

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1278

By: Smalley

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5  
6 AS INTRODUCED

7 An Act relating to income tax; amending 68 O.S. 2011,  
8 Section 2357.32A, as last amended by Section 1,  
9 Chapter 44, O.S.L. 2017 (68 O.S. Supp. 2017, Section  
10 2357.32A), which relates to tax credits for  
11 electricity generated by zero-emission facilities;  
12 modifying amount of credit; modifying term during  
13 which credit may be claimed; providing an effective  
14 date; and declaring an emergency.

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 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.  
18 2017, Section 2357.32A), is amended to read as follows:

19 Section 2357.32A. A. Except as otherwise provided in  
20 subsection H of this section, for tax years beginning on or after  
21 January 1, 2003, there shall be allowed a credit against the tax  
22 imposed by Section 2355 of this title to a taxpayer for the  
23 taxpayer's production and sale to an unrelated person of electricity  
24 generated by zero-emission facilities located in this state. As  
used in this 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 and before the effective date of this act, shall be fifty one-  
11 hundredths of one cent (\$0.0050) for each kilowatt-hour of  
12 electricity generated by zero-emission facilities. With respect to  
13 electricity generated by wind, the amount of the credit for  
14 electricity generated after the effective date of this act shall be  
15 twenty-five one-hundredths of one cent (\$0.0025) per kilowatt-hour  
16 of electricity generated.

17 C. ~~Credits~~ If a facility was placed in operation on or after  
18 July 1, 2013, credits may be claimed with respect to electricity  
19 ~~generated on or after January 1, 2003, during a ten-year period~~  
20 during a five-year period following the date that the facility is  
21 placed in operation ~~on or after June 4, 2001.~~ A facility which was  
22 placed in operation before July 1, 2013, shall not be eligible for  
23 credits with respect to electricity generated on or after the  
24 effective date of this act.

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

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

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