

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 1451

By: Hobson of the Senate

and

Miller (Doug), Nance,  
Balkman, Smith (Hopper),  
Greenwood, Coleman and  
Askins of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; allowing income tax credit to manufacturers of advanced small wind turbines; defining terms; specifying amount of credit; specifying qualifications for receipt of credit; providing for carryforward and transferability of credits; requiring certain filing with Oklahoma Tax Commission; allowing Tax Commission to promulgate certain rules; providing for treatment and claiming of credit; providing certain time limitations thereon; amending 68 O.S. 2001, Section 2357.32A, which relates to income tax credits; modifying tax years for which certain income tax credit allowed; modifying tax years in which certain income tax credit may be claimed; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.32B of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning on or after January 1, 2003, and ending on or before December 31, 2005, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes to Oklahoma manufacturers of advanced small wind turbines. As used in this section:

1. "Oklahoma manufacturers" means manufacturers who operate facilities located in this state which have the capability to

manufacture small wind turbine products, including rotor blade and alternator fabrication; and

2. "Advanced small wind turbines" means wind turbines that meet the following requirements:

- a. have a rated capacity of at least one kilowatt (1 kw) but not greater than fifty kilowatts (50 kw),
- b. incorporate advanced technologies such as new airfoils, new generators, and new power electronics, variable speed,
- c. at least one unit of each model has been installed for testing at the US-DOE National Wind Technology Center, and
- d. comply with appropriate interconnection safety standards of the Institute of Electrical and Electronics Engineers applicable to small wind turbines.

B. The amount of the credit shall be based on the square footage of rotor swept area of advanced small wind turbines manufactured in this state. The amount of the credit shall be Twenty-five Dollars (\$25.00) per square foot produced in calendar year 2003, Twelve Dollars and fifty cents (\$12.50) per square foot produced in calendar year 2004, and Six Dollars and twenty-five cents (\$6.25) per square foot produced in calendar year 2005.

C. The companies claiming the credit allowed by this section shall agree in advance to allow their production and claims to be audited by the Oklahoma Tax Commission and they must be able to show that they have made economic development investments in this state over the period of time for which the credit was claimed that exceed the amount of credit claimed.

D. If the amount of the credits allowed pursuant to this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of

the credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years.

E. The amount of the credit allowed but not used shall be freely transferable at any time during the ten (10) years following the year of qualification. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period. The transferor originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number of the parties to the transfer, the amount of the credit being transferred, the year the credit was originally allowed to the transferor and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules that unduly restrict or hinder the transfers of such tax credit.

F. For advanced small wind turbines produced in a calendar year, the tax credit allowed by the provisions of this section, upon election of the taxpayer, shall be treated and may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 2355 of Title 68 of the Oklahoma Statutes on or after July 1 of the following calendar year.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.32A, is amended to read as follows:

Section 2357.32A A. For tax years beginning on or after ~~January 1, 2002~~ January 1, 2003, there shall be allowed a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title to a taxpayer for the taxpayer's production and sale to an unrelated person of electricity generated by zero-emission facilities located in this state. As used in this ~~act~~ section:

1. "Electricity generated by zero-emission facilities" means electricity that is exclusively produced by any facility located in this state with a rated production capacity of fifty megawatts (50 mw) or greater, constructed for the generation of electricity and placed in operation after ~~the effective date of this act~~ June 4, 2001, which utilizes eligible renewable resources as its fuel source. The construction and operation of such facilities shall result in no pollution or emissions that are or may be harmful to the environment, pursuant to a determination by the Department of Environmental Quality; and

2. "Eligible renewable resources" means resources derived from:
- a. wind,
  - b. moving water,
  - c. sun, or
  - d. geothermal energy.

B. For electricity generated on or after January 1, 2003, but prior to January 1, 2004, the amount of the credit shall be seventy-five one hundredths of one cent (\$0.0075) for each kilowatt-hour of electricity generated by zero-emission facilities. For electricity generated on or after January 1, 2004, but prior to January 1, 2007, the amount of the credit shall be fifty one hundredths of one cent (\$0.0050) per kilowatt-hour for electricity generated by zero-emission facilities. For electricity generated on or after January 1, 2007, but prior to January 1, 2012, the amount of the credit

shall be twenty-five one hundredths of one cent (\$0.0025) per kilowatt-hour of electricity generated by zero-emission facilities.

C. Credits may be claimed ~~for~~ with respect to electricity generated on or after January 1, 2003, during a ten-year period of ~~ten (10) years~~ following the date that the facility is placed in operation on ~~and~~ or after ~~the effective date of this act~~ June 4, 2001.

D. If the credit allowed pursuant to this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of the credit allowed but not used in any tax year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years.

E. Any nontaxable entities, including agencies of the State of Oklahoma or political subdivisions thereof, shall be eligible to establish a transferable tax credit in the amount provided in subsection B of this section. Such tax credit shall be a property right available to ~~said~~ a state agency or political subdivision of this state to transfer or sell to a taxable entity, whether individual or corporate, who shall have an actual or anticipated income tax liability under Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title. These tax credit provisions are authorized as an incentive to the State of Oklahoma, its agencies and political subdivisions to encourage the expenditure of funds in the development, construction and utilization of electricity from zero-emission facilities as defined in subsection A of this section.

F. The amount of the credit allowed, but not used, shall be freely transferable at any time during the ten (10) years following the year of qualification. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of

this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee, regardless of the actual tax liability of the tax credit transferor, for the relevant taxable period. The transferor initially allowed the credit and any subsequent transferees shall jointly file a copy of any written transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number or social security number of the parties to the transfer, the amount of the credit being transferred, the year the credit was originally allowed to the transferor, and the tax year or years for which the credit may be claimed. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of the tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules that unduly restrict or hinder the transfers of such tax credit. The tax credit allowed by this section, upon the election of the taxpayer, may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 1803 or Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title.

G. For electricity generation produced and sold in a calendar year, the tax credit allowed by the provisions of this section, upon election of the taxpayer, shall be treated and may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title on or after July 1 of the following calendar year.

SECTION 3. This act shall become effective November 1, 2002.

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