

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 440

By: Easley

AS INTRODUCED

An Act relating to energy and environment; providing certain tax credit for construction, operation and production of electricity from certain zero-emission facilities; defining terms; stating amount of tax credit; providing certain time period for use of credits; providing for transfer of credits; requiring certain written agreement; authorizing the Oklahoma Tax Commission to promulgate rules; providing certain tax credit for taxpayers purchasing zero-emission electric power; stating amount of tax credit; providing certain time period for use of credits; requiring certain written agreement; authorizing the Oklahoma Tax Commission to promulgate rules; stating eligibility for certain nontaxable entities; providing for certain tax credits to be transferable; 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 2357.32A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning on or after January 1, 2001, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes to an entity granted a permit to construct, operate, and produce electricity from zero-emission facilities. As used in this act:

1. "Electricity from zero-emission facilities" means electricity that is exclusively produced by facilities placed in operation after the effective date of this act utilizing renewable resources and such production results in no pollution or emissions that are or may be harmful to the environment, as certified by the Department of Environmental Quality; and

2. "Renewable resources" means resources that are naturally regenerated and include, but are not limited to:

- a. sun,
- b. wind,
- c. moving water,
- d. geothermal energy,
- e. landfill and mine-based methane gas, and
- f. waste and sustainable bio-mass.

B. The amount of the credit shall be two and one-half cents (\$0.025) for each kilowatt hour of electricity produced by such entity from a zero-emission facility located in this state during the fifteen-year period beginning on the date the facility is placed in service and electricity is produced for retail consumption.

C. 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 taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years.

D. 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 Oklahoma 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.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.33B of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning on or after January 1, 2001, there shall be allowed a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes to a taxpayer for purchases of electricity from zero-emission facilities as defined in Section 1 of this act.

B. The amount of the credit shall be two and one-half cents (\$0.025) for each kilowatt hour of electricity purchased which was produced by zero-emission facilities.

C. 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.

D. 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 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. These tax credit provisions are authorized as an incentive to the State of Oklahoma, its agencies and political subdivisions to encourage expenditure of funds in the utilization of electricity from zero-emission facilities as defined in Section 1 of this act.

E. The amount of the credit authorized by the provisions of subsection D of this section shall be freely transferable at any time 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 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.

F. Only tax credits allowed for nontaxable entities as authorized by subsection D of this section shall be transferable. Tax credits allowed for individual taxpayers pursuant to subsection A of this section shall not be transferable.

SECTION 3. This act shall become effective November 1, 2001.

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