

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2246

By: Brumbaugh of the House

and

Quinn of the Senate

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10 COMMITTEE SUBSTITUTE

11 [revenue and taxation - tax credits - zero-emission
12 facilities - effective date]

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

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

19 Section 2357.32A A. Except as otherwise provided in ~~subsection~~
20 subsections B and H of this section, for tax years beginning on or
21 after January 1, 2003, but ending not later than December 31, 2020,
22 there shall be allowed a credit against the tax imposed by Section
23 2355 of this title to a taxpayer for the taxpayer's production and
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1 sale to an unrelated person of electricity generated by zero-
2 emission facilities located in this state. As used in this section:

3 1. "Electricity generated by zero-emission facilities" means
4 electricity that is exclusively produced by any facility located in
5 this state with a rated production capacity of one megawatt (1 mw)
6 or greater, constructed for the generation of electricity and placed
7 in operation after June 4, 2001, which utilizes eligible renewable
8 resources as its fuel source. The construction and operation of
9 such facilities shall result in no pollution or emissions that are
10 or may be harmful to the environment, pursuant to a determination by
11 the Department of 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. 1. For facilities placed in operation on or after January
18 1, 2003, and before January 1, 2007, the amount of the credit for
19 the 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 2018, the amount of the credit for the electricity generated on or
8 after January 1, 2007, shall be fifty one-hundredths of one cent
9 (\$0.0050) for each kilowatt-hour of electricity generated by zero-
10 emission facilities.

11 2. With respect to electricity generated from any zero-emission
12 facility, regardless of when facilities were first placed in
13 service, the amount of the credit for electricity generated from
14 such facilities shall be:

15 a. three-tenths of one cent (\$0.003) per kilowatt-hour
16 for electricity generated on or after January 1, 2018,
17 but not later than December 31, 2018,

18 b. two-tenths of one cent (\$0.002) per kilowatt-hour for
19 electricity generated on or after January 1, 2019, but
20 not later than December 31, 2019,

21 c. one-tenth of one cent (\$0.001) per kilowatt-hour for
22 electricity generated on or after January 1, 2020, but
23 not later than December 31, 2020, and
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1 d. zero cents (\$0.00) per kilowatt-hour for electricity
2 generated on or after January 1, 2021.

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

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

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

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1 electricity from zero-emission facilities as defined in subsection A
2 of this section.

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

1 such tax credit. The tax credit allowed by this section, upon the
2 election of the taxpayer, may be claimed as a payment of tax, a
3 prepayment of tax or a payment of estimated tax for purposes of
4 Section 1803 or Section 2355 of this title.

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

11 H. No credit otherwise authorized by the provisions of this
12 section may be claimed for any event, transaction, investment,
13 expenditure or other act occurring on or after July 1, 2010, for
14 which the credit would otherwise be allowable until the provisions
15 of this subsection shall cease to be operative on July 1, 2011.
16 Beginning July 1, 2011, the credit authorized by this section may be
17 claimed for any event, transaction, investment, expenditure or other
18 act occurring on or after July 1, 2010, according to the provisions
19 of this section. Any tax credits which accrue during the period of
20 July 1, 2010, through June 30, 2011, may not be claimed for any
21 period prior to the taxable year beginning January 1, 2012. No
22 credits which accrue during the period of July 1, 2010, through June
23 30, 2011, may be used to file an amended tax return for any taxable
24 year prior to the taxable year beginning January 1, 2012.

SECTION 2. This act shall become effective January 1, 2018.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
03/02/2017 - DO PASS, As Amended and Coauthored.