

1 STATE OF OKLAHOMA

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

3 SENATE BILL 95

By: Bergstrom

4
5
6 AS INTRODUCED

7 An Act relating to income tax; amending 68 O.S. 2011,
8 Section 2357.32A, as amended by Section 2, Chapter
9 371, O.S.L. 2013 (68 O.S. Supp. 2016, Section
10 2357.32A), which relates to tax credits for
11 electricity generated by zero emission facilities;
12 providing exception to amount of credit which may be
13 used or refunded; limiting total amount of certain
14 credit which may be used or refunded during specified
15 time period; providing for annual adjustment of total
16 amount of credits subject to certain limit based on
17 specified calculation and prescribing applicable
18 methodology; providing exception to certain limit
19 under specified circumstances; and providing an
20 effective date.

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

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

Section 2357.32A. A. Except as otherwise provided in
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, 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 the amount of the credit for the electricity generated on or after
8 January 1, 2007, shall be fifty one-hundredths of one cent (\$0.0050)
9 for each kilowatt-hour of electricity generated by zero-emission
10 facilities, except as otherwise provided in subsection I of this
11 section.

12 C. Credits may be claimed with respect to electricity generated
13 on or after January 1, 2003, during a ten-year period following the
14 date that the facility is placed in operation on or after June 4,
15 2001.

16 D. 1. 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, the Oklahoma Tax Commission shall refund, at the taxpayer's
24 election, directly to the taxpayer eighty-five percent (85%) of the

1 face amount of such credits, except as otherwise provided in
2 subsection I of this section. 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, except as otherwise provided in subsection I of this
16 section. Any person to whom or to which a tax credit is transferred
17 shall have only such rights to claim and use the credit under the
18 terms that would have applied to the entity by whom or by which the
19 tax credit was transferred. The provisions of this subsection shall
20 not limit the ability of a tax credit transferee to reduce the tax
21 liability of the transferee, regardless of the actual tax liability
22 of the tax credit transferor, for the relevant taxable period. The
23 transferor initially allowed the credit and any subsequent
24 transferees shall jointly file a copy of any written transfer

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

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

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

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

11 I. 1. For tax years beginning on or after January 1, 2017, the
12 amount of credits available as an offset or received as a direct
13 refund in a taxable year shall be limited to the percentage
14 calculated by the Tax Commission pursuant to the provisions of
15 paragraphs 2 and 3 of this subsection.

16 2. The total amount of credits authorized by this section used
17 to offset tax or received as a direct refund shall be adjusted
18 annually to limit the annual amount of credits to Twenty-five
19 Million Dollars (\$25,000,000.00). The Tax Commission shall annually
20 calculate and publish a percentage by which the credits authorized
21 by this section shall be reduced so the total amount of credits used
22 to offset tax or received as a direct refund does not exceed Twenty-
23 five Million Dollars (\$25,000,000.00) per year. The formula to be
24 used for the percentage adjustment shall be Twenty-five Million

1 Dollars (\$25,000,000.00) divided by the credits used to offset tax
2 or received as a direct refund in the second preceding year.

3 3. Pursuant to paragraph 2 of this subsection, in the event the
4 total tax credits authorized by this section exceed Twenty-five
5 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
6 Commission shall permit any excess over Twenty-five Million Dollars
7 (\$25,000,000.00) but shall factor such excess into the percentage
8 adjustment formula for subsequent years.

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

10

11 56-1-102 JCR 1/5/2017 6:10:06 PM

12

13

14

15

16

17

18

19

20

21

22

23

24