

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1548

By: Dunlap

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2011, Section 2357.32A, as amended by Section 2,
9 Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2016, Section
10 2357.32A), which relates to tax credits for zero-
11 emission facilities; modifying provisions related to
12 use of tax credits; terminating use of tax credits
13 with respect to electric power produced on or after
14 designated date; imposing fiscal year limitation with
15 respect to use of tax credits earned through electric
16 power production occurring prior to designated date;
17 imposing duty to report electric power production for
18 certain time period; requiring Oklahoma Tax
19 Commission to prescribe forms; imposing filing
20 deadline; requiring analysis of information regarding
21 electric power production; requiring Oklahoma Tax
22 Commission to compile report regarding failure to
23 file required annual reports with respect to electric
24 power production from zero-emission facilities;
requiring information to be accessible through
designated website; requiring report by Oklahoma Tax
Commission to the Governor, the Speaker of the
Oklahoma House of Representatives and the President
Pro Tempore of the Oklahoma State Senate; imposing
deadline for report; providing for codification;
providing an effective date; and declaring an
emergency.

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

1 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
2 amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2016,
3 Section 2357.32A), is amended to read as follows:

4 Section 2357.32A A. Except as otherwise provided in subsection
5 H or subsection I of this section, for tax years beginning on or
6 after January 1, 2003, and ending not later than June 30, 2017, with
7 respect to electric power produced on or after July 1, 2017, there
8 shall be allowed a credit against the tax imposed by Section 2355 of
9 this title to a taxpayer for the taxpayer's production and sale to
10 an unrelated person of electricity generated by zero-emission
11 facilities located in this state. As used in this section:

12 1. "Electricity generated by zero-emission facilities" means
13 electricity that is exclusively produced by any facility located in
14 this state with a rated production capacity of one megawatt (1 mw)
15 or greater, constructed for the generation of electricity and placed
16 in operation after June 4, 2001, which utilizes eligible renewable
17 resources as its fuel source. The construction and operation of
18 such facilities shall result in no pollution or emissions that are
19 or may be harmful to the environment, pursuant to a determination by
20 the Department of Environmental Quality; and

21 2. "Eligible renewable resources" means resources derived from:
22 a. wind,
23 b. moving water,
24 c. sun, or

1 d. geothermal energy.

2 B. For facilities placed in operation on or after January 1,
3 2003, and before January 1, 2007, the amount of the credit for the
4 electricity generated on or after January 1, 2003, but prior to
5 January 1, 2004, shall be seventy-five one-hundredths of one cent
6 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
7 emission facilities. For electricity generated on or after January
8 1, 2004, but prior to January 1, 2007, the amount of the credit
9 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
10 hour for electricity generated by zero-emission facilities. For
11 electricity generated on or after January 1, 2007, but prior to
12 January 1, 2012, the amount of the credit shall be twenty-five one-
13 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
14 generated by zero-emission facilities. For facilities placed in
15 operation on or after January 1, 2007, and before ~~January 1, 2021~~
16 July 1, 2017, the amount of the credit for the electricity generated
17 on or after January 1, 2007, but prior to July 1, 2017, shall be
18 fifty one-hundredths of one cent (\$0.0050) for each kilowatt-hour of
19 electricity generated by zero-emission facilities.

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

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

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

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

20 F. For credits generated prior to January 1, 2014, the amount
21 of the credit allowed, but not used, shall be freely transferable at
22 any time during the ten (10) years following the year of
23 qualification. Any person to whom or to which a tax credit is
24 transferred shall have only such rights to claim and use the credit

1 under the terms that would have applied to the entity by whom or by
2 which the tax credit was transferred. The provisions of this
3 subsection shall not limit the ability of a tax credit transferee to
4 reduce the tax liability of the transferee, regardless of the actual
5 tax liability of the tax credit transferor, for the relevant taxable
6 period. The transferor initially allowed the credit and any
7 subsequent transferees shall jointly file a copy of any written
8 transfer agreement with the Oklahoma Tax Commission within thirty
9 (30) days of the transfer. The written agreement shall contain the
10 name, address and taxpayer identification number or social security
11 number of the parties to the transfer, the amount of the credit
12 being transferred, the year the credit was originally allowed to the
13 transferor, and the tax year or years for which the credit may be
14 claimed. The Tax Commission may promulgate rules to permit
15 verification of the validity and timeliness of the tax credit
16 claimed upon a tax return pursuant to this subsection but shall not
17 promulgate any rules that unduly restrict or hinder the transfers of
18 such tax credit. The tax credit allowed by this section, upon the
19 election of the taxpayer, may be claimed as a payment of tax, a
20 prepayment of tax or a payment of estimated tax for purposes of
21 Section 1803 or Section 2355 of this title.

22 G. For electricity generation produced and sold in a calendar
23 year, the tax credit allowed by the provisions of this section, upon
24 election of the taxpayer, shall be treated and may be claimed as a

1 payment of tax, a prepayment of tax or a payment of estimated tax
2 for purposes of Section 2355 of this title on or after July 1 of the
3 following calendar year.

4 H. 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 until the provisions
8 of this subsection shall cease to be operative on July 1, 2011.
9 Beginning July 1, 2011, 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, 2010, according to the provisions
12 of this section. Any tax credits which accrue during the period of
13 July 1, 2010, through June 30, 2011, may not be claimed for any
14 period prior to the taxable year beginning January 1, 2012. No
15 credits which accrue during the period of July 1, 2010, through June
16 30, 2011, may be used to file an amended tax return for any taxable
17 year prior to the taxable year beginning January 1, 2012.

18 I. For the fiscal year beginning July 1, 2017, and for each
19 fiscal year thereafter, the total amount of tax credits which may be
20 used to either reduce tax liability amounts on returns and which may
21 be paid in the form of cash as authorized by subsection D of this
22 section shall not exceed Fifteen Million Dollars (\$15,000,000.00)
23 each fiscal year. The provisions of this subsection shall be
24 operative until all tax credits which have been earned through

1 electric power production from a zero-emission facility prior to
2 July 1, 2017, have been fully utilized either to reduce a tax
3 liability on a tax return or paid in the form of cash as authorized
4 by subsection D of this section.

5 SECTION 2. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2357.32A-1 of Title 68, unless
7 there is created a duplication in numbering, reads as follows:

8 A. Any taxpayer who claims a tax credit for electric power
9 produced from a zero-emission facility pursuant to the provisions of
10 Section 2357.32A of Title 68 of the Oklahoma Statutes shall be
11 required to file an annual report with the Oklahoma Tax Commission
12 which summarizes the total amount of electric power produced from
13 any and all facilities owned by the taxpayer within the state for
14 the period of January 1 through December 31 of the year prior to the
15 year in which the report is filed as required by this section. The
16 summary shall include the amount of electric power produced each
17 month by each zero-emission facility device owned by the taxpayer,
18 whether the device is related to solar energy, wind energy,
19 hydroelectric power or geothermal energy, and which is capable of
20 producing electric power.

21 B. The Oklahoma Tax Commission shall prescribe a form for the
22 report required by this section. The report shall be filed with the
23 Oklahoma Tax Commission not later than February 15 each year

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1 covering the electric power produced from zero-emission facilities
2 located in the state for the preceding calendar year.

3 C. If a taxpayer fails to file the report required by this
4 section by the due date, the Oklahoma Tax Commission shall compile a
5 list of the entities who have claimed tax credits pursuant to
6 Section 2357.32A of Title 68 of the Oklahoma Statutes in any past
7 tax years, together with any other entity owning a zero-emission
8 facility known to the Oklahoma Tax Commission whether or not as a
9 result of credits previously claimed, but who do not file the report
10 required by this section and shall publish the list of the taxpayers
11 on the Oklahoma Tax Commission website indicating that the taxpayers
12 have failed to file such required reports.

13 D. The Oklahoma Tax Commission shall analyze the reports filed
14 pursuant to the provisions of this section and shall prepare an
15 estimate of the amount of tax credits which could be claimed
16 together with the amount of cash rebate paid based on credit amounts
17 if the credits are not used to reduce a tax liability for the fiscal
18 year which begins on the next ensuing July 1. The report required
19 by this section shall be transmitted to the Governor, the Speaker of
20 the Oklahoma House of Representatives and the President Pro Tempore
21 of the Oklahoma State Senate not later than April 15 immediately
22 following the February 15 deadline for taxpayers to file the
23 information required pursuant to subsection B of this section.

24 SECTION 3. This act shall become effective July 1, 2017.

1 SECTION 4. It being immediately necessary for the preservation
2 of the public peace, health or safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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