

1 STATE OF OKLAHOMA

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

3 SENATE BILL 641

By: Marlatt

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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 generated by zero-emission facilities; clarifying
12 application of moratorium on ability to claim credits
13 during specified time period; and providing an
14 effective date.

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 amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2016,
18 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, which utilizes eligible renewable
6 resources as its fuel source. The construction and operation of
7 such facilities shall result in no pollution or emissions that are
8 or may be harmful to the environment, pursuant to a determination by
9 the Department of 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 the amount of the credit for the electricity generated on or after
6 January 1, 2007, shall be fifty one-hundredths of one cent (\$0.0050)
7 for each kilowatt-hour of electricity generated by zero-emission
8 facilities.

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

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

19 2. For credits generated, but not used, on or after January 1,
20 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
21 election, directly to the taxpayer eighty-five percent (85%) of the
22 face amount of such credits. The direct refund of the credits
23 pursuant to this paragraph shall be available to all taxpayers,
24 including, without limitation, pass-through entities and taxpayers

1 subject to Section 2355 of this title, but shall not be available to
2 any entities falling within the provisions of subsection E of this
3 section. The amount of any direct refund of credits actually
4 received at the eighty-five percent (85%) level by the taxpayer
5 pursuant to this paragraph shall not be subject to the tax imposed
6 by Section 2355 of this title. If the pass-through entity does not
7 file a claim for a direct refund, the pass-through entity shall
8 allocate the credit to one or more of the shareholders, partners or
9 members of the pass-through entity; provided, the total of all
10 credits refunded or allocated shall not exceed the amount of the
11 credit or refund to which the pass-through entity is entitled. For
12 the purposes of this paragraph, "pass-through entity" means a
13 corporation that for the applicable tax year is treated as an S
14 corporation under the Internal Revenue Code of 1986, as amended,
15 general partnership, limited partnership, limited liability
16 partnership, trust or limited liability company that for the
17 applicable tax year is not taxed as a corporation for federal income
18 tax purposes.

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

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

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

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

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

16 H. No credit otherwise authorized by the provisions of this
17 section may be claimed for any event, transaction, investment,
18 expenditure or other act occurring on or after the moratorium period
19 which began on July 1, 2010, ~~for which the credit would otherwise be~~
20 ~~allowable until the provisions of this subsection shall cease to be~~
21 ~~operative on July 1, 2011.~~ Beginning and ended on June 30, 2011;
22 provided; beginning on July 1, 2011, the credit authorized by this
23 section may be claimed for any event, transaction, investment,
24 expenditure or other act occurring on or after July 1, 2010,

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

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

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