

SUBCOMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB888 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Jeff Coody

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

PROPOSED SUBCOMMITTEE
SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 888

By: Brecheen of the Senate

and

Coody of the House

PROPOSED SUBCOMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 2357.32A, as last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp. 2017, Section 2357.32A), which relates to credits for electricity generated by zero-emission facilities; limiting time period during which unused credits are refundable; 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, as last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp. 2017, 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

1 by zero-emission facilities located in this state. As used in this
2 section:

3 1. "Electricity generated by zero-emission facilities" means
4 electricity that is exclusively produced by any facility located in
5 this state with a rated production capacity of one megawatt (1 mw)
6 or greater, constructed for the generation of electricity and placed
7 in operation after June 4, 2001, and with respect to electricity
8 generated by wind for any facility placed in operation not later
9 than July 1, 2017, which utilizes eligible renewable resources as
10 its fuel source. The construction and operation of such facilities
11 shall result in no pollution or emissions that are or may be harmful
12 to the environment, pursuant to a determination by the Department of
13 Environmental Quality; and

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

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

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

1 1, 2004, but prior to January 1, 2007, the amount of the credit
2 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
3 hour for electricity generated by zero-emission facilities. For
4 electricity generated on or after January 1, 2007, but prior to
5 January 1, 2012, the amount of the credit shall be twenty-five one-
6 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
7 generated by zero-emission facilities. For facilities placed in
8 operation on or after January 1, 2007, and before January 1, 2021,
9 or with respect to electricity generated by wind for any facility
10 placed in operation not later than July 1, 2017, the amount of the
11 credit for the electricity generated on or after January 1, 2007,
12 shall be fifty one-hundredths of one cent (\$0.0050) for each
13 kilowatt-hour of electricity generated by zero-emission facilities.

14 C. Credits may be claimed with respect to electricity generated
15 on or after January 1, 2003, during a ten-year period following the
16 date that the facility is placed in operation on or after June 4,
17 2001.

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~~ Except as otherwise provided in paragraph 3 of this
2 subsection, for credits generated, but not used, on or after January
3 1, 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
4 election, directly to the taxpayer eighty-five percent (85%) of the
5 face amount of such credits. The direct refund of the credits
6 pursuant to this paragraph shall be available to all taxpayers,
7 including, without limitation, pass-through entities and taxpayers
8 subject to Section 2355 of this title, but shall not be available to
9 any entities falling within the provisions of subsection E of this
10 section. The amount of any direct refund of credits actually
11 received at the eighty-five percent (85%) level by the taxpayer
12 pursuant to this paragraph shall not be subject to the tax imposed
13 by Section 2355 of this title. If the pass-through entity does not
14 file a claim for a direct refund, the pass-through entity shall
15 allocate the credit to one or more of the shareholders, partners or
16 members of the pass-through entity; provided, the total of all
17 credits refunded or allocated shall not exceed the amount of the
18 credit or refund to which the pass-through entity is entitled. For
19 the purposes of this paragraph, "pass-through entity" means a
20 corporation that for the applicable tax year is treated as an S
21 corporation under the Internal Revenue Code of 1986, as amended,
22 general partnership, limited partnership, limited liability
23 partnership, trust or limited liability company that for the

1 applicable tax year is not taxed as a corporation for federal income
2 tax purposes.

3 3. No refund of unused credits, pursuant to the provisions of
4 this subsection, for electricity generated by wind shall be
5 authorized for tax years beginning on or after January 1, 2019.

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

19 F. For credits generated prior to January 1, 2014, the amount
20 of the credit allowed, but not used, shall be freely transferable at
21 any time during the ten (10) years following the year of
22 qualification. Any person to whom or to which a tax credit is
23 transferred shall have only such rights to claim and use the credit
24 under the terms that would have applied to the entity by whom or by

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

21 G. For electricity generation produced and sold in a calendar
22 year, the tax credit allowed by the provisions of this section, upon
23 election of the taxpayer, shall be treated and may be claimed as a
24 payment of tax, a prepayment of tax or a payment of estimated tax

1 for purposes of Section 2355 of this title on or after July 1 of the
2 following calendar year.

3 H. No credit otherwise authorized by the provisions of this
4 section may be claimed for any event, transaction, investment,
5 expenditure or other act occurring on or after July 1, 2010, for
6 which the credit would otherwise be allowable until the provisions
7 of this subsection shall cease to be operative on July 1, 2011.
8 Beginning July 1, 2011, the credit authorized by this section may be
9 claimed for any event, transaction, investment, expenditure or other
10 act occurring on or after July 1, 2010, according to the provisions
11 of this section. Any tax credits which accrue during the period of
12 July 1, 2010, through June 30, 2011, may not be claimed for any
13 period prior to the taxable year beginning January 1, 2012. No
14 credits which accrue during the period of July 1, 2010, through June
15 30, 2011, may be used to file an amended tax return for any taxable
16 year prior to the taxable year beginning January 1, 2012.

17 SECTION 2. This act shall become effective November 1, 2018.

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