

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 888 By: Brecheen of the Senate  
3 and  
4 Coody of the House  
5

6 An Act relating to motor fuel tax; amending 68 O.S.  
7 2011, Section 500.10-1, which relates to fuel tax  
8 credit for sale of ethanol; limiting time period  
9 during which credit is allowed; updating language;  
and providing an effective date.

10 AUTHORS: Add the following House Coauthors: Bennett (John),  
11 Dunlap, Faught, Gann, Strohm, O'Donnell, McBride  
and West (Josh)

12 Add the following Senate Coauthors: Silk and Dahm

13 AMENDMENT NO. 1. Replace the title, enacting clause and entire bill  
14 and insert

15 "An Act relating to revenue and taxation; amending 68  
16 O.S. 2011, Section 2357.32A, as last amended by  
17 Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.  
18 2017, Section 2357.32A), which relates to income tax  
credits for certain electric power produced by zero-  
emission facilities; eliminating refundability of  
tax credits; and providing an effective date.

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

21 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as  
22 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.  
23 2017, Section 2357.32A), is amended to read as follows:  
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1 Section 2357.32A A. Except as otherwise provided in subsection  
2 H of this section, for tax years beginning on or after January 1,  
3 2003, there shall be allowed a credit against the tax imposed by  
4 Section 2355 of this title to a taxpayer for the taxpayer's  
5 production and sale to an unrelated person of electricity generated  
6 by zero-emission facilities located in this state. As used in this  
7 section:

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

24

1 B. For facilities placed in operation on or after January 1,  
2 2003, and before January 1, 2007, the amount of the credit for the  
3 electricity generated on or after January 1, 2003, but prior to  
4 January 1, 2004, 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, 2021,  
15 or with respect to electricity generated by wind for any facility  
16 placed in operation not later than July 1, 2017, the amount of the  
17 credit for the electricity generated on or after January 1, 2007,  
18 shall be fifty one-hundredths of one cent (\$0.0050) for each  
19 kilowatt-hour of electricity generated by zero-emission facilities.

20 C. Credits may be claimed with respect to electricity generated  
21 on or after January 1, 2003, during a ten-year period following the  
22 date that the facility is placed in operation on or after June 4,  
23 2001.

24

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

7 2. ~~For~~ Except as otherwise provided in paragraph 3 of this  
8 subsection, for credits generated, but not used, on or after January  
9 1, 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's  
10 election, directly to the taxpayer eighty-five percent (85%) of the  
11 face amount of such credits. The direct refund of the credits  
12 pursuant to this paragraph shall be available to all taxpayers,  
13 including, without limitation, pass-through entities and taxpayers  
14 subject to Section 2355 of this title, but shall not be available to  
15 any entities falling within the provisions of subsection E of this  
16 section. The amount of any direct refund of credits actually  
17 received at the eighty-five percent (85%) level by the taxpayer  
18 pursuant to this paragraph shall not be subject to the tax imposed  
19 by Section 2355 of this title. If the pass-through entity does not  
20 file a claim for a direct refund, the pass-through entity shall  
21 allocate the credit to one or more of the shareholders, partners or  
22 members of the pass-through entity; provided, the total of all  
23 credits refunded or allocated shall not exceed the amount of the  
24 credit or refund to which the pass-through entity is entitled. For

1 the purposes of this paragraph, "pass-through entity" means a  
2 corporation that for the applicable tax year is treated as an S  
3 corporation under the Internal Revenue Code of 1986, as amended,  
4 general partnership, limited partnership, limited liability  
5 partnership, trust or limited liability company that for the  
6 applicable tax year is not taxed as a corporation for federal income  
7 tax purposes.

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

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

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

1 prepayment of tax or a payment of estimated tax for purposes of  
2 Section 1803 or Section 2355 of this title.

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

9 H. No credit otherwise authorized by the provisions of this  
10 section may be claimed for any event, transaction, investment,  
11 expenditure or other act occurring on or after July 1, 2010, for  
12 which the credit would otherwise be allowable until the provisions  
13 of this subsection shall cease to be operative on July 1, 2011.  
14 Beginning July 1, 2011, the credit authorized by this section may be  
15 claimed for any event, transaction, investment, expenditure or other  
16 act occurring on or after July 1, 2010, according to the provisions  
17 of this section. Any tax credits which accrue during the period of  
18 July 1, 2010, through June 30, 2011, may not be claimed for any  
19 period prior to the taxable year beginning January 1, 2012. No  
20 credits which accrue during the period of July 1, 2010, through June  
21 30, 2011, may be used to file an amended tax return for any taxable  
22 year prior to the taxable year beginning January 1, 2012.

23 SECTION 2. This act shall become effective November 1, 2018."  
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1 ENGROSSED SENATE  
BILL NO. 888

By: Brecheen of the Senate

2  
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4 Coody of the House  
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6 An Act relating to motor fuel tax; amending 68 O.S.  
2011, Section 500.10-1, which relates to fuel tax  
7 credit for sale of ethanol; limiting time period  
during which credit is allowed; updating language;  
8 and providing an effective date.  
9

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

11 SECTION 3. AMENDATORY 68 O.S. 2011, Section 500.10-1, is  
12 amended to read as follows:

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

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

17 2. "Retail dealer" means the type of dealer described by  
18 paragraph 53 of Section 500.3 of ~~Title 68 of the Oklahoma Statutes~~  
19 this title.

20 B. Unless the federal government mandates the use of  
21 reformulated fuel in an area within the State of Oklahoma in  
22 nonattainment with the National Ambient Air Quality Standards, there  
23 shall be allowed as a credit against the tax levy imposed pursuant  
24 to paragraph 1 of subsection A of Section 500.4 of ~~Title 68 of the~~

1 ~~Oklahoma Statutes~~ this title in the amount of one and six-tenths  
2 cents (\$0.016) for each gallon of ethyl alcohol which is contained  
3 in ethanol sold by a retail dealer before November 1, 2018.

4 C. Notwithstanding any other provision of the Oklahoma Motor  
5 Fuel Tax Code to the contrary, the retail dealer described by  
6 subsection A of this section may make the claim for refund from the  
7 Oklahoma Tax Commission. The refund claim process for the credit  
8 authorized by this section shall be substantially the same as the  
9 refund claims process authorized by the Motor Fuel Tax Code for  
10 other refunds provided by law.

11 D. Each claim for refund filed pursuant to this section shall  
12 be accompanied by such documentation as may be required by the Tax  
13 Commission that the retail dealer reduced the retail price for each  
14 gallon of ethyl alcohol which is contained in ethanol sold, and for  
15 which the credit authorized by this section is claimed, by one and  
16 six-tenths cents (\$0.016) and that such cost savings was  
17 economically provided to the purchaser of the ethanol fuel.

18 SECTION 4. This act shall become effective November 1, 2018.  
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1 Passed the Senate the 7th day of March, 2018.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2018.

7  
8 \_\_\_\_\_  
9 Presiding Officer of the House  
10 of Representatives