

1 STATE OF OKLAHOMA

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

3 SENATE BILL 43x

By: Bergstrom

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5
6 AS INTRODUCED

7 An Act relating to income tax credit; amending 68
8 O.S. 2011, Section 2357.32A, as last amended by
9 Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
10 2017, Section 2357.32A), which relates to income tax
11 credits for zero-emission facilities; limiting total
12 amount of certain credit which may be claimed during
13 specified time periods; setting annual deadline for
14 certain claims; establishing procedure for Oklahoma
15 Tax Commission to determine certain proportionate
16 share of credit; authorizing certain credits to be
17 claimed under specified circumstances; providing an
18 effective date; and declaring an emergency.

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

20 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
21 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
22 2017, Section 2357.32A), is amended to read as follows:

23 Section 2357.32A. A. Except as otherwise provided in
24 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
taxpayer's production and sale to an unrelated person of electricity

1 generated by zero-emission facilities located in this state. As
2 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, and with respect to electricity
8 generated by wind for any facility placed in operation not later
9 than July 1, 2017, which utilizes eligible renewable resources as
10 its fuel source. The construction and operation of such facilities
11 shall result in no pollution or emissions that are or may be harmful
12 to the environment, pursuant to a determination by the Department of
13 Environmental Quality; and

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

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

1 1, 2004, but prior to January 1, 2007, the amount of the credit
2 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
3 hour for electricity generated by zero-emission facilities. For
4 electricity generated on or after January 1, 2007, but prior to
5 January 1, 2012, the amount of the credit shall be twenty-five one-
6 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
7 generated by zero-emission facilities. For facilities placed in
8 operation on or after January 1, 2007, and before January 1, 2021,
9 or with respect to electricity generated by wind for any facility
10 placed in operation not later than July 1, 2017, the amount of the
11 credit for the electricity generated on or after January 1, 2007,
12 shall be fifty one-hundredths of one cent (\$0.0050) for each
13 kilowatt-hour of electricity generated by zero-emission facilities,
14 except as otherwise provided in subsection I of this section.

15 C. Credits may be claimed with respect to electricity generated
16 on or after January 1, 2003, during a ten-year period following the
17 date that the facility is placed in operation on or after June 4,
18 2001; provided, to the extent that any taxpayer's credits are not
19 allowed due to the total statewide annual limitations provided in
20 paragraph 2 of subsection I of this section, such credits may
21 continue to be claimed by a taxpayer beyond the ten-year period
22 until no balance remains.

23 D. 1. For credits generated prior to January 1, 2014, if the
24 credit allowed pursuant to this section exceeds the amount of income

1 taxes due or if there are no state income taxes due on the income of
2 the taxpayer, the amount of the credit allowed but not used in any
3 tax year may be carried forward as a credit against subsequent
4 income tax liability for a period not exceeding ten (10) years.

5 2. For credits generated, but not used, on or after January 1,
6 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
7 election, directly to the taxpayer eighty-five percent (85%) of the
8 face amount of such credits; except as otherwise provided in
9 subsection I of this section. The direct refund of the credits
10 pursuant to this paragraph shall be available to all taxpayers,
11 including, without limitation, pass-through entities and taxpayers
12 subject to Section 2355 of this title, but shall not be available to
13 any entities falling within the provisions of subsection E of this
14 section. The amount of any direct refund of credits actually
15 received at the eighty-five percent (85%) level by the taxpayer
16 pursuant to this paragraph shall not be subject to the tax imposed
17 by Section 2355 of this title. If the pass-through entity does not
18 file a claim for a direct refund, the pass-through entity shall
19 allocate the credit to one or more of the shareholders, partners or
20 members of the pass-through entity; provided, the total of all
21 credits refunded or allocated shall not exceed the amount of the
22 credit or refund to which the pass-through entity is entitled. For
23 the purposes of this paragraph, "pass-through entity" means a
24 corporation that for the applicable tax year is treated as an S

1 corporation under the Internal Revenue Code of 1986, as amended,
2 general partnership, limited partnership, limited liability
3 partnership, trust or limited liability company that for the
4 applicable tax year is not taxed as a corporation for federal income
5 tax purposes.

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

19 F. For credits generated prior to January 1, 2014, the amount
20 of the credit allowed, but not used, shall be freely transferable at
21 any time during the ten (10) years following the year of
22 qualification, except as otherwise provided in subsection I of this
23 section. Any person to whom or to which a tax credit is transferred
24 shall have only such rights to claim and use the credit under the

1 terms that would have applied to the entity by whom or by which the
2 tax credit was transferred. The provisions of this subsection shall
3 not limit the ability of a tax credit transferee to reduce the tax
4 liability of the transferee, regardless of the actual tax liability
5 of the tax credit transferor, for the relevant taxable period. The
6 transferor initially allowed the credit and any subsequent
7 transferees shall jointly file a copy of any written transfer
8 agreement with the Oklahoma Tax Commission within thirty (30) days
9 of the transfer. The written agreement shall contain the name,
10 address and taxpayer identification number or social security number
11 of the parties to the transfer, the amount of the credit being
12 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 I. 1. The total amount of all credits allowed in a taxable
19 year shall be limited to the percentage calculated by the Oklahoma
20 Tax Commission pursuant to the provisions of this subsection. The
21 total amount of all allowed claims allowed shall not exceed:

22 a. Fifty Million Dollars (\$50,000,000.00) for fiscal
23 years 2020 and 2021,
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- 1 b. Sixty Million Dollars (\$60,000,000.00) for fiscal year
2 2022,
- 3 c. Seventy Million Dollars (\$70,000,000.00) for fiscal
4 year 2023,
- 5 d. Ninety Million Dollars (\$90,000,000.00) for fiscal
6 years 2024 and 2025, and
- 7 e. One Hundred Fifteen Million Dollars (\$115,000,000.00)
8 for fiscal year 2026 and all subsequent fiscal years
9 until the remaining balance of credits claimed over
10 the limitations provided in this paragraph are paid.

11 2. The total amount of all credits allowed by this section
12 shall be claimed before October 1 of any year for electricity
13 generated during the prior tax year, including any carryover. The
14 Tax Commission shall not allow or pay any claim filed on or after
15 October 1 for any electricity generated during the prior tax year or
16 credit carried forward during the prior tax year. If the Tax
17 Commission determines the total amount of credits allowed exceeds
18 the limitations provided in paragraph 1 of this subsection, the Tax
19 Commission shall determine the percentage of the credit which
20 establishes the proportionate share which may be claimed so that the
21 maximum amount authorized is not exceeded.

22 3. The remaining balance of credit claimed over the limitations
23 provided in paragraph 2 of this subsection shall be paid in
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1 subsequent fiscal years subject to the limitations provided and in
2 the same manner provided in this subsection.

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

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

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