

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2854

By: Park

6  
7 COMMITTEE SUBSTITUTE

8 [ revenue and taxation - Oklahoma Energy Content Tax  
9 Act of 2018 - purpose Section 19 of Article X of  
10 the Oklahoma Constitution - defining terms - levy -  
11 rates of taxation - exemptions - exempting certain  
12 wind turbines - exempting energy content -  
13 remittance - apportionment - codification ]

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

17 SECTION 1. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 7101 of Title 68, unless there  
19 is created a duplication in numbering, reads as follows:

20 This act shall be known and may be cited as the "Oklahoma Energy  
21 Content Tax Act of 2018".

22 SECTION 2. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 7102 of Title 68, unless there  
24 is created a duplication in numbering, reads as follows:

1 Pursuant to the requirements of Section 19 of Article X of the  
2 Oklahoma Constitution, the purpose of this act is to provide revenue  
3 for general government functions.

4 SECTION 3. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 7103 of Title 68, unless there  
6 is created a duplication in numbering, reads as follows:

7 As used in this act:

8 1. "British Thermal Unit" means the amount of heat energy  
9 required to increase the temperature of one (1) pound of water by  
10 one (1) degree Fahrenheit if the water is at its maximum density  
11 using an assumed temperature of thirty-nine (39) degrees Fahrenheit;

12 2. "Commercial wind turbine" means a device manufactured for  
13 the purpose of producing electric power by means of wind energy and  
14 which converts the energy from naturally occurring winds into  
15 mechanical energy through the rotation of blades or rotors and the  
16 production of an electric current and which has a nameplate capacity  
17 of more than fifty kilowatts (50 kw);

18 3. "Electric power generation facility" means an asset owned by  
19 a public service corporation as defined by Section 2808 of Title 68  
20 of the Oklahoma Statutes or an exempt wholesale generator as defined  
21 pursuant to 18 C.F.R. Section 366.1 engaged in the production of  
22 electricity by initial means of combustion of oil, natural gas or  
23 any other fossil fuel or refined product derived therefrom for the  
24 purpose of operating one or more turbines driven by steam or by the

1 flow of other gases to operate one or more turbines in order to  
2 generate electricity;

3 4. "Energy content" means the ability of a substance or  
4 compound to produce heat as measured by British Thermal Units  
5 (BTUs);

6 5. "Gross production tax" means the levy imposed on oil, gas or  
7 other minerals pursuant to Section 1001 of Title 68 of the Oklahoma  
8 Statutes;

9 6. "Lawfully recognized business entity" means:

- 10 a. a person,
- 11 b. a firm,
- 12 c. a general partnership,
- 13 d. a limited partnership,
- 14 e. a corporation,
- 15 f. a limited liability company,
- 16 g. a limited liability partnership,
- 17 h. a limited liability limited partnership,
- 18 i. a trust,
- 19 j. an estate, or
- 20 k. any other form of legal entity authorized to transact  
21 business in the State of Oklahoma;

22 7. "Manufacturer nameplate capacity" means the maximum amount  
23 of electric power capable of being produced by a commercial wind  
24 turbine according to information affixed to a wind turbine or its

1 associated structures and which nameplate is installed or affixed by  
2 the business entity which manufactured the wind turbine;

3 8. "Motor Fuel Tax Code" means Section 500.1 et seq. of Title  
4 68 of the Oklahoma Statutes;

5 9. "Qualified tax remitter" means a petroleum refinery, a  
6 natural gas processing plant, an electric power generation facility  
7 or a lawfully recognized business entity described by Industry No.  
8 221114 or 221115 of the North American Industry Classification  
9 System (NAICS) engaged in production of electric power by means of  
10 solar energy or wind power, respectively; and

11 10. "Qualified energy sources" means:

- 12 a. petroleum used by a refinery in a refinery process or  
13 a source of fuel for an electric power generation  
14 facility,
- 15 b. natural gas used by a petroleum refinery in a refinery  
16 process, used by a natural gas processing plant or  
17 used as a source of fuel for an electric power  
18 generation facility,
- 19 c. coal used by an electric power generation facility,
- 20 d. electric power produced by a public service  
21 corporation,
- 22 e. electric power produced by an exempt wholesale  
23 generator,
- 24 f. electric power produced by means of wind, and

1 g. electric power produced by means of solar energy.

2 SECTION 4. NEW LAW A new section of law to be codified  
3 in the Oklahoma Statutes as Section 7104 of Title 68, unless there  
4 is created a duplication in numbering, reads as follows:

5 A. Except as otherwise provided by this act and except as  
6 otherwise exempt pursuant to the provisions of Section 5 of this  
7 act, there is hereby imposed a tax on the energy content of  
8 qualified energy sources as measured by British Thermal Units  
9 (BTUs).

10 B. The tax shall be imposed as follows:

11 1. One Dollar and twenty thousand fifty-seven one-hundred-  
12 thousandths cents (\$1.20057) per barrel of oil at the time the oil  
13 has been delivered to a qualified tax remitter and is ready for  
14 consumption by combustion or other processes or for input as  
15 feedstock into a petroleum refinery located within the state;

16 2. Twenty-one thousand seven hundred seventy-seven one-hundred-  
17 thousandths cents (\$0.21777) per one thousand cubic feet (mcf) of  
18 natural gas at the time the natural gas has been delivered to a  
19 qualified tax remitter and is ready for consumption by combustion or  
20 other processes or for input into a natural gas processing facility  
21 located within the state;

22 3. Four Dollars and two thousand sixty-six one-hundred-  
23 thousandths cents (\$4.02066) per short ton on coal at the time the  
24 coal is ready for conversion by a combustion process in order to

1 produce electric power by an electric power generation facility  
2 located within the state;

3 4. Seven-hundred-sixteen-thousandths cents (\$0.716) per  
4 megawatt hour on electrical energy produced by a public service  
5 corporation from facilities located within the state;

6 5. Seven-hundred-sixteen-thousandths cents (\$0.716) per  
7 megawatt hour on electrical energy produced by an exempt wholesale  
8 generator facility from facilities located within the state;

9 6. Seven-hundred-sixteen-thousandths cents (\$0.716) per  
10 megawatt hour on electrical energy produced by means of wind by a  
11 business described pursuant to Industry No. 221115 of the North  
12 American Industry Classification System (NAICS) from facilities  
13 located within the state;

14 7. Seven-hundred-sixteen-thousandths cents (\$0.716) per  
15 megawatt hour on electrical energy produced by means of solar  
16 radiation by a business described pursuant to Industry No. 221114 of  
17 the North American Industry Classification System (NAICS) from  
18 facilities located within the state; and

19 8. Seven-hundred-sixteen-thousandths cents (\$0.716) per  
20 megawatt hour on electrical energy produced by a zero emission  
21 facility eligible to claim the tax credit authorized by Section  
22 2357.32A of Title 68 of the Oklahoma Statutes unless such zero  
23 emission facility is subject to a tax levy pursuant to any other  
24 provisions of this section.

1 SECTION 5. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 7105 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The tax imposed pursuant to Section 4 of this act shall not  
5 be applicable to the oil or natural gas extracted within the state  
6 by a lawfully recognized business entity based upon the energy  
7 content of the oil or gas at the time the oil or natural gas is  
8 produced from a wellhead and brought to the surface of the earth.

9 B. If oil or natural gas described in subsection A of this  
10 section is purchased by or delivered to a petroleum refinery, a  
11 natural gas processing plant or an electric power generation  
12 facility located within the state, the tax imposed pursuant to  
13 Section 4 of this act shall be applicable to the energy content of  
14 the qualified energy source according to the requirements of this  
15 act.

16 C. The tax imposed pursuant to Section 4 of this act shall be  
17 imposed based upon the energy content of oil, natural gas or oil and  
18 natural gas at the time such substances are delivered to a petroleum  
19 refinery, a natural gas processing plant, a public service  
20 corporation or an exempt wholesale generator and are ready for  
21 either combustion or the refining process with respect to petroleum  
22 or ready for combustion or processing with respect to natural gas or  
23 ready for combustion with respect to coal.

24

1 D. No wind turbine with a nameplate capacity of less than fifty  
2 kilowatts (50 kw) shall be subject to the tax imposed pursuant to  
3 the provisions of Section 4 of this act.

4 E. No wind turbine located on the private property of one or  
5 more natural persons which is attached to a single-family  
6 residential dwelling or located in close proximity to the single-  
7 family residential dwelling and used, in whole or in part, to supply  
8 electric power to the dwelling and its occupants shall be subject to  
9 the tax imposed pursuant to Section 4 of this act if the wind  
10 turbine has a manufacturer nameplate capacity of less than fifty  
11 kilowatts (50 kw).

12 F. No wind turbine located on the property of a for-profit  
13 business entity, other than a business entity engaged in the  
14 production of electric power by wind and having the North American  
15 Industry Classification Code (NAICS) 221115, which is attached to  
16 improvements used by the business entity to conduct its primary  
17 business activity or in close proximity to such improvements and the  
18 electric power from which is used, in whole or in part, by the  
19 business entity to conduct its for-profit business activity shall be  
20 subject to the tax imposed pursuant to the provisions of Section 4  
21 of this act if the wind turbine has a nameplate capacity of less  
22 than fifty kilowatts (50 kw).



1           SECTION 6.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 7106 of Title 68, unless there  
3 is created a duplication in numbering, reads as follows:

4           The tax imposed pursuant to Section 4 of this act shall not be  
5 applicable to any otherwise qualified energy source during the time  
6 that the qualified energy source is in the possession of a lawfully  
7 recognized business entity which is:

8           1. A common carrier, including a trucking company or railroad;

9           2. An oil pipeline company prior to delivery of petroleum for  
10 purposes of combustion or refining processes;

11           3. A natural gas pipeline company prior to delivery of natural  
12 gas for purposes of combustion or natural gas processing;

13           4. Principally engaged in the business of transporting crude  
14 oil from a wellhead or tank battery after its extraction for periods  
15 of time prior to final delivery of crude oil to a qualified tax  
16 remitter; and

17           5. Principally engaged in the initial delivery of natural gas  
18 through a system of natural gas gathering lines before the natural  
19 gas is delivered to a pipeline requiring extraction of liquids or  
20 other substances before further transport or prior to the time of  
21 final delivery of natural gas to a qualified tax remitter.

22           SECTION 7.           NEW LAW           A new section of law to be codified  
23 in the Oklahoma Statutes as Section 7107 of Title 68, unless there  
24 is created a duplication in numbering, reads as follows:

1 The tax shall be remitted by the qualified energy content  
2 remitter not later than the twentieth day of the month following the  
3 month of the applicable taxable event with respect to the qualified  
4 energy source. The Oklahoma Tax Commission shall prescribe such  
5 forms for the reporting of the tax as may be required to implement  
6 the provisions of this act.

7 SECTION 8. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 7108 of Title 68, unless there  
9 is created a duplication in numbering, reads as follows:

10 If not paid by the date prescribed pursuant to Section 7 of this  
11 act, there shall be imposed a penalty of ten percent (10%) of the  
12 principal amount of tax due and owing. Interest on delinquent tax  
13 amounts shall be imposed pursuant to the provisions of Section 217  
14 of Title 68 of the Oklahoma Statutes.

15 SECTION 9. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 7109 of Title 68, unless there  
17 is created a duplication in numbering, reads as follows:

18 The revenue derived from the tax levied by Section 4 of this act  
19 shall be apportioned to the General Revenue Fund of the State  
20 Treasury.

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