

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL 118

6 By: Thompson

7 COMMITTEE SUBSTITUTE

8 An Act relating to income tax credit; amending 68  
9 O.S. 2011, Section 2357.32A, as amended by Section 2,  
10 Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2016, Section  
11 2357.32A), which relates to income tax credits for  
12 zero-emission facilities; limiting time period during  
13 which certain facilities qualify to claim credit;  
14 limiting total amount of certain credit which may be  
15 claimed during specified time period; setting annual  
16 deadline for certain claims; establishing procedure  
17 for Oklahoma Tax Commission to determine certain  
18 proportionate share of credit; authorizing certain  
19 credits to be claimed under specified circumstance;  
20 and providing an effective date.

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

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

Section 2357.32A. A. Except as otherwise provided in  
subsection H of this section, for tax years beginning on or after  
January 1, 2003, there shall be allowed a credit against the tax  
imposed by Section 2355 of this title to a taxpayer for the

1 taxpayer's production and sale to an unrelated person of electricity  
2 generated by zero-emission facilities located in this state. As  
3 used in this section:

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

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

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

1 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-  
2 hour for electricity generated by zero-emission facilities. For  
3 electricity generated on or after January 1, 2007, but prior to  
4 January 1, 2012, the amount of the credit shall be twenty-five one-  
5 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity  
6 generated by zero-emission facilities. For facilities placed in  
7 operation on or after January 1, 2007, and before ~~January 1, 2021~~  
8 January 1, 2018, the amount of the credit for the electricity  
9 generated on or after January 1, 2007, shall be fifty one-hundredths  
10 of one cent (\$0.0050) for each kilowatt-hour of electricity  
11 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. Provided, for tax years beginning on  
2 or after January 1, 2017, the amount of credits allowed in a taxable  
3 year shall be limited as provided pursuant to the provisions of  
4 subsection I of this section. The direct refund of the credits  
5 pursuant to this paragraph shall be available to all taxpayers,  
6 including, without limitation, pass-through entities and taxpayers  
7 subject to Section 2355 of this title, but shall not be available to  
8 any entities falling within the provisions of subsection E of this  
9 section. The amount of any direct refund of credits actually  
10 received at the eighty-five percent (85%) level by the taxpayer  
11 pursuant to this paragraph shall not be subject to the tax imposed  
12 by Section 2355 of this title. If the pass-through entity does not  
13 file a claim for a direct refund, the pass-through entity shall  
14 allocate the credit to one or more of the shareholders, partners or  
15 members of the pass-through entity; provided, the total of all  
16 credits refunded or allocated shall not exceed the amount of the  
17 credit or refund to which the pass-through entity is entitled. For  
18 the purposes of this paragraph, "pass-through entity" means a  
19 corporation that for the applicable tax year is treated as an S  
20 corporation under the Internal Revenue Code of 1986, as amended,  
21 general partnership, limited partnership, limited liability  
22 partnership, trust or limited liability company that for the  
23 applicable tax year is not taxed as a corporation for federal income  
24 tax purposes.

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

14 F. For credits generated prior to January 1, 2014, the amount  
15 of the credit allowed, but not used, shall be freely transferable at  
16 any time during the ten (10) years following the year of  
17 qualification. Provided, for tax years beginning on or after  
18 January 1, 2017, the amount of credits allowed in a taxable year  
19 shall be limited as provided pursuant to the provisions of  
20 subsection I of this section. Any person to whom or to which a tax  
21 credit is transferred shall have only such rights to claim and use  
22 the credit under the terms that would have applied to the entity by  
23 whom or by which the tax credit was transferred. The provisions of  
24 this subsection shall not limit the ability of a tax credit

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

19 G. For electricity generation produced and sold in a calendar  
20 year, the tax credit allowed by the provisions of this section, upon  
21 election of the taxpayer, shall be treated and may be claimed as a  
22 payment of tax, a prepayment of tax or a payment of estimated tax  
23 for purposes of Section 2355 of this title on or after July 1 of the  
24 following calendar year.

1 H. No credit otherwise authorized by the provisions of this  
2 section may be claimed for any event, transaction, investment,  
3 expenditure or other act occurring on or after July 1, 2010, for  
4 which the credit would otherwise be allowable until the provisions  
5 of this subsection shall cease to be operative on July 1, 2011.  
6 Beginning July 1, 2011, the credit authorized by this section may be  
7 claimed for any event, transaction, investment, expenditure or other  
8 act occurring on or after July 1, 2010, according to the provisions  
9 of this section. Any tax credits which accrue during the period of  
10 July 1, 2010, through June 30, 2011, may not be claimed for any  
11 period prior to the taxable year beginning January 1, 2012. No  
12 credits which accrue during the period of July 1, 2010, through June  
13 30, 2011, may be used to file an amended tax return for any taxable  
14 year prior to the taxable year beginning January 1, 2012.

15 I. For tax years beginning on or after January 1, 2017, the  
16 total amount of all credits allowed in a taxable year shall be  
17 limited as follows:

18 1. For credits generated before January 1, 2014, the total  
19 payment of all allowed claims shall not exceed Two Million Dollars  
20 (\$2,000,000.00) in fiscal year 2019 and each fiscal year thereafter.  
21 The total amount of all credits allowed pursuant to this subsection  
22 shall be claimed before October 1 of any year for electricity  
23 generated during the prior tax year, including any carryover. The  
24 Tax Commission shall not allow or pay any claim filed on or after

1 October 1 for any electricity generated or credit carried forward  
2 during the prior tax year;

3 2. For credits generated on or after January 1, 2014, the total  
4 payment of all allowed claims shall not exceed Ten Million Dollars  
5 (\$10,000,000.00) in fiscal year 2019 and each fiscal year  
6 thereafter. The total amount of all credits allowed pursuant to  
7 this subsection shall be claimed before October 1 of any year for  
8 electricity generated during the prior tax year. The Tax Commission  
9 shall not allow or pay any claim filed on or after October 1 for any  
10 electricity generated during the prior tax year;

11 3. If the Tax Commission determines the total amount of credits  
12 allowed exceeds the amounts provided in paragraph 1 or 2 of this  
13 subsection, the Tax Commission shall determine the percentage of the  
14 credit which establishes the proportionate share which may be  
15 claimed so that the maximum amount authorized is not exceeded; and

16 4. The remaining balance of credit claimed over the limitations  
17 provided in paragraphs 1 and 2 of this subsection shall be paid in  
18 subsequent fiscal years subject to the limitations provided and in  
19 the same manner provided in this subsection.

20 SECTION 2. This act shall become effective November 1, 2017.

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