

1 **SENATE FLOOR VERSION**

2 February 12, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 475

5 By: Quinn

6 **[income tax credits - production of electricity by**
7 **zero-emission facilities - specified date - effective**
8 **date]**

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

10 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
11 last amended by Section 1, Chapter 264, O.S.L. 2018 (68 O.S. Supp.
12 2018, Section 2357.32A), is amended to read as follows:

13 Section 2357.32A. A. Except as otherwise provided in
14 subsection H of this section, for tax years beginning on or after
15 January 1, 2003, but with respect to tax credits for eligible
16 renewable resources described by subparagraphs b, c and d of
17 paragraph 2 of this subsection, for tax years ending not later than
18 December 31, 2021, there shall be allowed a credit against the tax
19 imposed by Section 2355 of this title to a taxpayer for the
20 taxpayer's production and sale to an unrelated person of electricity
21 generated by zero-emission facilities located in this state. As
22 used in this section:

23 1. "Electricity generated by zero-emission facilities" means
24 electricity that is exclusively produced by any facility located in

1 this state with a rated production capacity of one megawatt (1 mw)
2 or greater, constructed for the generation of electricity and placed
3 in operation after June 4, 2001, and with respect to electricity
4 generated by wind for any facility placed in operation not later
5 than July 1, 2017, which utilizes eligible renewable resources as
6 its fuel source. The construction and operation of such facilities
7 shall result in no pollution or emissions that are or may be harmful
8 to the environment, pursuant to a determination by the Department of
9 Environmental Quality; and

10 2. "Eligible renewable resources" means resources derived from:

- 11 a. wind,
- 12 b. moving water,
- 13 c. sun, or
- 14 d. geothermal energy.

15 B. For facilities placed in operation on or after January 1,
16 2003, and before January 1, 2007, the amount of the credit for the
17 electricity generated on or after January 1, 2003, but prior to
18 January 1, 2004, shall be seventy-five one-hundredths of one cent
19 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
20 emission facilities. For electricity generated on or after January
21 1, 2004, but prior to January 1, 2007, the amount of the credit
22 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
23 hour for electricity generated by zero-emission facilities. For
24 electricity generated on or after January 1, 2007, but prior to

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

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

14 D. 1. For credits generated prior to January 1, 2014, if the
15 credit allowed pursuant to this section exceeds the amount of income
16 taxes due or if there are no state income taxes due on the income of
17 the taxpayer, the amount of the credit allowed but not used in any
18 tax year may be carried forward as a credit against subsequent
19 income tax liability for a period not exceeding ten (10) years.

20 2. For credits generated, but not used, on or after January 1,
21 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
22 election, directly to the taxpayer eighty-five percent (85%) of the
23 face amount of such credits. The direct refund of the credits
24 pursuant to this paragraph shall be available to all taxpayers,

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

20 E. Any nontaxable entities, including agencies of the State of
21 Oklahoma or political subdivisions thereof, shall be eligible to
22 establish a transferable tax credit in the amount provided in
23 subsection B of this section. Such tax credit shall be a property
24 right available to a state agency or political subdivision of this

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

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

1 being transferred, the year the credit was originally allowed to the
2 transferor, and the tax year or years for which the credit may be
3 claimed. The Tax Commission may promulgate rules to permit
4 verification of the validity and timeliness of the tax credit
5 claimed upon a tax return pursuant to this subsection but shall not
6 promulgate any rules that unduly restrict or hinder the transfers of
7 such tax credit. The tax credit allowed by this section, upon the
8 election of the taxpayer, may be claimed as a payment of tax, a
9 prepayment of tax or a payment of estimated tax for purposes of
10 Section 1803 or Section 2355 of this title.

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

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

1 of this section. Any tax credits which accrue during the period of
2 July 1, 2010, through June 30, 2011, may not be claimed for any
3 period prior to the taxable year beginning January 1, 2012. No
4 credits which accrue during the period of July 1, 2010, through June
5 30, 2011, may be used to file an amended tax return for any taxable
6 year prior to the taxable year beginning January 1, 2012.

7 I. For tax years beginning on or after January 1, 2019, the
8 total amount of credits authorized by this section with respect to
9 eligible renewable resources described by subparagraphs b, c and d
10 of paragraph 2 of subsection A of this section used to offset tax or
11 paid as a refund shall be adjusted annually to limit the annual
12 amount of credits to Five Hundred Thousand Dollars (\$500,000.00).
13 The Tax Commission shall annually calculate and publish a percentage
14 by which the credits authorized by subparagraphs b, c and d of
15 paragraph 2 of subsection A of this section shall be reduced so the
16 total amount of credits used to offset tax or paid as a refund does
17 not exceed Five Hundred Thousand Dollars (\$500,000.00) per year.
18 The formula to be used for the percentage adjustment shall be Five
19 Hundred Thousand Dollars (\$500,000.00) divided by the credits
20 claimed in the second preceding year.

21 J. Pursuant to subsection I of this section, in the event the
22 total tax credits authorized by this section with respect to
23 eligible renewable resources described by subparagraphs b, c and d
24 of paragraph 2 of subsection A of this section exceed Five Hundred

1 Thousand Dollars (\$500,000.00) in any calendar year, the Tax
2 Commission shall permit any excess over Five Hundred Thousand
3 Dollars (\$500,000.00) but shall factor such excess into the
4 percentage adjustment formula for subsequent years.

5 K. Any credits authorized by this section with respect to
6 eligible renewable resources described by subparagraphs b, c and d
7 of paragraph 2 of subsection A of this section not used or unable to
8 be used because of the provisions of subsection I or J of this
9 section may be carried over until such credits are fully used.

10 L. The Tax Commission shall prepare an annual report and submit
11 it to the Office of the State Secretary of Energy and Environment,
12 the Governor, the Speaker of the Oklahoma House of Representatives
13 and the President Pro Tempore of the Oklahoma State Senate
14 summarizing the amount of credits allowed pursuant to subparagraphs
15 b, c and d of paragraph 2 of subsection A of this section. The
16 Secretary of Energy and Environment shall submit recommendations for
17 changes to the tax credit to the Governor, the Speaker of the
18 Oklahoma House of Representatives and the President Pro Tempore of
19 the Oklahoma State Senate within sixty (60) days after receipt of
20 the report from the Oklahoma Tax Commission.

21 SECTION 2. This act shall become effective November 1, 2019.

22 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
23 February 12, 2019 - DO PASS AS AMENDED
24