

**COMMITTEE AMENDMENT**

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3150 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Ryan Martinez

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

PROPOSED COMMITTEE  
SUBSTITUTE  
FOR  
HOUSE BILL NO. 3150

By: Martinez

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 500.10-1, which relates to fuel tax credit for sale of ethanol; limiting time period during which credit is allowed; updating language; amending 68 O.S. 2011, Section 2357.32A, as last amended by Section 1, Chapter 287, O.S.L. 2019 (68 O.S. Supp. 2019, 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.

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

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

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

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

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

4        B. Unless the federal government mandates the use of  
5 reformulated fuel in an area within the State of Oklahoma in  
6 nonattainment with the National Ambient Air Quality Standards, there  
7 shall be allowed as a credit against the tax levy imposed pursuant  
8 to paragraph 1 of subsection A of Section 500.4 of ~~Title 68 of the~~  
9 ~~Oklahoma Statutes~~ this title in the amount of one and six-tenths  
10 cents (\$0.016) for each gallon of ethyl alcohol which is contained  
11 in ethanol sold by a retail dealer before November 1, 2020.

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

19        D. Each claim for refund filed pursuant to this section shall  
20 be accompanied by such documentation as may be required by the Tax  
21 Commission that the retail dealer reduced the retail price for each  
22 gallon of ethyl alcohol which is contained in ethanol sold, and for  
23 which the credit authorized by this section is claimed, by one and  
24

1 six-tenths cents (\$0.016) and that such cost savings was  
2 economically provided to the purchaser of the ethanol fuel.

3 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2357.32A, as  
4 last amended by Section 1, Chapter 287, O.S.L. 2019 (68 O.S. Supp.  
5 2019, Section 2357.32A), is amended to read as follows:

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

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

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, 2021.

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 I. For tax years beginning on or after January 1, 2019, the  
5 total amount of credits authorized by this section with respect to  
6 eligible renewable resources described by subparagraphs b, c and d  
7 of paragraph 2 of subsection A of this section used to offset tax or  
8 paid as a refund shall be adjusted annually to limit the annual  
9 amount of credits to Five Hundred Thousand Dollars (\$500,000.00).  
10 The Tax Commission shall annually calculate and publish a percentage  
11 by which the credits authorized by subparagraphs b, c and d of  
12 paragraph 2 of subsection A of this section shall be reduced so the  
13 total amount of credits used to offset tax or paid as a refund does  
14 not exceed Five Hundred Thousand Dollars (\$500,000.00) per year.  
15 The formula to be used for the percentage adjustment shall be Five  
16 Hundred Thousand Dollars (\$500,000.00) divided by the credits  
17 claimed in the second preceding year.

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

3 K. Any credits authorized by this section with respect to  
4 eligible renewable resources described by subparagraphs b, c and d  
5 of paragraph 2 of subsection A of this section not used or unable to  
6 be used because of the provisions of subsection I or J of this  
7 section may be carried over until such credits are fully used.

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

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