

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 3710

By: Wallace and Casey of the
House

and

David and Fields of the
Senate

COMMITTEE 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 income tax credits for electric power generation by certain zero-emission facilities; imposing limitation on total tax credits which may be claimed; prescribing formula for computation of limit on credits; 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 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, and with respect to electricity generated by wind for any facility placed in operation not later than July 1, 2017, 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

1 January 1, 2004, shall be seventy-five one-hundredths of one cent
2 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
3 emission facilities. For electricity generated on or after January
4 1, 2004, but prior to January 1, 2007, the amount of the credit
5 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
6 hour for electricity generated by zero-emission facilities. For
7 electricity generated on or after January 1, 2007, but prior to
8 January 1, 2012, the amount of the credit shall be twenty-five one-
9 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
10 generated by zero-emission facilities. For facilities placed in
11 operation on or after January 1, 2007, and before January 1, 2021,
12 or with respect to electricity generated by wind for any facility
13 placed in operation not later than July 1, 2017, the amount of the
14 credit for the electricity generated on or after January 1, 2007,
15 shall be fifty one-hundredths of one cent (\$0.0050) for each
16 kilowatt-hour of electricity generated by zero-emission facilities.

17 C. Credits may be claimed with respect to electricity generated
18 on or after January 1, 2003, during a ten-year period following the
19 date that the facility is placed in operation on or after June 4,
20 2001.

21 D. 1. For credits generated prior to January 1, 2014, if the
22 credit allowed pursuant to this section exceeds the amount of income
23 taxes due or if there are no state income taxes due on the income of
24 the taxpayer, the amount of the credit allowed but not used in any

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

3 2. For credits generated, but not used, on or after January 1,
4 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
5 election, directly to the taxpayer eighty-five percent (85%) of the
6 face amount of such credits. The direct refund of the credits
7 pursuant to this paragraph shall be available to all taxpayers,
8 including, without limitation, pass-through entities and taxpayers
9 subject to Section 2355 of this title, but shall not be available to
10 any entities falling within the provisions of subsection E of this
11 section. The amount of any direct refund of credits actually
12 received at the eighty-five percent (85%) level by the taxpayer
13 pursuant to this paragraph shall not be subject to the tax imposed
14 by Section 2355 of this title. If the pass-through entity does not
15 file a claim for a direct refund, the pass-through entity shall
16 allocate the credit to one or more of the shareholders, partners or
17 members of the pass-through entity; provided, the total of all
18 credits refunded or allocated shall not exceed the amount of the
19 credit or refund to which the pass-through entity is entitled. For
20 the purposes of this paragraph, "pass-through entity" means a
21 corporation that for the applicable tax year is treated as an S
22 corporation under the Internal Revenue Code of 1986, as amended,
23 general partnership, limited partnership, limited liability
24 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 E. Any nontaxable entities, including agencies of the State of
4 Oklahoma or political subdivisions thereof, shall be eligible to
5 establish a transferable tax credit in the amount provided in
6 subsection B of this section. Such tax credit shall be a property
7 right available to a state agency or political subdivision of this
8 state to transfer or sell to a taxable entity, whether individual or
9 corporate, who shall have an actual or anticipated income tax
10 liability under Section 2355 of this title. These tax credit
11 provisions are authorized as an incentive to the State of Oklahoma,
12 its agencies and political subdivisions to encourage the expenditure
13 of funds in the development, construction and utilization of
14 electricity from zero-emission facilities as defined in subsection A
15 of this section.

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

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

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

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

15 I. For tax years beginning on or after January 1, 2019, the
16 total amount of credits authorized by subparagraph a of paragraph 2
17 of subsection A of this section used to offset tax and which are
18 refunded pursuant to paragraph 2 of subsection D of this section
19 shall be adjusted annually to limit the annual amount of credits to
20 Thirty-five Million Dollars (\$35,000,000.00). The Tax Commission
21 shall annually calculate and publish a percentage by which the
22 credits authorized by this section shall be reduced so the total
23 amount of credits used to offset tax and which is refunded pursuant
24 to paragraph 2 of subsection D of this section does not exceed

1 Thirty-five Million Dollars (\$35,000,000.00) per year. The formula
2 to be used for the percentage adjustment shall be Thirty-five
3 Million Dollars (\$35,000,000.00) divided by the credits used to
4 offset tax in the second preceding year.

5 J. Pursuant to subsection I of this section, in the event the
6 total tax credits authorized by this section exceed Thirty-five
7 Million Dollars (\$35,000,000.00) in any calendar year, the Tax
8 Commission shall permit any excess over Thirty-five Million Dollars
9 (\$35,000,000.00) but shall factor such excess into the percentage
10 adjustment formula for subsequent years.

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

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