

1 ENGROSSED SENATE AMENDMENT  
TO

2 ENGROSSED HOUSE  
3 BILL NO. 1416

By: Hall, Hoskin and Sherrer of  
the House

4 and

5 Mazzei of the Senate

6  
7  
8 An Act relating to revenue and taxation; amending 68  
9 O.S. 2011, Section 3603, as amended by Section 1,  
10 Chapter 310, O.S.L. 2012 (68 O.S. Supp. 2012, Section  
11 3603), which relates to the Oklahoma Quality Jobs  
Program Act; modifying provisions related to net  
benefit rate computation; and providing an effective  
date.

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13  
14 AUTHORS: Add the following Senate Coauthors: Loveless and Brinkley

15 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
16 entire bill and insert

17 "An act relating to income tax; amending 68 O.S.  
18 2011, Sections 2357.11 and 2357.32A, which relate to  
19 tax credits; modifying expiration date for credit  
20 related to use of coal; providing for expiration date  
21 for credit related to production of coal; limiting  
22 transferability of certain credits to specified time  
23 period; authorizing refund of certain credits under  
24 specified circumstances; providing certain exception;  
providing for amount of refund; specifying entities  
to whom credit may be refunded and procedures related  
thereto; exempting refund amounts from income tax;  
defining term; clarifying language; modifying  
expiration date for credit related to zero-emission  
facilities; providing limitation on ability to carry  
credit forward; authorizing refund of certain credits  
under specified circumstances; providing for amount

1 of refund; specifying entities to whom credit may be  
2 refunded and procedures related thereto; exempting  
3 refund amounts from income tax; defining term;  
4 limiting ability to transfer credit after certain  
5 date; and providing an effective date.

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

7 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.11, is  
8 amended to read as follows:

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

13 B. 1. Except as provided in subsection M of this section, for  
14 tax years beginning on or after January 1, 1993, and ending on or  
15 before December 31, ~~2014~~ 2021, there shall be allowed a credit  
16 against the tax imposed by Section 1803 or Section 2355 of this  
17 title or Section 624 or 628 of Title 36 of the Oklahoma Statutes for  
18 every person in this state furnishing water, heat, light or power to  
19 the state or its citizens, or for every person in this state burning  
20 coal to generate heat, light or power for use in manufacturing  
21 operations located in this state.

22 2. For tax years beginning on or after January 1, 1993, and  
23 ending on or before December 31, 2005, and for the period of January  
24 1, 2006, through June 30, 2006, the credit shall be in the amount of

1 Two Dollars (\$2.00) per ton for each ton of Oklahoma-mined coal  
2 purchased by such person.

3 3. For the period of July 1, 2006 through December 31, 2006,  
4 and for tax years beginning on or after January 1, 2007, and ending  
5 on or before December 31, ~~2014~~ 2021, the credit shall be in the  
6 amount of Two Dollars and eighty-five cents (\$2.85) per ton for each  
7 ton of Oklahoma-mined coal purchased by such person.

8 4. In addition to the credit allowed pursuant to the provisions  
9 of paragraph 3 of this subsection, for the period of July 1, 2006,  
10 through December 31, 2006, and except as provided in subsection M of  
11 this section, for tax years beginning on or after January 1, 2007,  
12 and ending on or before December 31, ~~2014~~ 2021, there shall be  
13 allowed a credit in the amount of Two Dollars and fifteen cents  
14 (\$2.15) per ton for each ton of Oklahoma-mined coal purchased by  
15 such person. The credit allowed pursuant to the provisions of this  
16 paragraph may not be claimed or transferred prior to January 1,  
17 2008.

18 C. For tax years beginning on or after January 1, 1995, and  
19 ending on or before December 31, 2005, and for the period beginning  
20 January 1, 2006, through June 30, 2006, there shall be allowed, in  
21 addition to the credits allowed pursuant to subsection B of this  
22 section, a credit against the tax imposed by Section 1803 or Section  
23 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma  
24 Statutes for every person in this state which:

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

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

6 The additional credit allowed pursuant to this subsection shall  
7 be in the amount of Three Dollars (\$3.00) per ton for each ton of  
8 Oklahoma-mined coal purchased by such person.

9 D. Except as otherwise provided in subsection E of this section  
10 and in subsection M of this section, for tax years beginning on or  
11 after January 1, 2001, and ending on or before December 31, 2021,  
12 there shall be allowed a credit against the tax imposed by Section  
13 1803 or Section 2355 of this title or Section 624 or 628 of Title 36  
14 of the Oklahoma Statutes for every person in this state primarily  
15 engaged in mining, producing or extracting coal, and holding a valid  
16 permit issued by the Oklahoma Department of Mines. For tax years  
17 beginning on or after January 1, 2001, and ending on or before  
18 December 31, 2005, and for the period beginning January 1, 2006,  
19 through June 30, 2006, the credit shall be in the amount of ninety-  
20 five cents (\$0.95) per ton and for the period of July 1, 2006,  
21 through December 31, 2006, and for tax years beginning on or after  
22 January 1, 2007, the credit shall be in the amount of Five Dollars  
23 (\$5.00) for each ton of coal mined, produced or extracted in on,  
24 under or through a permit in this state by such person.

1 E. In addition to the credit allowed pursuant to the provisions  
2 of subsection D of this section and except as otherwise provided in  
3 subsection F of this section, for tax years beginning on or after  
4 January 1, 2001, and ending on or before December 31, 2005, and for  
5 the period of January 1, 2006, through June 30, 2006, there shall be  
6 allowed a credit against the tax imposed by Section 1803 or Section  
7 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma  
8 Statutes for every person in this state primarily engaged in mining,  
9 producing or extracting coal, and holding a valid permit issued by  
10 the Oklahoma Department of Mines in the amount of ninety-five cents  
11 (\$0.95) per ton for each ton of coal mined, produced or extracted  
12 from thin seams in this state by such person; provided, the credit  
13 shall not apply to such coal sold to any consumer who purchases at  
14 least seven hundred fifty thousand (750,000) tons of Oklahoma-mined  
15 coal per year.

16 F. In addition to the credit allowed pursuant to the provisions  
17 of subsection D of this section and except as otherwise provided in  
18 subsection G of this section, for tax years beginning on or after  
19 January 1, 2005, and ending on or before December 31, 2005, and for  
20 the period of January 1, 2006, through June 30, 2006, there shall be  
21 allowed a credit against the tax imposed by Section 1803 or Section  
22 2355 of this title or that portion of the tax imposed by Section 624  
23 or 628 of Title 36 of the Oklahoma Statutes, which is actually paid  
24 to and placed into the General Revenue Fund, in the amount of

1 ninety-five cents (\$0.95) per ton for each ton of coal mined,  
2 produced or extracted from thin seams in this state by such person  
3 on or after July 1, 2005.

4 G. The credits provided in subsections D and E of this section  
5 shall not be allowed for coal mined, produced or extracted in any  
6 month in which the average price of coal is Sixty-eight Dollars  
7 (\$68.00) or more per ton, excluding freight charges, as determined  
8 by the Tax Commission.

9 H. The additional credits allowed pursuant to subsections B, C,  
10 D and E of this section but not used shall be freely transferable  
11 after January 1, 2002, but not later than December 31, 2013, by  
12 written agreement to subsequent transferees at any time during the  
13 five (5) years following the year of qualification; provided, the  
14 additional credits allowed pursuant to the provisions of paragraph 4  
15 of subsection B of this section but not used shall be freely  
16 transferable after January 1, 2008, but not later than December 31,  
17 2013, by written agreement to subsequent transferees at any time  
18 during the five (5) years following the year of qualification. An  
19 eligible transferee shall be any taxpayer subject to the tax imposed  
20 by Section 1803 or Section 2355 of this title or Section 624 or 628  
21 of Title 36 of the Oklahoma Statutes. The person originally allowed  
22 the credit and the subsequent transferee shall jointly file a copy  
23 of the written credit transfer agreement with the Tax Commission  
24 within thirty (30) days of the transfer. The written agreement

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

10 I. The additional credit allowed pursuant to subsection F of  
11 this section but not used shall be freely transferable on or after  
12 July 1, 2006, but not later than December 31, 2013, by written  
13 agreement to subsequent transferees at any time during the five (5)  
14 years following the year of qualification. An eligible transferee  
15 shall be any taxpayer subject to the tax imposed by Section 1803 or  
16 Section 2355 of this title or Section 624 or 628 of Title 36 of the  
17 Oklahoma Statutes. The person originally allowed the credit and the  
18 subsequent transferee shall jointly file a copy of the written  
19 credit transfer agreement with the Tax Commission within thirty (30)  
20 days of the transfer. The written agreement shall contain the name,  
21 address and taxpayer identification number of the parties to the  
22 transfer, the amount of credit being transferred, the year the  
23 credit was originally allowed to the transferring person and the tax  
24 year or years for which the credit may be claimed. The Tax

1 Commission may promulgate rules to permit verification of the  
2 validity and timeliness of a tax credit claimed upon a tax return  
3 pursuant to this subsection but shall not promulgate any rules which  
4 unduly restrict or hinder the transfers of such tax credit.

5 J. Any person receiving tax credits pursuant to the provisions  
6 of this section shall apply the credits against taxes payable or,  
7 subject to the limitation that credits shall not be transferred  
8 after December 31, 2013, shall transfer the credits as provided in  
9 this section or shall receive a refund pursuant to the provisions of  
10 subsection L of this section. Credits shall not be used to lower  
11 the price of any Oklahoma-mined coal sold that is produced by a  
12 subsidiary of the person receiving a tax credit under this section  
13 to other buyers of the Oklahoma-mined coal.

14 K. ~~The~~ Except as provided by paragraph 2 of subsection L of  
15 this section, the credits allowed by subsections B, C, D, E and F of  
16 this section, upon election of the taxpayer, shall be treated and  
17 may be claimed as a payment of tax, a prepayment of tax or a payment  
18 of estimated tax for purposes of Section 1803 or 2355 of this title  
19 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.

20 L. ~~Any~~ 1. With respect to credits allowed pursuant to the  
21 provisions of subsections B, C, D, E and F of this section, but not  
22 used in any tax year, and for which no election is made for refund  
23 pursuant to paragraph 2 of this subsection, such credits may be  
24

1 carried over in order to each of the five (5) years following the  
2 year of qualification.

3 2. With respect to credits allowed pursuant to the provisions  
4 of subsections B, C, D, E and F of this section which are earned but  
5 not used, based upon activity occurring on or after January 1, 2014,  
6 the Oklahoma Tax Commission shall refund directly to the taxpayer  
7 eighty-five percent (85%) of the face amount of such credits. The  
8 direct refund of the credits pursuant to this paragraph shall be  
9 available to all taxpayers, including, without limitation, pass-  
10 through entities and taxpayers subject to Section 2355 of this  
11 title. If the pass-through entity does not file a claim for a  
12 direct refund, the pass-through entity shall allocate the refund to  
13 its shareholders, partners or members. The amount of any refund  
14 received by the taxpayers pursuant to this paragraph shall not be  
15 subject to the tax imposed by Section 2355 of this title. If a  
16 pass-through entity is entitled to a credit or refund under this  
17 paragraph, the pass-through entity shall allocate such credit or  
18 refund to one or more of the shareholders, partners or members of  
19 the pass-through entity; provided, the total of all credits refunded  
20 or allocated shall not exceed the amount of the credit or refund to  
21 which the pass-through entity is entitled. For the purposes of this  
22 paragraph, "pass-through entity" means a corporation that for the  
23 applicable tax year is treated as an S corporation under the  
24 Internal Revenue Code of 1986, as amended, general partnership,

1 limited partnership, limited liability partnership, trust or limited  
2 liability company that for the applicable tax year is not taxed as a  
3 corporation for federal income tax purposes.

4 M. No credit otherwise authorized by the provisions of this  
5 section may be claimed for any event, transaction, investment,  
6 expenditure or other act occurring on or after July 1, 2010, for  
7 which the credit would otherwise be allowable. The provisions of  
8 this subsection shall cease to be operative on July 1, 2012.

9 Beginning July 1, 2012, the credit authorized by this section may be  
10 claimed for any event, transaction, investment, expenditure or other  
11 act occurring on or after July 1, 2012, according to the provisions  
12 of this section.

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

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

22 1. "Electricity generated by zero-emission facilities" means  
23 electricity that is exclusively produced by any facility located in  
24 this state with a rated production capacity of one megawatt (1 mw)

1 or greater, constructed for the generation of electricity and placed  
2 in operation after June 4, 2001, which utilizes eligible renewable  
3 resources as its fuel source. The construction and operation of  
4 such facilities shall result in no pollution or emissions that are  
5 or may be harmful to the environment, pursuant to a determination by  
6 the Department of 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, ~~the amount of the credit~~ shall be seventy-five one-  
16 hundredths of one cent (\$0.0075) for each kilowatt-hour of  
17 electricity generated by zero-emission facilities. For electricity  
18 generated on or after January 1, 2004, but prior to January 1, 2007,  
19 the amount of the credit shall be fifty one-  
20 hundredths of one cent (\$0.0050) per kilowatt-hour for electricity generated by zero-  
21 emission facilities. For electricity generated on or after January  
22 1, 2007, but prior to January 1, 2012, the amount of the credit  
23 shall be twenty-five one-  
24 hundredths of one cent (\$0.0025) per  
kilowatt-hour of electricity generated by zero-emission facilities.

1 For facilities placed in operation on or after January 1, 2007, and  
2 before January 1, ~~2016~~ 2021, the amount of the credit for the  
3 ~~electricity generated by these facilities the amount of the credit~~  
4 on or after January 1, 2007, but prior to January 1, 2021, shall be  
5 fifty onehundredths of one cent (\$0.0050) for each kilowatt-hour of  
6 electricity generated by zero-emission facilities.

7 C. Credits may be claimed with respect to electricity generated  
8 on or after January 1, 2003, during a ten-year period following the  
9 date that the facility is placed in operation on or after June 4,  
10 2001.

11 D. ~~¶~~ For credits generated prior to January 1, 2014, if the  
12 credit allowed pursuant to this section exceeds the amount of income  
13 taxes due or if there are no state income taxes due on the income of  
14 the taxpayer, the amount of the credit allowed but not used in any  
15 tax year may be carried forward as a credit against subsequent  
16 income tax liability for a period not exceeding ten (10) years. For  
17 credits generated, but not used, on or after January 1, 2014, the  
18 Oklahoma Tax Commissions shall refund directly to the taxpayer  
19 eighty-five percent (85%) of the face amount of such credits. The  
20 direct refund of the credits pursuant to this paragraph shall be  
21 available to all taxpayers, including, without limitation, pass-  
22 through entities and taxpayers subject to Section 2355 of this  
23 title, but shall not be available to any entities falling within the  
24 provisions of subsection E of this section. If the pass-through

1 entity does not file a claim for a direct refund, the pass-through  
2 entity shall allocate the refund to its shareholders, partners or  
3 members. The amount of any refund received by the taxpayers  
4 pursuant to this paragraph shall not be subject to the tax imposed  
5 by Section 2355 of this title. If a pass-through entity is entitled  
6 to a credit or refund under this paragraph, the pass-through entity  
7 shall allocate such credit or refund to one or more of the  
8 shareholders, partners or members of the pass-through entity;  
9 provided, the total of all credits refunded or allocated shall not  
10 exceed the amount of the credit or refund to which the pass-through  
11 entity is entitled. For the purposes of this paragraph, "pass-  
12 through entity" means a corporation that for the applicable tax year  
13 is treated as an S corporation under the Internal Revenue Code of  
14 1986, as amended, general partnership, limited partnership, limited  
15 liability partnership, trust or limited liability company that for  
16 the applicable tax year is not taxed as a corporation for federal  
17 income tax purposes.

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

1 liability under Section 2355 of this title. These tax credit  
2 provisions are authorized as an incentive to the State of Oklahoma,  
3 its agencies and political subdivisions to encourage the expenditure  
4 of funds in the development, construction and utilization of  
5 electricity from zero-emission facilities as defined in subsection A  
6 of this section.

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

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

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

15 H. 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 until the provisions  
19 of this subsection shall cease to be operative on July 1, 2011.  
20 Beginning July 1, 2011, 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, 2010, according to the provisions  
23 of this section. Any tax credits which accrue during the period of  
24 July 1, 2010, through June 30, 2011, may not be claimed for any

1 period prior to the taxable year beginning January 1, 2012. No  
2 credits which accrue during the period of July 1, 2010, through June  
3 30, 2011, may be used to file an amended tax return for any taxable  
4 year prior to the taxable year beginning January 1, 2012.

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

6 Passed the Senate the 24th day of April, 2013.

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\_\_\_\_\_  
Presiding Officer of the Senate

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10 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
11 2013.

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Presiding Officer of the House  
of Representatives

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