

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 56th Legislature (2017)

3 HOUSE BILL 1070

By: Calvey

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6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2011, Section 2357.32A, as last amended by
9 Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
10 2017, Section 23576.32A), which relates to tax
credits for certain zero emission facilities;
imposing fiscal year cap on tax credits; and
declaring an emergency.

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
15 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
16 2017, Section 2357.32A), is amended to read as follows:

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

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

12 2. "Eligible renewable resources" means resources derived from:
13 a. wind,
14 b. moving water,
15 c. sun, or
16 d. geothermal energy.

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

1 hour for electricity generated by zero-emission facilities. For
2 electricity generated on or after January 1, 2007, but prior to
3 January 1, 2012, the amount of the credit shall be twenty-five one-
4 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
5 generated by zero-emission facilities. For facilities placed in
6 operation on or after January 1, 2007, and before January 1, 2021,
7 or with respect to electricity generated by wind for any facility
8 placed in operation not later than July 1, 2017, the amount of the
9 credit for the electricity generated on or after January 1, 2007,
10 shall be fifty one-hundredths of one cent (\$0.0050) for each
11 kilowatt-hour of electricity generated by zero-emission facilities.

12 C. Credits may be claimed with respect to electricity generated
13 on or after January 1, 2003, during a ten-year period following the
14 date that the facility is placed in operation on or after June 4,
15 2001.

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

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

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

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

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

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

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

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

19 H. No credit otherwise authorized by the provisions of this
20 section may be claimed for any event, transaction, investment,
21 expenditure or other act occurring on or after July 1, 2010, for
22 which the credit would otherwise be allowable until the provisions
23 of this subsection shall cease to be operative on July 1, 2011.
24 Beginning July 1, 2011, the credit authorized by this section may be

1 claimed for any event, transaction, investment, expenditure or other
2 act occurring on or after July 1, 2010, according to the provisions
3 of this section. Any tax credits which accrue during the period of
4 July 1, 2010, through June 30, 2011, may not be claimed for any
5 period prior to the taxable year beginning January 1, 2012. No
6 credits which accrue during the period of July 1, 2010, through June
7 30, 2011, may be used to file an amended tax return for any taxable
8 year prior to the taxable year beginning January 1, 2012.

9 I. On and after the effective date of this act, the total
10 amount of tax credits which may be used to reduce liabilities on a
11 tax return together with cash amounts paid to tax credit claimants
12 that elect to receive payment based on the provisions of paragraph 2
13 of subsection D of this section shall not exceed Twelve Million Five
14 Hundred Thousand Dollars (\$12,500,000.00) each fiscal year.

15 SECTION 2. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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20 56-1EX-50004 MAH 09/24/17

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