

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 983

By: Bergstrom

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5
6 AS INTRODUCED

7 An Act relating to income tax; amending 68 O.S. 2011,
8 Section 2357.32A, as last amended by Section 1,
9 Chapter 44, O.S.L. 2017 (68 O.S. Supp. 2017, Section
10 2357.32A), which relates to tax credits for
11 electricity generated by zero-emission facilities;
12 limiting time period during which certain credits may
13 be claimed; providing an effective date; and
14 declaring an emergency.

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 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
18 2017, 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, and with respect to electricity
6 generated by wind for any facility placed in operation not later
7 than July 1, 2017, which utilizes eligible renewable resources as
8 its fuel source. The construction and operation of such facilities
9 shall result in no pollution or emissions that are or may be harmful
10 to the environment, pursuant to a determination by the Department of
11 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 or with respect to electricity generated by wind for any facility
8 placed in operation not later than July 1, 2017, the amount of the
9 credit for the electricity generated on or after January 1, 2007,
10 shall be fifty one-hundredths of one cent (\$0.0050) for each
11 kilowatt-hour of electricity generated by zero-emission facilities.

12 C. Credits may be claimed with respect to electricity generated
13 on or after January 1, 2003, either during a ten-year period
14 following the date that the facility is placed in operation ~~on or~~
15 ~~after June 4, 2001,~~ or for electricity generated before July 1,
16 2022, whichever occurs earlier.

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

23 2. For credits generated, but not used, on or after January 1,
24 2014, 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 SECTION 2. This act shall become effective July 1, 2018.

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

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