

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1554

By: Sears

AS INTRODUCED

An Act relating to revenue and taxation; defining terms; authorizing income tax credit for electricity produced from certain zero emission facilities; prescribing tax credit amounts based upon taxable years; providing tax credits not transferable; authorizing allocation of tax credits based upon certain tax treatment pursuant to the Internal Revenue Code of 1986, as amended; providing tax credits refundable at the election of the taxpayer; prohibiting carryover of tax credits; prohibiting use of credits with respect to certain tax years after specified date; amending 68 O.S. 2011, Section 2357.32A, as amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2014, Section 2357.32A), which relates to tax credits for electrical power generation by zero emission facilities; specifying last taxable year for which credits may be used or refunds made; providing exception; imposing limitation upon use of tax credits with respect to electricity generated from certain zero emission facilities; amending 68 O.S. 2011, Section 2357.4, which relates to tax credits for investment in certain property or for creation of employment; imposing restriction on ability to claim tax credit based upon use of zero emission facility tax credits; specifying extent of limitation based upon certain qualified personal property or new direct jobs; providing for codification; and providing an effective date.

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

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

4 A. As used in this section:

5 1. "Electricity generated by zero-emission facilities" means
6 electricity that is exclusively produced by any facility located in
7 this state with a rated production capacity of one megawatt (1 MW)
8 or greater, constructed for the generation of electricity on or
9 after January 1, 2016, and first placed in operation on or after
10 January 1, 2016, which utilizes eligible renewable resources as its
11 fuel source. The construction and operation of such facilities
12 shall result in no pollution or emissions that are or may be harmful
13 to the environment, pursuant to a determination by the Department of
14 Environmental Quality; and

15 2. "Eligible renewable resources" means resources derived from:

- 16 a. wind,
- 17 b. moving water,
- 18 c. sun, or
- 19 d. geothermal energy.

20 B. For taxable years beginning on or after January 1, 2016, and
21 ending not later than December 31, 2020, there shall be allowed a
22 credit against the tax imposed pursuant to Section 2355 of Title 68
23 of the Oklahoma Statutes to a taxpayer for the taxpayer's production
24

1 and sale to an unrelated person of electricity generated by zero-
2 emission facilities located in this state equal to:

3 1. Five-tenths of one cent (\$0.005) per kilowatt hour for
4 electricity generated during calendar year 2016;

5 2. Four-tenths of one cent (\$0.004) per kilowatt hour for
6 electricity generated during calendar year 2017;

7 3. Three-tenths of one cent (\$0.003) per kilowatt hour for
8 electricity generated during calendar year 2018;

9 4. Two-tenths of one cent (\$0.002) per kilowatt hour for
10 electricity generated during calendar year 2019; and

11 5. One-tenth of one cent (\$0.001) per kilowatt hour for
12 electricity generated during calendar year 2020.

13 C. The credits authorized pursuant to the provisions of this
14 section shall not be transferable.

15 D. The credits authorized pursuant to the provisions of this
16 section may be allocated to members of partnerships, shareholders in
17 corporations, members of limited liability companies or other owners
18 of equity interests in a business entity entitled to the credits
19 according to the applicable provisions of the Internal Revenue Code
20 of 1986, as amended, regarding pass-through treatment of profits,
21 losses and tax credits.

22 E. For credits generated, but not used to reduce an income tax
23 liability on an income tax return, after January 1, 2016, the
24 Oklahoma Tax Commission shall refund, at the taxpayer's election,

1 directly to the taxpayer eighty-five percent (85%) of the face
2 amount of such credits. The direct refund of the credits pursuant
3 to this subsection shall be available to all taxpayers, including,
4 without limitation, pass-through entities and taxpayers subject to
5 Section 2355 of Title 68 of the Oklahoma Statutes. The amount of
6 any direct refund of credits actually received at the eighty-five
7 percent (85%) level by the taxpayer pursuant to this subsection
8 shall not be subject to the tax imposed by Section 2355 of Title 68
9 of the Oklahoma Statutes. If the pass-through entity does not file
10 a claim for a direct refund, the pass-through entity shall allocate
11 the credit to one or more of the shareholders, partners or members
12 of the pass-through entity; provided, the total of all credits
13 refunded or allocated shall not exceed the amount of the credit or
14 refund to which the pass-through entity is entitled. For the
15 purposes of this subsection, "pass-through entity" means a
16 corporation that for the applicable tax year is treated as an S
17 corporation under the Internal Revenue Code of 1986, as amended,
18 general partnership, limited partnership, limited liability
19 partnership, trust or limited liability company that for the
20 applicable tax year is not taxed as a corporation for federal income
21 tax purposes.

22 F. The credits authorized by this section may be claimed for
23 use in reducing an income tax liability with respect to each tax
24 year as authorized by subsection B of this section or the credits

1 may be refunded, based upon the election of the taxpayer, with
2 respect to each tax year as authorized by subsection E of this
3 section.

4 G. There shall be no carryover of unused tax credits from one
5 taxable year to any other taxable year. All tax credits authorized
6 pursuant to the provisions of this section shall either be used to
7 reduce an income tax liability on an income tax return, or the tax
8 credits shall be refunded pursuant to the provisions of subsection E
9 of this section.

10 H. The tax credits authorized by the provisions of this section
11 shall not be authorized for any electricity generated by a zero
12 emission facility after December 31, 2020.

13 SECTION 2. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
14 amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2014,
15 Section 2357.32A), is amended to read as follows:

16 Section 2357.32A A. Except as otherwise provided in subsection
17 H of this section, for tax years beginning on or after January 1,
18 2003, and for tax years ending not later than December 31, 2015,
19 there shall be allowed a credit against the tax imposed by Section
20 2355 of Title 68 of the Oklahoma Statutes to a taxpayer for the
21 taxpayer's production and sale to an unrelated person of electricity
22 generated by zero-emission facilities located in this state. As
23 used in this section:
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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, which utilizes eligible renewable
6 resources as its fuel source. The construction and operation of
7 such facilities shall result in no pollution or emissions that are
8 or may be harmful to the environment, pursuant to a determination by
9 the Department of Environmental Quality; and

10 2. "Eligible renewable resources" means resources derived from:

- 11 a. wind,
- 12 b. moving water,
- 13 c. sun, or
- 14 d. geothermal energy.

15 B. For facilities placed in operation on or after January 1,
16 2003, and before January 1, 2007, the amount of the credit for the
17 electricity generated on or after January 1, 2003, but prior to
18 January 1, 2004, shall be seventy-five one-hundredths of one cent
19 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
20 emission facilities. For electricity generated on or after January
21 1, 2004, but prior to January 1, 2007, the amount of the credit
22 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
23 hour for electricity generated by zero-emission facilities. For
24 electricity generated on or after January 1, 2007, but prior to

1 January 1, 2012, the amount of the credit shall be twenty-five one-
2 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
3 generated by zero-emission facilities. For facilities placed in
4 operation on or after January 1, 2007, and before January 1, ~~2021~~
5 2016, the amount of the credit for the electricity generated on or
6 after January 1, 2007, shall be fifty one-hundredths of one cent
7 (\$0.0050) for each kilowatt-hour of electricity generated by zero-
8 emission facilities.

9 C. ~~Credits~~ 1. Except as provided by paragraph 2 of this
10 subsection, credits may be claimed with respect to electricity
11 generated on or after January 1, 2003, during a ten-year period
12 following the date that the facility is placed in operation on or
13 after June 4, 2001, but not later than December 31, 2015.

14 2. The provisions of this subsection shall not be applicable
15 with respect to a zero emission facility which becomes operational
16 and produces electricity for the first time on or after January 1,
17 2016.

18 D. 1. For credits generated prior to January 1, 2014, if the
19 credit allowed pursuant to this section exceeds the amount of income
20 taxes due or if there are no state income taxes due on the income of
21 the taxpayer, the amount of the credit allowed but not used in any
22 tax year may be carried forward as a credit against subsequent
23 income tax liability for a period not exceeding ten (10) years.
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1 2. For credits generated, but not used, on or after January 1,
2 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
3 election, directly to the taxpayer eighty-five percent (85%) of the
4 face amount of such credits. The direct refund of the credits
5 pursuant to this paragraph shall be available to all taxpayers,
6 including, without limitation, pass-through entities and taxpayers
7 subject to Section 2355 of this title, but shall not be available to
8 any entities falling within the provisions of subsection E of this
9 section. The amount of any direct refund of credits actually
10 received at the eighty-five percent (85%) level by the taxpayer
11 pursuant to this paragraph shall not be subject to the tax imposed
12 by Section 2355 of this title. If the pass-through entity does not
13 file a claim for a direct refund, the pass-through entity shall
14 allocate the credit to one or more of the shareholders, partners or
15 members of the pass-through entity; provided, the total of all
16 credits refunded or allocated shall not exceed the amount of the
17 credit or refund to which the pass-through entity is entitled. For
18 the purposes of this paragraph, "pass-through entity" means a
19 corporation that for the applicable tax year is treated as an S
20 corporation under the Internal Revenue Code of 1986, as amended,
21 general partnership, limited partnership, limited liability
22 partnership, trust or limited liability company that for the
23 applicable tax year is not taxed as a corporation for federal income
24 tax purposes.

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

14 F. For credits generated prior to January 1, 2014, the amount
15 of the credit allowed, but not used, shall be freely transferable at
16 any time during the ten (10) years following the year of
17 qualification. Any person to whom or to which a tax credit is
18 transferred shall have only such rights to claim and use the credit
19 under the terms that would have applied to the entity by whom or by
20 which the tax credit was transferred. The provisions of this
21 subsection shall not limit the ability of a tax credit transferee to
22 reduce the tax liability of the transferee, regardless of the actual
23 tax liability of the tax credit transferor, for the relevant taxable
24 period. The transferor initially allowed the credit and any

1 subsequent transferees shall jointly file a copy of any written
2 transfer agreement with the Oklahoma Tax Commission within thirty
3 (30) days of the transfer. The written agreement shall contain the
4 name, address and taxpayer identification number or social security
5 number of the parties to the transfer, the amount of the credit
6 being transferred, the year the credit was originally allowed to the
7 transferor, and the tax year or years for which the credit may be
8 claimed. The Tax Commission may promulgate rules to permit
9 verification of the validity and timeliness of the tax credit
10 claimed upon a tax return pursuant to this subsection but shall not
11 promulgate any rules that unduly restrict or hinder the transfers of
12 such tax credit. The tax credit allowed by this section, upon the
13 election of the taxpayer, may be claimed as a payment of tax, a
14 prepayment of tax or a payment of estimated tax for purposes of
15 Section 1803 or Section 2355 of this title.

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

22 H. No credit otherwise authorized by the provisions of this
23 section may be claimed for any event, transaction, investment,
24 expenditure or other act occurring on or after July 1, 2010, for

1 which the credit would otherwise be allowable until the provisions
2 of this subsection shall cease to be operative on July 1, 2011.
3 Beginning July 1, 2011, the credit authorized by this section may be
4 claimed for any event, transaction, investment, expenditure or other
5 act occurring on or after July 1, 2010, according to the provisions
6 of this section. Any tax credits which accrue during the period of
7 July 1, 2010, through June 30, 2011, may not be claimed for any
8 period prior to the taxable year beginning January 1, 2012. No
9 credits which accrue during the period of July 1, 2010, through June
10 30, 2011, may be used to file an amended tax return for any taxable
11 year prior to the taxable year beginning January 1, 2012.

12 I. The provisions of this section shall not be operative with
13 respect to any electricity produced by a zero emission facility
14 which becomes operational and produces electricity for the first
15 time on or after January 1, 2016. Any tax credits which may be
16 claimed with respect to such zero emission facility may only be
17 computed and claimed as provided by Section 1 of this act.

18 SECTION 3. AMENDATORY 68 O.S. 2011, Section 2357.4, is
19 amended to read as follows:

20 Section 2357.4 A. Except as otherwise provided in subsection F
21 of Section 3658 of this title and in subsection J and K of this
22 section, for taxable years beginning after December 31, 1987, there
23 shall be allowed a credit against the tax imposed by Section 2355 of
24 this title for:

1 1. Investment in qualified depreciable property placed in
2 service during those years for use in a manufacturing operation, as
3 defined in Section 1352 of this title, which has received a
4 manufacturer exemption permit pursuant to the provisions of Section
5 1359.2 of this title or a qualified aircraft maintenance or
6 manufacturing facility as defined in paragraph 14 of Section 1357 of
7 this title in this state or a qualified web search portal as defined
8 paragraph 35 of Section 1357 of this title; or

9 2. A net increase in the number of full-time-equivalent
10 employees engaged in manufacturing, processing or aircraft
11 maintenance in this state including employees engaged in support
12 services.

13 B. Except as otherwise provided in subsection F of Section 3658
14 of this title and in subsection J of this section, for taxable years
15 beginning after December 31, 1998, there shall be allowed a credit
16 against the tax imposed by Section 2355 of this title for:

17 1. Investment in qualified depreciable property with a total
18 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)
19 within three (3) years from the date of initial qualifying
20 expenditure and placed in service in this state during those years
21 for use in the manufacture of products described by any Industry
22 Number contained in Division D of Part I of the Standard Industrial
23 Classification (SIC) Manual, latest revision; or
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1 2. A net increase in the number of full-time-equivalent
2 employees in this state engaged in the manufacture of any goods
3 identified by any Industry Number contained in Division D of Part I
4 of the Standard Industrial Classification (SIC) Manual, latest
5 revision, if the total cost of qualified depreciable property placed
6 in service by the business entity within the state equals or exceeds
7 Forty Million Dollars (\$40,000,000.00) within three (3) years from
8 the date of initial qualifying expenditure.

9 C. The business entity may claim the credit authorized by
10 subsection B of this section for expenditures incurred or for a net
11 increase in the number of full-time-equivalent employees after the
12 business entity provides proof satisfactory to the Oklahoma Tax
13 Commission that the conditions imposed pursuant to paragraph 1 or
14 paragraph 2 of subsection B of this section have been satisfied.

15 D. If a business entity fails to expend the amount required by
16 paragraph 1 or paragraph 2 of subsection B of this section within
17 the time required, the business entity may not claim the credit
18 authorized by subsection B of this section, but shall be allowed to
19 claim a credit pursuant to subsection A of this section if the
20 requirements of subsection A of this section are met with respect to
21 the investment in qualified depreciable property or net increase in
22 the number of full-time-equivalent employees.

23 E. The credit provided for in subsection A of this section, if
24 based upon investment in qualified depreciable property, shall not

1 be allowed unless the investment in qualified depreciable property
2 is at least Fifty Thousand Dollars (\$50,000.00). The credit
3 provided for in subsection A or B of this section shall not be
4 allowed if the applicable investment is the direct cause of a
5 decrease in the number of full-time-equivalent employees. Qualified
6 property shall be limited to machinery, fixtures, equipment,
7 buildings or substantial improvements thereto, placed in service in
8 this state during the taxable year. The taxable years for which the
9 credit may be allowed if based upon investment in qualified
10 depreciable property shall be measured from the year in which the
11 qualified property is placed in service. If the credit provided for
12 in subsection A or B of this section is calculated on the basis of
13 the cost of the qualified property, the credit shall be allowed in
14 each of the four (4) subsequent years. If the qualified property on
15 which a credit has previously been allowed is acquired from a
16 related party, the date such property is placed in service by the
17 transferor shall be considered to be the date such property is
18 placed in service by the transferee, for purposes of determining the
19 aggregate number of years for which credit may be allowed.

20 F. The credit provided for in subsection A or B of this
21 section, if based upon an increase in the number of full-time-
22 equivalent employees, shall be allowed in each of the four (4)
23 subsequent years only if the level of new employees is maintained in
24 the subsequent year. In calculating the credit by the number of new

1 employees, only those employees whose paid wages or salary were at
2 least Seven Thousand Dollars (\$7,000.00) during each year the credit
3 is claimed shall be included in the calculation. Provided, that the
4 first year a credit is claimed for a new employee, such employee may
5 be included in the calculation notwithstanding paid wages of less
6 than Seven Thousand Dollars (\$7,000.00) if the employee was hired in
7 the last three quarters of the tax year, has wages or salary which
8 will result in annual paid wages in excess of Seven Thousand Dollars
9 (\$7,000.00) and the taxpayer submits an affidavit stating that the
10 employee's position will be retained in the following tax year and
11 will result in the payment of wages in excess of Seven Thousand
12 Dollars (\$7,000.00). The number of new employees shall be
13 determined by comparing the monthly average number of full-time
14 employees subject to Oklahoma income tax withholding for the final
15 quarter of the taxable year with the corresponding period of the
16 prior taxable year, as substantiated by such reports as may be
17 required by the Tax Commission.

18 G. The credit allowed by subsection A of this section shall be
19 the greater amount of either:

20 1. One percent (1%) of the cost of the qualified property in
21 the year the property is placed in service; or

22 2. Five Hundred Dollars (\$500.00) for each new employee. No
23 credit shall be allowed in any taxable year for a net increase in
24 the number of full-time-equivalent employees if such increase is a

1 result of an investment in qualified depreciable property for which
2 an income tax credit has been allowed as authorized by this section.

3 H. The credit allowed by subsection B of this section shall be
4 the greater amount of either:

5 1. Two percent (2%) of the cost of the qualified property in
6 the year the property is placed in service; or

7 2. One Thousand Dollars (\$1,000.00) for each new employee.

8 No credit shall be allowed in any taxable year for a net
9 increase in the number of full-time-equivalent employees if such
10 increase is a result of an investment in qualified depreciable
11 property for which an income tax credit has been allowed as
12 authorized by this section.

13 I. Except as provided by subsection G of Section 3658 of this
14 title, any credits allowed but not used in any taxable year may be
15 carried over in order as follows:

16 1. To each of the four (4) years following the year of
17 qualification;

18 2. To the extent not used in those years in order to each of
19 the fifteen (15) years following the initial five-year period; and

20 3. If a C corporation that otherwise qualified for the credits
21 under subsection A of this section subsequently changes its
22 operating status to that of a pass-through entity which is being
23 treated as the same entity for federal tax purposes, the credits
24 will continue to be available as if the pass-through entity had

1 originally qualified for the credits subject to the limitations of
2 this section.

3 To the extent not used in paragraphs 1 and 2 of this subsection,
4 such credits from qualified depreciable property placed in service
5 on or after January 1, 2000, may be utilized in any subsequent tax
6 years after the initial twenty-year period.

7 J. No credit otherwise authorized by the provisions of this
8 section may be claimed for any event, transaction, investment,
9 expenditure or other act occurring on or after July 1, 2010, for
10 which the credit would otherwise be allowable until the provisions
11 of this subsection shall cease to be operative on July 1, 2012.
12 Beginning July 1, 2012, the credit authorized by this section may be
13 claimed for any event, transaction, investment, expenditure or other
14 act occurring on or after July 1, 2010, according to the provisions
15 of this section; provided, credits accrued during the period from
16 July 1, 2010, through June 30, 2012, shall be limited to a period of
17 two (2) taxable years. The credit shall be limited in each taxable
18 year to fifty percent (50%) of the total amount of the accrued
19 credit. Any tax credits which accrue during the period of July 1,
20 2010, through June 30, 2012, may not be claimed for any period prior
21 to the taxable year beginning January 1, 2012. No credits which
22 accrue during the period of July 1, 2010, through June 30, 2012, may
23 be used to file an amended tax return for any taxable year prior to
24 the taxable year beginning January 1, 2012.

1 K. Beginning January 1, 2016, the credits authorized by this
2 section may not be used by any person, firm, partnership,
3 corporation, limited liability company or any other lawfully
4 recognized business entity if the person or entity claims any tax
5 credit or requests a refund as authorized by law with respect to tax
6 credits for electric power produced by a zero emission facility
7 pursuant to Section 2357.32A of this title or pursuant to Section 1
8 of this act if:

9 1. The qualified depreciable property for purposes of the
10 credit authorized by this section consists of the same assets or
11 substantially the same assets used to produce the electric power for
12 which the tax credit authorized by Section 2357.32A of this title or
13 by Section 1 of this act is authorized; or

14 2. If the increase in full-time-equivalent jobs occurs as a
15 result of the same business activity which produces electric power
16 for which the tax credit authorized by Section 2357.32A of this
17 title or by Section 1 of this act is authorized.

18 SECTION 4. This act shall become effective January 1, 2016.

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