~  
3 ~~credit and any subsequent transferees shall jointly file a copy of~~  
4 ~~any written transfer agreement with the Oklahoma Tax Commission~~  
5 ~~within thirty (30) days of the transfer. The written agreement~~  
6 ~~shall contain the name, address and taxpayer identification number~~  
7 ~~or social security number of the parties to the transfer, the amount~~  
8 ~~of the credit being transferred, the year the credit was originally~~  
9 ~~allowed to the transferor, and the tax year or years for which the~~  
10 ~~credit may be claimed. The Tax Commission may promulgate rules to~~  
11 ~~permit verification of the validity and timeliness of the tax credit~~  
12 ~~claimed upon a tax return pursuant to this subsection but shall not~~  
13 ~~promulgate any rules that unduly restrict or hinder the transfers of~~  
14 ~~such tax credit. The tax credit allowed by this section, upon the~~  
15 ~~election of the taxpayer, may be claimed as a payment of tax, a~~  
16 ~~prepayment of tax or a payment of estimated tax for purposes of~~  
17 ~~Section 1803 or Section 2355 of this title.~~

18       G. F. For electricity generation produced and sold in a  
19 calendar year, the tax credit allowed by the provisions of this  
20 section, upon election of the taxpayer, shall be treated and may be  
21 claimed as a payment of tax, a prepayment of tax or a payment of  
22 estimated tax for purposes of Section 2355 of this title on or after  
23 July 1 of the following calendar year.

24

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

15        SECTION 3.        AMENDATORY        68 O.S. 2011, Section 2357.32B, is  
16 amended to read as follows:

17        Section 2357.32B A. Except as otherwise provided by subsection  
18 ~~G~~ F of this section, for tax years beginning on or after January 1,  
19 2003, and ending on or before December 31, 2012, there shall be  
20 allowed a credit against the tax imposed by ~~Section 624 or 628 of~~  
21 ~~Title 36 of the Oklahoma Statutes, and actually paid to and placed~~  
22 ~~into the General Revenue Fund, or Section 2370 or 2355 of this title~~  
23 to Oklahoma manufacturers of advanced small wind turbines. As used  
24 in this section:

1        1. "Oklahoma manufacturers" means manufacturers who operate  
2 facilities located in this state which have the capability to  
3 manufacture small wind turbine products, including rotor blade and  
4 alternator fabrication; and

5        2. "Advanced small wind turbines" means upwind, furling wind  
6 turbines that meet the following requirements:

7            a. have a rated capacity of at least one kilowatt (1 kw)  
8 but not greater than fifty kilowatts (50 kw),

9            b. incorporate advanced technologies such as new  
10 airfoils, new generators, and new power electronics,  
11 variable speed,

12           c. at least one unit of each model has undergone testing  
13 at the US-DOE National Wind Technology Center, and

14           d. comply with appropriate interconnection safety  
15 standards of the Institute of Electrical and  
16 Electronics Engineers applicable to small wind  
17 turbines.

18        B. The amount of the credit shall be based on the square  
19 footage of rotor swept area of advanced small wind turbines  
20 manufactured in this state. The amount of the credit shall be  
21 Twenty-five Dollars (\$25.00) per square foot produced in calendar  
22 year 2003, Twelve Dollars and fifty cents (\$12.50) per square foot  
23 produced in calendar year 2004, and Twenty-five Dollars (\$25.00) per  
24 square foot produced in calendar years 2005 through 2012.

1 C. The companies claiming the credit allowed by this section  
2 shall agree in advance to allow their production and claims to be  
3 audited by the Oklahoma Tax Commission and they must be able to show  
4 that they have made economic development investments in this state  
5 over the period of time for which the credit was claimed that exceed  
6 the net proceeds from the amount of credit claimed.

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

13 ~~E. The amount of the credit allowed but not used shall be~~  
14 ~~freely transferable at any time during the ten (10) years following~~  
15 ~~the year of qualification. Any person to whom or to which a tax~~  
16 ~~credit is transferred shall have only such rights to claim and use~~  
17 ~~the credit under the terms that would have applied to the entity by~~  
18 ~~whom or by which the tax credit was transferred. The provisions of~~  
19 ~~this subsection shall not limit the ability of a tax credit~~  
20 ~~transferee to reduce the tax liability of the transferee regardless~~  
21 ~~of the actual tax liability of the tax credit transferor for the~~  
22 ~~relevant taxable period. The transferor originally allowed the~~  
23 ~~credit and the subsequent transferee shall jointly file a copy of~~  
24 ~~the written credit transfer agreement with the Tax Commission within~~

1 ~~thirty (30) days of the transfer. The written agreement shall~~  
2 ~~contain the name, address and taxpayer identification number of the~~  
3 ~~parties to the transfer, the amount of the credit being transferred,~~  
4 ~~the year the credit was originally allowed to the transferor and the~~  
5 ~~tax year or years for which the credit may be claimed. The Tax~~  
6 ~~Commission may promulgate rules to permit verification of the~~  
7 ~~validity and timeliness of a tax credit claimed upon a tax return~~  
8 ~~pursuant to this subsection but shall not promulgate any rules that~~  
9 ~~unduly restrict or hinder the transfers of such tax credit.~~

10 ~~F.~~ For advanced small wind turbines produced in a calendar  
11 year, the tax credit allowed by the provisions of this section, upon  
12 election of the taxpayer, shall be treated and may be claimed as a  
13 payment of tax, a prepayment of tax or a payment of estimated tax  
14 for purposes of ~~Section 624 or 628 of Title 36 of the Oklahoma~~  
15 ~~Statutes, and actually paid to and placed into the General Revenue~~  
16 ~~Fund, or Section 2370 or 2355 of this title on or after July 1 of~~  
17 the following calendar year.

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

1 act occurring on or after July 1, 2012, according to the provisions  
2 of this section.

3 SECTION 4. AMENDATORY 68 O.S. 2011, Section 2357.41, is  
4 amended to read as follows:

5 Section 2357.41 A. Except as otherwise provided by subsection  
6 ~~¶ H~~ of this section, for tax years beginning after December 31,  
7 2000, there shall be allowed a credit against the tax imposed by  
8 ~~Sections Section~~ Section 2355 and ~~2370~~ of this title ~~or that portion of the~~  
9 ~~tax imposed by Section 624 or 628 of Title 36 of the Oklahoma~~  
10 ~~Statutes that would otherwise have been apportioned to the General~~  
11 ~~Revenue Fund~~ for qualified rehabilitation expenditures incurred in  
12 connection with any certified historic hotel or historic newspaper  
13 plant building located in an increment or incentive district created  
14 pursuant to the Local Development Act or for qualified  
15 rehabilitation expenditures incurred after January 1, 2006, in  
16 connection with any certified historic structure.

17 B. The amount of the credit shall be one hundred percent (100%)  
18 of the federal rehabilitation credit provided for in Section 47 of  
19 Title 26 of the United States Code. The credit authorized by this  
20 section may be claimed at any time after the relevant local  
21 governmental body responsible for doing so issues a certificate of  
22 occupancy or other document that is a precondition for the  
23 applicable use of the building or structure that is the basis upon  
24 which the credit authorized by this section is claimed.

1 C. All requirements with respect to qualification for the  
2 credit authorized by Section 47 of Title 26 of the United States  
3 Code shall be applicable to the credit authorized by this section.

4 D. If the credit allowed pursuant to this section exceeds the  
5 amount of income taxes due or if there are no state income taxes due  
6 on the income of the taxpayer, the amount of the credit allowed but  
7 not used in any taxable year may be carried forward as a credit  
8 against subsequent income tax liability for a period not exceeding  
9 ten (10) years following the qualified expenditures.

10 E. All rehabilitation work to which the credit may be applied  
11 shall be reviewed by the State Historic Preservation Office which  
12 will in turn forward the information to the National Park Service  
13 for certification in accordance with 36 C.F.R., Part 67. A  
14 certified historic structure may be rehabilitated for any lawful use  
15 or uses, including without limitation mixed uses and still retain  
16 eligibility for the credit provided for in this section.

17 ~~F. The amount of the credit allowed for any credit claimed for~~  
18 ~~a certified historic hotel or historic newspaper plant building or~~  
19 ~~any certified historic structure, but not used, shall be freely~~  
20 ~~transferable, in whole or in part, to subsequent transferees at any~~  
21 ~~time during the five (5) years following the year of qualification.~~  
22 ~~Any person to whom or to which a tax credit is transferred shall~~  
23 ~~have only such rights to claim and use the credit under the terms~~  
24 ~~that would have applied to the entity by whom or by which the tax~~

1 ~~credit was transferred. The provisions of this subsection shall not~~  
2 ~~limit the ability of a tax credit transferee to reduce the tax~~  
3 ~~liability of the transferee regardless of the actual tax liability~~  
4 ~~of the tax credit transferor for the relevant taxable period. The~~  
5 ~~transferor of the credit and the transferee shall jointly file a~~  
6 ~~copy of the written credit transfer agreement with the Oklahoma Tax~~  
7 ~~Commission within thirty (30) days of the transfer. Such filing of~~  
8 ~~the written credit transfer agreement with the Oklahoma Tax~~  
9 ~~Commission shall perfect such transfer. The written agreement shall~~  
10 ~~contain the name, address and taxpayer identification number of the~~  
11 ~~parties to the transfer, the amount of credit being transferred, the~~  
12 ~~year the credit was originally allowed to the transferor, the tax~~  
13 ~~year or years for which the credit may be claimed, and a~~  
14 ~~representation by the transferor that the transferor has neither~~  
15 ~~claimed for its own behalf nor conveyed such credits to any other~~  
16 ~~transferee. The Tax Commission shall develop a standard form for~~  
17 ~~use by subsequent transferees of the credit demonstrating~~  
18 ~~eligibility for the transferee to reduce its applicable tax~~  
19 ~~liabilities resulting from ownership of the credit. The Tax~~  
20 ~~Commission shall develop a system to record and track the transfers~~  
21 ~~of the credit and certify the ownership of the credit and may~~  
22 ~~promulgate rules to permit verification of the validity and~~  
23 ~~timeliness of a tax credit claimed upon a tax return pursuant to~~

24

1 ~~this subsection but shall not promulgate any rules which unduly~~  
2 ~~restrict or hinder the transfers of such tax credit.~~

3 ~~G.~~ Notwithstanding any other provisions in this section, on or  
4 after January 1, 2009, if a credit allowed pursuant to this section  
5 which has been transferred is subsequently reduced as the result of  
6 an adjustment by the Internal Revenue Service, Tax Commission, or  
7 any other applicable government agency, only the transferor  
8 originally allowed the credit and not any subsequent transferee of  
9 the credit, shall be held liable to repay any amount of disallowed  
10 credit.

11 ~~H.~~ G. As used in this section:

12 1. "Certified historic hotel or historic newspaper plant  
13 building" means a hotel or newspaper plant building that is listed  
14 on the National Register of Historic Places within thirty (30)  
15 months of taking the credit pursuant to this section;

16 2. "Certified historic structure" means a building that is  
17 listed on the National Register of Historic Places within thirty  
18 (30) months of taking the credit pursuant to this section or a  
19 building located in Oklahoma which is certified by the State  
20 Historic Preservation Office as contributing to the historic  
21 significance of a certified historic district listed on the National  
22 Register of Historic Places, or a local district that has been  
23 certified by the State Historic Preservation Office as eligible for  
24 listing in the National Register of Historic Places; and

1       3. "Qualified rehabilitation expenditures" means capital  
2 expenditures that qualify for the federal rehabilitation credit  
3 provided in Section 47 of Title 26 of the United States Code and  
4 that were paid after December 31, 2000. Qualified rehabilitation  
5 expenditures do not include capital expenditures for nonhistoric  
6 additions except an addition that is required by state or federal  
7 regulations that relate to safety or accessibility. In addition,  
8 qualified rehabilitation expenditures do not include expenditures  
9 related to the cost of acquisition of the property.

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

1 SECTION 5. AMENDATORY 68 O.S. 2011, Section 2357.46, is  
2 amended to read as follows:

3 Section 2357.46 A. Except as otherwise provided by subsection  
4 ~~G F~~ of this section, for tax years beginning after December 31,  
5 2005, there shall be allowed a credit against the tax imposed by  
6 Section 2355 of ~~Title 68 of Oklahoma Statutes~~ this title for  
7 eligible expenditures incurred by a contractor in the construction  
8 of energy\_efficient residential property of two thousand (2,000)  
9 square feet or less. The amount of the credit shall be based upon  
10 the following:

11 1. For any eligible energy\_efficient residential property  
12 constructed and certified as forty percent (40%) or more above the  
13 International Energy Conservation Code 2003 and any supplement in  
14 effect at the time of completion, the amount of the credit shall be  
15 equal to the eligible expenses, not to exceed Four Thousand Dollars  
16 (\$4,000.00) for the taxpayer who is the contractor; and

17 2. For any eligible energy\_efficient residential property  
18 constructed and certified as between twenty percent (20%) and  
19 thirty-nine percent (39%) above the International Energy  
20 Conservation Code 2003 and any supplement in effect at the time of  
21 completion, the credit shall be equal to the eligible expenditures,  
22 not to exceed Two Thousand Dollars (\$2,000.00) for the taxpayer who  
23 is the contractor.

24 B. As used in this section:

1 1. "Eligible expenditure" means any:

2 a. energy\_efficient heating or cooling system,

3 b. insulation material or system which is specifically  
4 and primarily designed to reduce the heat gain or loss  
5 of a residential property when installed in or on such  
6 property,

7 c. exterior windows, including skylights,

8 d. exterior doors, and

9 e. any metal roof installed on a residential property,

10 but only if such roof has appropriate pigmented  
11 coatings which are specifically and primarily designed  
12 to reduce the heat gain of such dwelling unit and  
13 which meet Energy Star program requirements;

14 2. "Contractor" means the taxpayer who constructed the  
15 residential property or manufactured home, or if more than one  
16 taxpayer qualifies as the contractor, the primary contractor; and

17 3. "Eligible energy\_efficient residential property" means a  
18 newly constructed residential property or manufactured home property  
19 which is located in the State of Oklahoma and substantially complete  
20 after December 31, 2005, and which is two thousand (2,000) square  
21 feet or less:

22 a. for the credit provided pursuant to paragraph 1 of  
23 subsection A of this section, which is certified by an  
24

1 accredited Residential Energy Services Network

2 Provider using the Home Energy Rating System to have:

3 (1) a level of annual heating and cooling energy

4 consumption which is at least forty percent (40%)

5 below the annual level of heating and cooling

6 energy consumption of a comparable residential

7 property constructed in accordance with the

8 standards of Chapter 4 of the 2003 International

9 Energy Conservation Code, as such code is in

10 effect on the effective date of this act,

11 (2) heating and cooling equipment efficiencies which

12 correspond to the minimum allowed under the

13 regulations established by the Department of

14 Energy pursuant to the National Appliance Energy

15 Conservation Act of 1987 and in effect at the

16 time of construction of the property, and

17 (3) building envelope component improvements which

18 account for at least one-fifth of the reduced

19 annual heating and cooling energy consumption

20 levels,

21 b. for the credit provided pursuant to paragraph 2 of

22 subsection A of this section, which is certified by an

23 accredited Residential Energy Services Network

24 Provider using the Home Energy Rating System to have:

- 1 (1) a level of annual heating and cooling energy  
2 consumption which is between twenty percent (20%)  
3 and thirty-nine percent (39%) below the annual  
4 level of heating and cooling energy consumption  
5 of a comparable residential property constructed  
6 in accordance with the standards of Chapter 4 of  
7 the 2003 International Energy Conservation Code,  
8 as such code is in effect on the effective date  
9 of this act,
- 10 (2) heating and cooling equipment efficiencies which  
11 correspond to the minimum allowed under the  
12 regulations established by the Department of  
13 Energy pursuant to the National Appliance Energy  
14 Conservation Act of 1987 and in effect at the  
15 time of construction of the property, and
- 16 (3) building envelope component improvements which  
17 account for at least one-third of the reduced  
18 annual heating and cooling energy consumption  
19 levels.

20 C. The credit provided for in subsection A of this section may  
21 only be claimed once for the contractor of any eligible residential  
22 energy\_efficient property during the taxable year when the property  
23 is substantially complete.  
24

1 D. If the credit allowed pursuant to this section exceeds the  
2 amount of income taxes due or if there are no state income taxes due  
3 on the income of the taxpayer, the amount of credit allowed but not  
4 used in any taxable year may be carried forward as a credit against  
5 subsequent income tax liability for a period not exceeding four (4)  
6 years following the qualified expenditures.

7 ~~E. For credits earned on or after the effective date of this~~  
8 ~~act, the credits authorized by this section shall be freely~~  
9 ~~transferable to subsequent transferees.~~

10 ~~F.~~ The Oklahoma Tax Commission shall promulgate rules necessary  
11 to implement this act.

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

21 SECTION 6. AMENDATORY 68 O.S. 2011, Section 2357.104, is  
22 amended to read as follows:

23 Section 2357.104 A. Except as otherwise provided by subsection  
24 G F of this section, for taxable years beginning after December 31,

1 2005, there shall be allowed a credit against the tax imposed by  
2 Section 2355 of this title equal to fifty percent (50%) of an  
3 eligible taxpayer's qualified railroad reconstruction or replacement  
4 expenditures.

5 B. 1. Except as provided in paragraph 2 of this subsection,  
6 the amount of the credit shall be limited to the product of Five  
7 Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars  
8 (\$2,000.00) for tax year 2008 and subsequent tax years and the  
9 number of miles of railroad track owned or leased within this state  
10 by the eligible taxpayer as of the close of the taxable year.

11 2. In tax year 2009 and subsequent tax years, a taxpayer may  
12 elect to increase the limit provided in paragraph 1 of this  
13 subsection to an amount equal to three times the limit specified in  
14 paragraph 1 of this subsection for qualified expenditures made in  
15 the tax year, provided the taxpayer may only claim one third (1/3)  
16 of the credit in any one taxable period.

17 ~~C. The credit allowed pursuant to subsection A of this section~~  
18 ~~but not used shall be freely transferable, by written agreement, to~~  
19 ~~subsequent transferees at any time during the five (5) years~~  
20 ~~following the year of qualification. An eligible transferee shall~~  
21 ~~be any taxpayer subject to the tax imposed by Section 2355 of this~~  
22 ~~title. The person originally allowed the credit and the subsequent~~  
23 ~~transferee shall jointly file a copy of the written credit transfer~~  
24 ~~agreement with the Oklahoma Tax Commission within thirty (30) days~~

1 ~~of the transfer. The written agreement shall contain the name,~~  
2 ~~address and taxpayer identification number of the parties to the~~  
3 ~~transfer, the amount of credit being transferred, the year the~~  
4 ~~credit was originally allowed to the transferring person and the tax~~  
5 ~~year or years for which the credit may be claimed. The Tax~~  
6 ~~Commission shall promulgate rules to permit verification of the~~  
7 ~~timeliness of a tax credit claimed upon a tax return pursuant to~~  
8 ~~this subsection but shall not promulgate any rules which unduly~~  
9 ~~restrict or hinder the transfers of such tax credit. The Department~~  
10 ~~of Transportation shall promulgate rules to permit verification of~~  
11 ~~the eligibility of an eligible taxpayer's expenditures for the~~  
12 ~~purpose of claiming the credit. The rules shall provide for the~~  
13 ~~approval of qualified railroad reconstruction or replacement~~  
14 ~~expenditures prior to commencement of a project and provide a~~  
15 ~~certificate of verification upon completion of a project that uses~~  
16 ~~qualified railroad reconstruction or replacement expenditures. The~~  
17 ~~certificate of verification shall satisfy all requirements of the~~  
18 ~~Tax Commission pertaining to the eligibility of the person claiming~~  
19 ~~the credit.~~

20       D. Any credits allowed pursuant to the provisions of subsection  
21 A of this section but not used in any tax year may be carried over  
22 in order to each of the five (5) years following the year of  
23 qualification.

24

1 ~~E.~~ D. A taxpayer who elects to increase the limitation on the  
2 credit under paragraph 2 of subsection B of this section shall not  
3 be granted additional credits under subsection A of this section  
4 during the period of such election.

5 ~~F.~~ E. As used in this section:

6 1. "Class II and Class III railroad" means a railroad that is  
7 classified by the United States Surface Transportation Board as a  
8 Class II or Class III railroad;

9 2. "Eligible taxpayer" means any Class II or Class III  
10 railroad; and

11 3. "Qualified railroad reconstruction or replacement  
12 expenditures" means expenditures for:

- 13 a. reconstruction or replacement of railroad  
14 infrastructure including track, roadbed, bridges,  
15 industrial leads and track-related structures owned or  
16 leased by a Class II or Class III railroad as of  
17 January 1, 2006, or  
18 b. new construction of industrial leads, switches, spurs  
19 and sidings and extensions of existing sidings by a  
20 Class II or Class III railroad.

21 ~~G.~~ F. No credit otherwise authorized by the provisions of this  
22 section may be claimed for any event, transaction, investment,  
23 expenditure or other act occurring on or after July 1, 2010, for  
24 which the credit would otherwise be allowable. The provisions of

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

6 SECTION 7. NEW LAW A new section of law not to be  
7 codified in the Oklahoma Statutes reads as follows:

8 A. The amendments made by this act shall not be applicable to  
9 any tax credit earned prior to January 1, 2012.

10 B. The amendments made by this act shall not be applicable to  
11 any tax credit transferred prior to January 1, 2012.

12 C. The amendments made by this act shall not be applicable to  
13 any tax credit that was eligible to be carried forward prior to  
14 January 1, 2012, and any such credit may be carried forward based  
15 upon the carryforward period in effect at the time the tax credit  
16 was earned or transferred.

17 SECTION 8. It being immediately necessary for the preservation  
18 of the public peace, health and safety, an emergency is hereby  
19 declared to exist, by reason whereof this act shall take effect and  
20 be in full force from and after its passage and approval.

21  
22 53-2-8435 MAH 01/15/12  
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