

1 STATE OF OKLAHOMA

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

3 SENATE BILL 294

By: Dahm

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5  
6 AS INTRODUCED

7 An Act relating to income tax credits; 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 credits for electricity  
11 produced by zero-emission facilities; providing  
12 exceptions; modifying time period during which  
13 facilities are qualified to claim credit; modifying  
14 time period during which certain facilities are  
15 qualified for carryforward of unused credits or  
16 during which unused credits are refundable; providing  
17 an effective date; and declaring an emergency.

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

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

22 Section 2357.32A. A. Except as otherwise provided in  
23 ~~subsection H~~ subsections H and I of this section, for tax years  
24 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 taxpayer's production and sale to an unrelated

1 person of electricity generated by zero-emission facilities located  
2 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. 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 July 1, 2017, the amount of the credit for the electricity generated  
8 on or after January 1, 2007, shall be fifty one-hundredths of one  
9 cent (\$0.0050) for each kilowatt-hour of electricity generated by  
10 zero-emission facilities.

11 C. Credits may be claimed with respect to electricity generated  
12 on or after January 1, 2003, during a ten-year period following the  
13 date that the facility is placed in operation on or after June 4,  
14 2001.

15 D. 1. ~~For~~ Except as otherwise provided in subsection I of this  
16 section, 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, except as otherwise provided in subsection I of this section,  
24 the Oklahoma Tax Commission shall refund, at the taxpayer's

1 election, directly to the taxpayer eighty-five percent (85%) of the  
2 face amount of such credits. The direct refund of the credits  
3 pursuant to this paragraph shall be available to all taxpayers,  
4 including, without limitation, pass-through entities and taxpayers  
5 subject to Section 2355 of this title, but shall not be available to  
6 any entities falling within the provisions of subsection E of this  
7 section. The amount of any direct refund of credits actually  
8 received at the eighty-five percent (85%) level by the taxpayer  
9 pursuant to this paragraph shall not be subject to the tax imposed  
10 by Section 2355 of this title. If the pass-through entity does not  
11 file a claim for a direct refund, the pass-through entity shall  
12 allocate the credit to one or more of the shareholders, partners or  
13 members of the pass-through entity; provided, the total of all  
14 credits refunded or allocated shall not exceed the amount of the  
15 credit or refund to which the pass-through entity is entitled. For  
16 the purposes of this paragraph, "pass-through entity" means a  
17 corporation that for the applicable tax year is treated as an S  
18 corporation under the Internal Revenue Code of 1986, as amended,  
19 general partnership, limited partnership, limited liability  
20 partnership, trust or limited liability company that for the  
21 applicable tax year is not taxed as a corporation for federal income  
22 tax purposes.

23 E. Any nontaxable entities, including agencies of the State of  
24 Oklahoma or political subdivisions thereof, shall be eligible to

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

12 F. For credits generated prior to January 1, 2014, the amount  
13 of the credit allowed, but not used, shall be freely transferable at  
14 any time during the ten (10) years following the year of  
15 qualification. Any person to whom or to which a tax credit is  
16 transferred shall have only such rights to claim and use the credit  
17 under the terms that would have applied to the entity by whom or by  
18 which the tax credit was transferred. The provisions of this  
19 subsection shall not limit the ability of a tax credit transferee to  
20 reduce the tax liability of the transferee, regardless of the actual  
21 tax liability of the tax credit transferor, for the relevant taxable  
22 period. The transferor initially allowed the credit and any  
23 subsequent transferees shall jointly file a copy of any written  
24 transfer agreement with the Oklahoma Tax Commission within thirty

1 (30) days of the transfer. The written agreement shall contain the  
2 name, address and taxpayer identification number or social security  
3 number of the parties to the transfer, the amount of the credit  
4 being transferred, the year the credit was originally allowed to the  
5 transferor, and the tax year or years for which the credit may be  
6 claimed. The Tax Commission may promulgate rules to permit  
7 verification of the validity and timeliness of the tax credit  
8 claimed upon a tax return pursuant to this subsection but shall not  
9 promulgate any rules that unduly restrict or hinder the transfers of  
10 such tax credit. The tax credit allowed by this section, upon the  
11 election of the taxpayer, may be claimed as a payment of tax, a  
12 prepayment of tax or a payment of estimated tax for purposes of  
13 Section 1803 or Section 2355 of this title.

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

20 H. No credit otherwise authorized by the provisions of this  
21 section may be claimed for any event, transaction, investment,  
22 expenditure or other act occurring on or after July 1, 2010, for  
23 which the credit would otherwise be allowable until the provisions  
24 of this subsection shall cease to be operative on July 1, 2011.

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

10 I. Credits shall be refundable pursuant to paragraph 2 of  
11 subsection D of this section, only if such credits were generated on  
12 or after January 1, 2014, and before July 1, 2017. Credits  
13 generated on or after July 1, 2017, by facilities placed in  
14 operation before July 1, 2017, shall be allowed only as a credit  
15 against the tax imposed by Section 2355 of this title.

16 SECTION 2. This act shall become effective July 1, 2017.

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

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