

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 893 By: Quinn of the Senate  
3 and  
4 Thomsen of the House  
5  
6

7 [ income tax - credits for electricity generated by  
8 zero-emission facilities - effective date ]  
9

10 AUTHORS: Remove Representative Thomsen as principal House author  
11 and substitute with Representative Sears.

12 Add as coauthor Representative Bennett (John)

13 AMENDMENT NO. 1. Replace the stricken title, enacting clause and  
14 entire bill 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 tax  
19 credits for certain zero-emission facilities;  
20 imposing cap on tax credits; prescribing formula for  
21 adjustment to tax credit amounts; providing for  
22 applicability of tax credit cap to certain zero-  
23 emission facilities; authorizing carryover of unused  
24 credits; requiring Tax Commission to prepare annual  
report; requiring report by the Secretary of Energy  
and Environment; and providing an effective date.

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

1 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as  
2 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.  
3 2017, Section 2357.32A), is amended to read as follows:

4 Section 2357.32A A. Except as otherwise provided in subsection  
5 H of this section, for tax years beginning on or after January 1,  
6 2003, but with respect to tax credits for eligible renewable  
7 resources described by subparagraphs b, c and d of paragraph 2 of  
8 this subsection, for tax years ending not later than December 31,  
9 2021, there shall be allowed a credit against the tax imposed by  
10 Section 2355 of this title to a taxpayer for the taxpayer's  
11 production and sale to an unrelated person of electricity generated  
12 by zero-emission facilities located in this state. As used in this  
13 section:

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

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

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

6 B. For facilities placed in operation on or after January 1,  
7 2003, and before January 1, 2007, the amount of the credit for the  
8 electricity generated on or after January 1, 2003, but prior to  
9 January 1, 2004, shall be seventy-five one-hundredths of one cent  
10 (\$0.0075) for each kilowatt-hour of electricity generated by zero-  
11 emission facilities. For electricity generated on or after January  
12 1, 2004, but prior to January 1, 2007, the amount of the credit  
13 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-  
14 hour for electricity generated by zero-emission facilities. For  
15 electricity generated on or after January 1, 2007, but prior to  
16 January 1, 2012, the amount of the credit shall be twenty-five one-  
17 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity  
18 generated by zero-emission facilities. For facilities placed in  
19 operation on or after January 1, 2007, and before January 1, 2021,  
20 or with respect to electricity generated by wind for any facility  
21 placed in operation not later than July 1, 2017, the amount of the  
22 credit for the electricity generated on or after January 1, 2007,  
23 shall be fifty one-hundredths of one cent (\$0.0050) for each  
24 kilowatt-hour of electricity generated by zero-emission facilities.

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

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

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

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

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 I. For tax years beginning on or after January 1, 2019, the  
24 total amount of credits authorized by this section with respect to

1 eligible renewable resources described by subparagraphs b, c and d  
2 of paragraph 2 of subsection A of this section used to offset tax or  
3 paid as a refund shall be adjusted annually to limit the annual  
4 amount of credits to Five Hundred Thousand Dollars (\$500,000.00).  
5 The Tax Commission shall annually calculate and publish a percentage  
6 by which the credits authorized by subparagraphs b, c and d of  
7 paragraph 2 of subsection A of this section shall be reduced so the  
8 total amount of credits used to offset tax or paid as a refund does  
9 not exceed Five Hundred Thousand Dollars (\$500,000.00) per year.  
10 The formula to be used for the percentage adjustment shall be Five  
11 Hundred Thousand Dollars (\$500,000.00) divided by the credits  
12 claimed in the second preceding year.

13 J. Pursuant to subsection I of this section, in the event the  
14 total tax credits authorized by this section with respect to  
15 eligible renewable resources described by subparagraphs b, c and d  
16 of paragraph 2 of subsection A of this section exceed Five Hundred  
17 Thousand Dollars (\$500,000.00) in any calendar year, the Tax  
18 Commission shall permit any excess over Five Hundred Thousand  
19 Dollars (\$500,000.00) but shall factor such excess into the  
20 percentage adjustment formula for subsequent years.

21 K. Any credits authorized by this section with respect to  
22 eligible renewable resources described by subparagraphs b, c and d  
23 of paragraph 2 of subsection A of this section not used or unable to  
24



1 be used because of the provisions of subsection I or J of this  
2 section may be carried over until such credits are fully used.

3 L. The Tax Commission shall prepare an annual report and submit  
4 it to the Office of the State Secretary of Energy and Environment,  
5 the Governor, the Speaker of the Oklahoma House of Representatives  
6 and the President Pro Tempore of the Oklahoma State Senate  
7 summarizing the amount of credits allowed pursuant to subparagraphs  
8 b, c and d of paragraph 2 of subsection A of this section. The  
9 Secretary of Energy and Environment shall submit recommendations for  
10 changes to the tax credit to the Governor, the Speaker of the  
11 Oklahoma House of Representatives and the President Pro Tempore of  
12 the Oklahoma State Senate within sixty (60) days after receipt of  
13 the report from the Oklahoma Tax Commission.

14 SECTION 2. This act shall become effective January 1, 2019."  
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1 ENGROSSED SENATE  
2 BILL NO. 893

By: Quinn of the Senate

3 and

4 Thomsen of the House

5  
6 [ income tax - credits for electricity generated by  
7 zero-emission facilities - effective date ]  
8

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

10 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2357.32A, as  
11 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.  
12 2017, Section 2357.32A), is amended to read as follows:

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

20 1. "Electricity generated by zero-emission facilities" means  
21 electricity that is exclusively produced by any facility located in  
22 this state with a rated production capacity of one megawatt (1 mw)  
23 or greater, constructed for the generation of electricity and placed  
24 in operation after June 4, 2001, and with respect to electricity

1 generated by wind for any facility placed in operation not later  
2 than July 1, 2017, which utilizes eligible renewable resources as  
3 its fuel source. The construction and operation of such facilities  
4 shall result in no pollution or emissions that are or may be harmful  
5 to the environment, pursuant to a determination by the Department of  
6 Environmental Quality; and

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

- 8 a. wind,
- 9 b. moving water,
- 10 c. sun, or
- 11 d. geothermal energy.

12 B. For facilities placed in operation on or after January 1,  
13 2003, and before January 1, 2007, the amount of the credit for the  
14 electricity generated on or after January 1, 2003, but prior to  
15 January 1, 2004, shall be seventy-five one-hundredths of one cent  
16 (\$0.0075) for each kilowatt-hour of electricity generated by zero-  
17 emission facilities. For electricity generated on or after January  
18 1, 2004, but prior to January 1, 2007, the amount of the credit  
19 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-  
20 hour for electricity generated by zero-emission facilities. For  
21 electricity generated on or after January 1, 2007, but prior to  
22 January 1, 2012, the amount of the credit shall be twenty-five one-  
23 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity  
24 generated by zero-emission facilities. For facilities placed in

1 operation on or after January 1, 2007, and before January 1, 2021,  
2 ~~or with respect to electricity generated by wind for any facility~~  
3 ~~placed in operation not later than July 1, 2017,~~ the amount of the  
4 credit for the electricity generated on or after January 1, 2007,  
5 shall be fifty one-hundredths of one cent (\$0.0050) for each  
6 kilowatt-hour of electricity generated by zero-emission facilities;  
7 provided, with respect to electricity generated by wind for any  
8 facility placed in operation not later than July 1, 2017, and with  
9 respect to electricity generated by the sun, a qualified facility  
10 shall be placed in operation not later than December 31, 2018.

11 C. Credits may be claimed with respect to electricity generated  
12 on or after January 1, 2003, during a ten-year period following the  
13 date that the facility is placed in operation on or after June 4,  
14 2001.

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

21 2. For credits generated, but not used, on or after January 1,  
22 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's  
23 election, directly to the taxpayer eighty-five percent (85%) of the  
24 face amount of such credits. The direct refund of the credits

1 pursuant to this paragraph shall be available to all taxpayers,  
2 including, without limitation, pass-through entities and taxpayers  
3 subject to Section 2355 of this title, but shall not be available to  
4 any entities falling within the provisions of subsection E of this  
5 section. The amount of any direct refund of credits actually  
6 received at the eighty-five percent (85%) level by the taxpayer  
7 pursuant to this paragraph shall not be subject to the tax imposed  
8 by Section 2355 of this title. If the pass-through entity does not  
9 file a claim for a direct refund, the pass-through entity shall  
10 allocate the credit to one or more of the shareholders, partners or  
11 members of the pass-through entity; provided, the total of all  
12 credits refunded or allocated shall not exceed the amount of the  
13 credit or refund to which the pass-through entity is entitled. For  
14 the purposes of this paragraph, "pass-through entity" means a  
15 corporation that for the applicable tax year is treated as an S  
16 corporation under the Internal Revenue Code of 1986, as amended,  
17 general partnership, limited partnership, limited liability  
18 partnership, trust or limited liability company that for the  
19 applicable tax year is not taxed as a corporation for federal income  
20 tax purposes.

21 E. Any nontaxable entities, including agencies of the State of  
22 Oklahoma or political subdivisions thereof, shall be eligible to  
23 establish a transferable tax credit in the amount provided in  
24 subsection B of this section. Such tax credit shall be a property

1 right available to a state agency or political subdivision of this  
2 state to transfer or sell to a taxable entity, whether individual or  
3 corporate, who shall have an actual or anticipated income tax  
4 liability under Section 2355 of this title. These tax credit  
5 provisions are authorized as an incentive to the State of Oklahoma,  
6 its agencies and political subdivisions to encourage the expenditure  
7 of funds in the development, construction and utilization of  
8 electricity from zero-emission facilities as defined in subsection A  
9 of this section.

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

1 number of the parties to the transfer, the amount of the credit  
2 being transferred, the year the credit was originally allowed to the  
3 transferor, and the tax year or years for which the credit may be  
4 claimed. The Tax Commission may promulgate rules to permit  
5 verification of the validity and timeliness of the tax credit  
6 claimed upon a tax return pursuant to this subsection but shall not  
7 promulgate any rules that unduly restrict or hinder the transfers of  
8 such tax credit. The tax credit allowed by this section, upon the  
9 election of the taxpayer, may be claimed as a payment of tax, a  
10 prepayment of tax or a payment of estimated tax for purposes of  
11 Section 1803 or Section 2355 of this title.

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

18 H. 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 until the provisions  
22 of this subsection shall cease to be operative on July 1, 2011.  
23 Beginning July 1, 2011, the credit authorized by this section may be  
24 claimed for any event, transaction, investment, expenditure or other



