STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2512 By: Terrill

AS INTRODUCED

An Act relating to revenue and taxation; authorizing income tax credits for installation of wind or photovoltaic energy systems on residential or nonresidential property; specifying percentage of credit based upon taxable year in which costs for equipment incurred; authorizing income tax credits for installation of geothermal heating and cooling systems on residential or nonresidential property; specifying percentage of credit based upon taxable year in which costs for equipment incurred; authorizing carryover of credits; requiring itemized accounting of costs; prescribing procedures for use of cost information; requiring rating of wind turbine devices; requiring rating of photovoltaic devices; providing for certain standards applicable to energy equipment and requiring purchasers to be provided information prior to purchase; requiring ratings for geothermal and cooling system equipment; requiring minimum limited warranty period; amending 68 O.S. 2001, Section 1357, as last amended by Section 14, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005, Section 1357), which relates to sales tax exemptions; providing sales tax exemption for equipment for which income tax credits may be claimed; providing for codification; providing effective dates; and declaring an emergency.

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 2357.204 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. 1. For all taxable years beginning after December 31, 2005, any taxpayer, having a wind and/or photovoltaic energy system installed on residential property in this state, may claim a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes. In determining the amount of credit allowed, the taxpayer may include in the total costs of the wind and/or photovoltaic

energy system such direct expenses incurred for equipment, construction, and installation of the system, less all seller rebates and remunerations of any type resulting from the installation.

2. The following percentage of the qualified wind and/or photovoltaic energy system expenditures shall be allowed as a credit under the provisions of this subsection for the taxable year in which the cost is incurred:

Taxable Year	Percentage of Expenditure
a. 2006	40%
b. 2007	40%
c. 2008	40%
d. 2009	40%
e. 2010	40%

B. 1. For all taxable years beginning after December 31, 2005, any taxpayer, having a geothermal heating and cooling system installed on residential property in this state, may claim a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes. In determining the amount of credit allowed, the taxpayer may include in the total costs of the geothermal heat and air system such direct expenses incurred for equipment, construction, and installation of the system, less all seller rebates and remunerations of any type resulting from the installation.

2. The following percentage of the qualified geothermal heating and cooling system expenditures shall be allowed as a credit under the provisions of this subsection for the taxable year in which the cost is incurred:

Taxable Year	Percentage of Expenditure
a. 2006	10%
b. 2007	10%
c. 2008	10%
d. 2009	10%

e.	2010	10%

C. If the tax credit allowable to the taxpayer for the cost of a wind and/or photovoltaic energy system or geothermal heating and cooling system pursuant to subsection A or B of this section exceeds the taxes due on the income of the taxpayer, the amount of the claim not used as an offset against the income taxes of a taxable year may be carried forward as a credit against subsequent income tax liabilities for up to ten (10) years.

D. 1. For all taxable years beginning after December 31, 2005, any taxpayer, having a wind and/or photovoltaic energy system installed on nonresidential property in this state, may claim a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes. In determining the amount of credit allowed, the taxpayer may include in the total costs of the wind and/or photovoltaic energy system such direct expenses incurred for equipment, construction, and installation of the system, less all seller rebates and remunerations of any type resulting from the installation.

2. The following percentage of the qualified wind and/or photovoltaic energy system expenditures shall be allowed as a credit under the provisions of this subsection for the taxable year in which the cost is incurred:

	Taxable Year	Percentage of Expenditure
a.	2006	40%
b.	2007	40%
c.	2008	40%
d.	2009	40%
e.	2010	40%

3. For the purposes of qualifying for the tax credit provided for in this subsection, more than fifty percent (50%) of the energy produced by the wind and/or photovoltaic energy system must be utilized on the premises of the installation and the wind turbines

and solar arrays may not exceed one hundred kilowatts (100 kW) in nameplate power rating.

E. 1. For all taxable years beginning after December 31, 2005, any taxpayer, having a geothermal heating and cooling system installed on nonresidential property in this state, may claim a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes. In determining the amount of credit allowed, the taxpayer may include in the total costs of the geothermal heat and air system such direct expenses incurred for equipment, construction, and installation of the system, less all seller rebates and remunerations of any type resulting from the installation.

2. The following percentage of the qualified geothermal heating and cooling system expenditures shall be allowed as a credit under the provisions of this subsection for the taxable year in which the cost is incurred:

Taxable Year	Percentage of Expenditure
a. 2006	10%
b. 2007	10%
c. 2008	10%
d. 2009	10%
e. 2010	10%

3. If the tax credit allowable to the taxpayer for the cost of a wind and/or photovoltaic energy system or geothermal heating and cooling system pursuant to subsection C or D of this section exceeds the taxes due on the income of the taxpayer, the amount of the claim not used as an offset against the income taxes of a taxable year may be carried forward as a credit against subsequent income tax liabilities for up to ten (10) years.

F. An itemized accounting of the cost and an affidavit attesting to the facts thereof shall be furnished to the taxpayer by the supplier of the wind and/or photovoltaic energy system or

geothermal heating and cooling system. The itemized accounting shall include the amounts properly attributable to the cost of acquisition, construction, and installation of the renewable energy system. The taxpayer shall include a copy of said accounting when claiming either credit provided for in this section.

G. Wind turbines shall be rated in accordance with the latest performance rating standards published or endorsed by the American Wind Energy Association (AWEA) and the manufacturer must be a member in good standing of AWEA or the Small Wind Industry Council (SWIC) in order to qualify for the credits provided for in this section. Photovoltaic modules shall be rated in accordance with the latest United States Department of Energy (US-DOE) or Solar Energy Industries Association (SEIA) endorsed performance rating standard and the manufacturer must be a member in good standing of SEIA in order to qualify for the credits provided for in this section.

H. For wind and/or solar energy systems, product performance specifications conforming to either AWEA or DOE/SEIA standards, as appropriate, for renewable energy generating equipment shall be provided to potential purchasers prior to any qualifying purchase. Wind and/or solar energy resource information, as most recently published by the U.S. Department of Energy or the State of Oklahoma, for the state shall also be provided to potential purchasers prior to any qualifying purchase pursuant to the provisions of this section.

I. Geothermal heating and cooling systems shall be rated in accordance with the latest performance rating standards published or endorsed by the American Refrigeration Institute (ARI) and the manufacturer and installing contractor must be a member in good standing of the International Ground Source Heat Pump Association (IGSHPA) in order to qualify for the credits provided for in this section.

J. For the purpose of either credit provided for in this section, qualifying wind and/or photovoltaic energy systems or geothermal heat and air systems shall carry, as a minimum, a five-year limited warranty covering defects in design and manufacture. For other than owner-installed systems, qualifying renewable energy systems shall also carry, as a minimum, a five-year limited warranty covering defects in installation.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 1357, as last amended by Section 14, Chapter 479, O.S.L. 2005 (68 O.S. Supp. 2005, Section 1357), is amended to read as follows:

Section 1357. There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. Transportation of school pupils to and from elementary schools or high schools in motor or other vehicles;

2. Transportation of persons where the fare of each person does not exceed One Dollar ($1.00), or local transportation of persons within the corporate limits of a municipality except by taxicabs;

3. Sales for resale to persons engaged in the business of reselling the articles purchased, whether within or without the state, provided that such sales to residents of this state are made to persons to whom sales tax permits have been issued as provided in Section 1350 et seq. of this title. This exemption shall not apply to the sales of articles made to persons holding permits when such persons purchase items for their use and which they are not regularly engaged in the business of reselling; neither shall this exemption apply to sales of tangible personal property to peddlers, solicitors and other salespersons who do not have an established place of business and a sales tax permit. The exemption provided by this paragraph shall apply to sales of motor fuel or diesel fuel to a Group Five vendor, but the use of such motor fuel or diesel fuel by the Group Five vendor shall not be exempt from the tax levied by Section 1350 et seq. of this title. The purchase of motor fuel or

diesel fuel is exempt from sales tax when the motor fuel is for shipment outside this state and consumed by a common carrier by rail in the conduct of its business. The sales tax shall apply to the purchase of motor fuel or diesel fuel in Oklahoma by a common carrier by rail when such motor fuel is purchased for fueling, within this state, of any locomotive or other motorized flanged wheel equipment;

4. Sales of advertising space in newspapers and periodicals and billboard advertising service, and any advertising through the electronic media, including radio, television and cable television, and the servicing of any advertising devices;

5. Eggs, feed, supplies, machinery and equipment purchased by persons regularly engaged in the business of raising worms, fish, any insect or any other form of terrestrial or aquatic animal life and used for the purpose of raising same for marketing. This exemption shall only be granted and extended to the purchaser when the items are to be used and in fact are used in the raising of animal life as set out above. Each purchaser shall certify, in writing, on the invoice or sales ticket retained by the vendor that the purchaser is regularly engaged in the business of raising such animal life and that the items purchased will be used only in such business. The vendor shall certify to the Oklahoma Tax Commission that the price of the items has been reduced to grant the full benefit of the exemption. Violation hereof by the purchaser or vendor shall be a misdemeanor;

6. Sale of natural or artificial gas and electricity, and associated delivery or transmission services, when sold exclusively for residential use. Provided, this exemption shall not apply to any sales tax levied by a city or town, or a county, or any other jurisdiction in this state;

7. In addition to the exemptions authorized by Section 1357.6 of this title, sales of drugs sold pursuant to a prescription

written for the treatment of human beings by a person licensed to prescribe the drugs, and sales of insulin and medical oxygen. Provided, this exemption shall not apply to over-the-counter drugs;

8. Transfers of title or possession of empty, partially filled, or filled returnable oil and chemical drums to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty, partially filled, or filled returnable oil drums;

9. Sales of one-way utensils, paper napkins, paper cups, disposable hot containers and other one-way carry out materials to a vendor of meals or beverages;

10. Sales of food or food products for home consumption which are purchased in whole or in part with coupons issued pursuant to the federal food stamp program as authorized by Sections 2011 through 2029 of Title 7 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the state in the federal food stamp program;

11. Sales of food or food products, or any equipment or supplies used in the preparation of the food or food products to or by an organization which:

a. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which provides and delivers prepared meals for home consumption to elderly or homebound persons as part of a program commonly known as “Meals on Wheels” or “Mobile Meals”, or

b. is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26

U.S.C., Section 501(c)(3), and which receives federal funding pursuant to the Older Americans Act of 1965, as amended, for the purpose of providing nutrition programs for the care and benefit of elderly persons;

12. Sales of tangible personal property or services to or by organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which are primarily involved in the collection and distribution of food and other household products to other organizations which are exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), which facilitate the distribution of such products to the needy, except sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business;

13. Sales of tangible personal property or services to children's homes which are located on church-owned property and are operated by organizations exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3);

14. Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility. For purposes of this paragraph, "qualified aircraft maintenance or manufacturing facility" means a new or expanding facility primarily engaged in aircraft repair, building or rebuilding whether or not on a factory basis, whose total cost of construction exceeds the sum of Five Million Dollars ($5,000,000.00) and which employs at least two hundred fifty (250) new full-time-equivalent employees, as certified by the Oklahoma Employment Security Commission, upon completion of the facility. In order to qualify for the exemption provided for by this paragraph, the cost

of the items purchased by the qualified aircraft maintenance or manufacturing facility shall equal or exceed the sum of Two Million Dollars ($2,000,000.00);

15. Sales of tangible personal property consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of this section. For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of such a facility shall be considered sales made to a qualified aircraft maintenance or manufacturing facility;

16. Sales of any interstate telecommunications services which:

a. entitle the subscriber to inward or outward calling respectively between a station associated with an access line in the local telephone system area or a station directly connected to any interexchange carrier's facilities and telephone or radiotelephone stations in diverse geographical locations specified by the subscriber, or

b. entitle the subscriber to private communications services which allow exclusive or priority use of a communications channel or group of channels between exchanges;

17. Sales of railroad track spikes manufactured and sold for use in this state in the construction or repair of railroad tracks, switches, sidings and turnouts;

18. Sales of aircraft and aircraft parts provided such sales occur at a qualified aircraft maintenance facility. As used in this paragraph, "qualified aircraft maintenance facility" means a facility operated by an air common carrier at which there were employed at least two thousand (2,000) full-time-equivalent

employees in the preceding year as certified by the Oklahoma Employment Security Commission and which is primarily related to the fabrication, repair, alteration, modification, refurbishing, maintenance, building or rebuilding of commercial aircraft or aircraft parts used in air common carriage. For purposes of this paragraph, "air common carrier" shall also include members of an affiliated group as defined by Section 1504 of the Internal Revenue Code, 26 U.S.C., Section 1504;

19. Sales of machinery and equipment purchased and used by persons and establishments primarily engaged in computer services and data processing:

a. as defined under Industrial Group Numbers 7372 and 7373 of the Standard Industrial Classification (SIC) Manual, latest version, which derive at least fifty percent (50%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer, and

b. as defined under Industrial Group Number 7374 of the SIC Manual, latest version, which derive at least eighty percent (80%) of their annual gross revenues from the sale of a product or service to an out-of-state buyer or consumer.

Eligibility for the exemption set out in this paragraph shall be established, subject to review by the Tax Commission, by annually filing an affidavit with the Tax Commission stating that the facility so qualifies and such information as required by the Tax Commission. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be to an out-of-state buyer or consumer;

20. Sales of prosthetic devices to an individual for use by such individual. For purposes of this paragraph, "prosthetic

device" shall have the same meaning as provided in Section 1357.6 of this title, but shall not include corrective eye glasses, contact lenses or hearing aids;

21. Sales of tangible personal property or services to a motion picture or television production company to be used or consumed in connection with an eligible production. For purposes of this paragraph, "eligible production" means a documentary, special, music video, or a television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series filmed or taped for network or national or regional syndication or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast. The provisions of this paragraph shall apply to sales occurring on or after July 1, 1996;

22. Sales of diesel fuel sold for consumption by commercial vessels, barges and other commercial watercraft;

23. Sales of tangible personal property or services to tax-exempt independent nonprofit biomedical research foundations that provide educational programs for Oklahoma science students and teachers and to tax-exempt independent nonprofit community blood banks headquartered in this state;

24. Effective May 6, 1992, sales of wireless telecommunications equipment to a vendor who subsequently transfers the equipment at no charge or for a discounted charge to a consumer as part of a promotional package or as an inducement to commence or continue a contract for wireless telecommunications services;

25. Effective January 1, 1991, leases of rail transportation cars to haul coal to coal-fired plants located in this state which generate electric power;

26. Beginning July 1, 2002, sales of aircraft engine repairs, modification, and replacement parts, sales of aircraft frame repairs and modification, aircraft interior modification, and paint, and

sales of services employed in the repair, modification and replacement of parts of aircraft engines, aircraft frame and interior repair and modification, and paint. The exemption provided by this paragraph shall be limited to aircraft repairs, modification, and replacement parts for aircraft weighing more than nine thousand (9,000) pounds gross take-off weight and less than three hundred thousand (300,000) pounds gross take-off weight and which aircraft are brought into this state exclusively for such repairs or modification. The exemption provided by this paragraph shall be limited to repairs or modifications made by an aircraft repair facility. As used in this paragraph, the term "aircraft" shall have the same meaning as such term is defined in Section 6001 of this title. The term "aircraft repair facility" shall mean any facility which either is an aircraft manufacturer's authorized service facility or a facility which repairs, modifies or replaces aircraft parts in which more than Three Million Dollars ($3,000,000.00) was invested to establish the new facility or expand an existing facility and which construction was commenced or was in progress on or after July 1, 1999; provided, amounts expended for research and development as defined in Sections 41 and 174 of the Internal Revenue Code with respect to modification of aircraft shall be included as amounts invested to establish a new facility or expand an existing facility for purposes of the investment threshold specified herein;

27. Sales of materials and supplies to the owner or operator of a ship, motor vessel or barge that is used in interstate or international commerce if the materials and supplies:

a. are loaded on the ship, motor vessel or barge and used in the maintenance and operation of the ship, motor vessel or barge, or

b. enter into and become component parts of the ship, motor vessel or barge;

28. Sales of tangible personal property made at estate sales at which such property is offered for sale on the premises of the former residence of the decedent by a person who is not required to be licensed pursuant to the Transient Merchant Licensing Act, Section 1601 et seq. of Title 19 of the Oklahoma Statutes, or who is not otherwise required to obtain a sales tax permit for the sale of such property pursuant to the provisions of Section 1364 of this title; provided:

a. such sale or event may not be held for a period exceeding three (3) consecutive days,

b. the sale must be conducted within six (6) months of the date of death of the decedent, and

c. the exemption allowed by this paragraph shall not be allowed for property that was not part of the decedent's estate;

29. Beginning January 1, 2004, sales of electricity and associated delivery and transmission services, when sold exclusively for use by an oil and gas operator for reservoir dewatering projects and associated operations commencing on or after July 1, 2003, in which the initial water-to-oil ratio is greater than or equal to five-to-one water-to-oil, and such oil and gas development projects have been classified by the Corporation Commission as a reservoir dewatering unit;

30. Sales of prewritten computer software that is delivered electronically. For purposes of this paragraph, "delivered electronically" means delivered to the purchaser by means other than tangible storage media;

31. Sales of modular dwelling units when built at a production facility and moved in whole or in parts, to be assembled on-site, and permanently affixed to the real property and used for residential or commercial purposes. The exemption provided by this paragraph shall equal forty-five percent (45%) of the total sales

price of the modular dwelling unit. For purposes of this paragraph, "modular dwelling unit" means a structure that is not subject to the motor vehicle excise tax imposed pursuant to Section 2103 of this title; ~~and~~

32. Sales of intrastate charter and tour bus transportation. As used in this paragraph, "intrastate charter and tour bus transportation" means the transportation of persons from one location in this state to another location in this state in a motor vehicle which has been constructed in such a manner that it may lawfully carry more than eighteen persons, and which is ordinarily used or rented to carry persons for compensation. Provided, this exemption shall not apply to regularly scheduled bus transportation for the general public; and

33. Sales of tangible personal property that consists of qualified renewable energy equipment for which the income tax credit authorized by Section 1 of this act may be claimed.

SECTION 3. Section 1 of this act shall become effective January 1, 2006.

SECTION 4. Section 2 of this act shall become effective July 1, 2006.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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