

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 888

By: Brecheen of the Senate

and

Coody and Bennett (John) of
the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to revenue and taxation; amending 68
12 O.S. 2011, Section 500.10-1, which relates to fuel
13 tax credit for sale of ethanol; limiting time period
14 during which credit is allowed; updating language;
15 amending 68 O.S. 2011, Section 2357.32A, as last
16 amended by Section 1, Chapter 44, O.S.L. 2017 (68
17 O.S. Supp. 2017, Section 2357.32A), which relates to
18 income tax credits for certain electric power
19 produced by zero-emission facilities; eliminating
20 refundability of tax credits; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY 68 O.S. 2011, Section 500.10-1, is
24 amended to read as follows:

Section 500.10-1 A. As used in this section:

1 1. "Ethanol" means a blend of gasoline and ethyl alcohol
2 consisting of not more than fifteen percent (15%) ethyl alcohol by
3 volume; and

4 2. "Retail dealer" means the type of dealer described by
5 paragraph 53 of Section 500.3 of ~~Title 68 of the Oklahoma Statutes~~
6 this title.

7 B. Unless the federal government mandates the use of
8 reformulated fuel in an area within the State of Oklahoma in
9 nonattainment with the National Ambient Air Quality Standards, there
10 shall be allowed as a credit against the tax levy imposed pursuant
11 to paragraph 1 of subsection A of Section 500.4 of ~~Title 68 of the~~
12 ~~Oklahoma Statutes~~ this title in the amount of one and six-tenths
13 cents (\$0.016) for each gallon of ethyl alcohol which is contained
14 in ethanol sold by a retail dealer before November 1, 2018.

15 C. Notwithstanding any other provision of the Oklahoma Motor
16 Fuel Tax Code to the contrary, the retail dealer described by
17 subsection A of this section may make the claim for refund from the
18 Oklahoma Tax Commission. The refund claim process for the credit
19 authorized by this section shall be substantially the same as the
20 refund claims process authorized by the Motor Fuel Tax Code for
21 other refunds provided by law.

22 D. Each claim for refund filed pursuant to this section shall
23 be accompanied by such documentation as may be required by the Tax
24 Commission that the retail dealer reduced the retail price for each

1 gallon of ethyl alcohol which is contained in ethanol sold, and for
2 which the credit authorized by this section is claimed, by one and
3 six-tenths cents (\$0.016) and that such cost savings was
4 economically provided to the purchaser of the ethanol fuel.

5 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
6 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
7 2017, Section 2357.32A), is amended to read as follows:

8 Section 2357.32A A. Except as otherwise provided in subsection
9 H of this section, for tax years beginning on or after January 1,
10 2003, there shall be allowed a credit against the tax imposed by
11 Section 2355 of this title to a taxpayer for the taxpayer's
12 production and sale to an unrelated person of electricity generated
13 by zero-emission facilities located in this state. As used in this
14 section:

15 1. "Electricity generated by zero-emission facilities" means
16 electricity that is exclusively produced by any facility located in
17 this state with a rated production capacity of one megawatt (1 mw)
18 or greater, constructed for the generation of electricity and placed
19 in operation after June 4, 2001, and with respect to electricity
20 generated by wind for any facility placed in operation not later
21 than July 1, 2017, which utilizes eligible renewable resources as
22 its fuel source. The construction and operation of such facilities
23 shall result in no pollution or emissions that are or may be harmful
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1 to the environment, pursuant to a determination by the Department of
2 Environmental Quality; and

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

- 4 a. wind,
- 5 b. moving water,
- 6 c. sun, or
- 7 d. geothermal energy.

8 B. For facilities placed in operation on or after January 1,
9 2003, and before January 1, 2007, the amount of the credit for the
10 electricity generated on or after January 1, 2003, but prior to
11 January 1, 2004, shall be seventy-five one-hundredths of one cent
12 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
13 emission facilities. For electricity generated on or after January
14 1, 2004, but prior to January 1, 2007, the amount of the credit
15 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
16 hour for electricity generated by zero-emission facilities. For
17 electricity generated on or after January 1, 2007, but prior to
18 January 1, 2012, the amount of the credit shall be twenty-five one-
19 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
20 generated by zero-emission facilities. For facilities placed in
21 operation on or after January 1, 2007, and before January 1, 2021,
22 or with respect to electricity generated by wind for any facility
23 placed in operation not later than July 1, 2017, the amount of the
24 credit for the electricity generated on or after January 1, 2007,

1 shall be fifty one-hundredths of one cent (\$0.0050) for each
2 kilowatt-hour of electricity generated by zero-emission facilities.

3 C. Credits may be claimed with respect to electricity generated
4 on or after January 1, 2003, during a ten-year period following the
5 date that the facility is placed in operation on or after June 4,
6 2001.

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

13 2. ~~For~~ Except as otherwise provided in paragraph 3 of this
14 subsection, for credits generated, but not used, on or after January
15 1, 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
16 election, directly to the taxpayer eighty-five percent (85%) of the
17 face amount of such credits. The direct refund of the credits
18 pursuant to this paragraph shall be available to all taxpayers,
19 including, without limitation, pass-through entities and taxpayers
20 subject to Section 2355 of this title, but shall not be available to
21 any entities falling within the provisions of subsection E of this
22 section. The amount of any direct refund of credits actually
23 received at the eighty-five percent (85%) level by the taxpayer
24 pursuant to this paragraph shall not be subject to the tax imposed

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

14 3. No refund of unused credits, pursuant to the provisions of
15 this subsection, for electricity generated by wind shall be
16 authorized for tax years beginning on or after January 1, 2019.

17 E. Any nontaxable entities, including agencies of the State of
18 Oklahoma or political subdivisions thereof, shall be eligible to
19 establish a transferable tax credit in the amount provided in
20 subsection B of this section. Such tax credit shall be a property
21 right available to a state agency or political subdivision of this
22 state to transfer or sell to a taxable entity, whether individual or
23 corporate, who shall have an actual or anticipated income tax
24 liability under Section 2355 of this title. These tax credit

1 provisions are authorized as an incentive to the State of Oklahoma,
2 its agencies and political subdivisions to encourage the expenditure
3 of funds in the development, construction and utilization of
4 electricity from zero-emission facilities as defined in subsection A
5 of this section.

6 F. For credits generated prior to January 1, 2014, the amount
7 of the credit allowed, but not used, shall be freely transferable at
8 any time during the ten (10) years following the year of
9 qualification. Any person to whom or to which a tax credit is
10 transferred shall have only such rights to claim and use the credit
11 under the terms that would have applied to the entity by whom or by
12 which the tax credit was transferred. The provisions of this
13 subsection shall not limit the ability of a tax credit transferee to
14 reduce the tax liability of the transferee, regardless of the actual
15 tax liability of the tax credit transferor, for the relevant taxable
16 period. The transferor initially allowed the credit and any
17 subsequent transferees shall jointly file a copy of any written
18 transfer agreement with the Oklahoma Tax Commission within thirty
19 (30) days of the transfer. The written agreement shall contain the
20 name, address and taxpayer identification number or social security
21 number of the parties to the transfer, the amount of the credit
22 being transferred, the year the credit was originally allowed to the
23 transferor, and the tax year or years for which the credit may be
24 claimed. The Tax Commission may promulgate rules to permit

1 verification of the validity and timeliness of the tax credit
2 claimed upon a tax return pursuant to this subsection but shall not
3 promulgate any rules that unduly restrict or hinder the transfers of
4 such tax credit. The tax credit allowed by this section, upon the
5 election of the taxpayer, may be claimed as a payment of tax, a
6 prepayment of tax or a payment of estimated tax for purposes of
7 Section 1803 or Section 2355 of this title.

8 G. For electricity generation produced and sold in a calendar
9 year, the tax credit allowed by the provisions of this section, upon
10 election of the taxpayer, shall be treated and may be claimed as a
11 payment of tax, a prepayment of tax or a payment of estimated tax
12 for purposes of Section 2355 of this title on or after July 1 of the
13 following calendar year.

14 H. 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 until the provisions
18 of this subsection shall cease to be operative on July 1, 2011.
19 Beginning July 1, 2011, 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, 2010, according to the provisions
22 of this section. Any tax credits which accrue during the period of
23 July 1, 2010, through June 30, 2011, may not be claimed for any
24 period prior to the taxable year beginning January 1, 2012. No

1 credits which accrue during the period of July 1, 2010, through June
2 30, 2011, may be used to file an amended tax return for any taxable
3 year prior to the taxable year beginning January 1, 2012.

4 SECTION 3. This act shall become effective November 1, 2018.

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6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
7 04/10/2018 - DO PASS, As Amended and Coauthored.
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