STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 2049 By: Jackson

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 2357.32A, which relates to zero-emission facilities; reducing amount of credit for certain time period; requiring refund of credit after certain date; providing refund procedures; specifying eligibility for refund; prohibiting certain allocation; exempting refund from taxation; providing penalty for late payment of refund; modifying time period during which credit may be transferred; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, 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 generated

by zero-emission facilities located in this state. As used in this 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 one megawatt (1 mw) or greater, constructed for the generation of electricity and placed in operation after 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 facilities placed in operation on or after January 1, 2003, and before January 1, 2007, the amount of the credit for the 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. For facilities placed in operation on or after January 1, 2007, and before January 1, ~~2016~~ 2021, the amount of the credit for the electricity generated ~~by these facilities the amount of the credit~~ on or after January 1, 2007, but prior to January 1, 2014, shall be fifty one-hundredths of one cent ($0.0050) for each kilowatt-hour of electricity generated by zero-emission facilities. For electricity generated on or after January 1, 2014, but prior to January 1, 2021, the amount of the credit shall be forty one-hundredths of one cent ($0.0040) for each kilowatt-hour of electricity generated by zero-emission facilities.

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

D. ~~If~~ For credits generated prior to January 1, 2014, 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. For credits generated on or after January 1, 2014, upon the election of the taxpayer, the Oklahoma Tax Commission shall refund directly to the taxpayer the amount of such credits pursuant to the following procedures:

1. Taxpayers must file an appropriate form, to be designed by the Tax Commission, on or before the twentieth day of the second month after the taxpayer's tax year ends reporting the amount of credits generated during the applicable tax year; and

2. Within sixty (60) days after receipt of the appropriate form, the Tax Commission must act by either issuing the refund or disputing the credits claimed by the taxpayer.

This direct refund of the credits shall be available to both taxpayers subject to Section 2355 of this title as well as other taxpayers, including pass-through entities; however, this direct refund shall not be available to any entities falling within subsection E of this section. Pass-through entities may not allocate any credits generated on or after January 1, 2014, to a shareholder, partner or member. The amount of any refund received by taxpayers pursuant to this section shall not be subject to the tax imposed by Section 2355 of this title. If the Tax Commission does not dispute a refund claim and a refund is not paid to the taxpayer within sixty (60) days after receipt of the appropriate form by the Tax Commission, then the Tax Commission shall pay

interest on the refund at the rate of one and one-quarter percent (1 1/4%) per month.

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 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 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~~ For credits generated prior to January 1, 2014, 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 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 this title on or after July 1 of the following calendar year.

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

SECTION 2. This act shall become effective January 1, 2014.

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