

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 3716

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 tax credits for electricity produced by certain zero-emission facilities; modifying provisions related to refundability; providing for reduction of the tax liability amounts; providing for carryover of credits; authorizing election with respect to credits within designated time period; and modifying provisions related to tax credits established by certain government entities.

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~~ G 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~~ Except as otherwise provided by paragraph 4 of this
4 subsection, for credits generated, but not used, on or after January
5 1, 2014, and before January 1, 2019, the Oklahoma Tax Commission
6 shall refund, at the taxpayer's election, directly to the taxpayer
7 eighty-five percent (85%) of the face amount of such credits. The
8 direct refund of the credits pursuant to this paragraph shall be
9 available to all taxpayers, including, without limitation, pass-
10 through entities and taxpayers subject to Section 2355 of this
11 title, ~~but shall not be available to any entities falling within the~~
12 ~~provisions of subsection E of this section.~~ The amount of any
13 direct refund of credits actually received at the eighty-five
14 percent (85%) level by the taxpayer pursuant to this paragraph shall
15 not be subject to the tax imposed by Section 2355 of this title. If
16 the pass-through entity does not file a claim for a direct refund,
17 the pass-through entity shall allocate the credit to one or more of
18 the shareholders, partners or members of the pass-through entity;
19 provided, the total of all credits refunded or allocated shall not
20 exceed the amount of the credit or refund to which the pass-through
21 entity is entitled. For the purposes of this paragraph, "pass-
22 through entity" means a corporation that for the applicable tax year
23 is treated as an S corporation under the Internal Revenue Code of
24 1986, as amended, general partnership, limited partnership, limited

1 liability partnership, trust or limited liability company that for
2 the applicable tax year is not taxed as a corporation for federal
3 income tax purposes.

4 3. For credits generated, but not used, on or after January 1,
5 2019, if the credit allowed pursuant to this section exceeds the
6 amount of income taxes due or if there are no state income taxes due
7 on the income of the taxpayer, the amount of the credit allowed but
8 not used in any tax year may be carried forward as a credit against
9 subsequent income tax liability for a period not exceeding twenty
10 (20) years.

11 4. For credits generated, but not used, on or after January 1,
12 2017, and prior to January 1, 2019, the taxpayer may elect to either
13 receive the refund authorized by paragraph 2 of this subsection with
14 respect to such credits or if the credit allowed pursuant to this
15 section exceeds the amount of income taxes due or if there are no
16 state income taxes due on the income of the taxpayer, the amount of
17 the credit allowed but not refunded may be carried forward as a
18 credit against subsequent income tax liability for a period not
19 exceeding twenty (20) years.

20 ~~E. Any nontaxable entities, including agencies of the State of~~
21 ~~Oklahoma or political subdivisions thereof, shall be eligible to~~
22 ~~establish a transferable tax credit in the amount provided in~~
23 ~~subsection B of this section. Such tax credit shall be a property~~
24 ~~right available to a state agency or political subdivision of this~~

1 ~~state to transfer or sell to a taxable entity, whether individual or~~
2 ~~corporate, who shall have an actual or anticipated income tax~~
3 ~~liability under Section 2355 of this title. These tax credit~~
4 ~~provisions are authorized as an incentive to the State of Oklahoma,~~
5 ~~its agencies and political subdivisions to encourage the expenditure~~
6 ~~of funds in the development, construction and utilization of~~
7 ~~electricity from zero emission facilities as defined in subsection A~~
8 ~~of this section.~~

9 ~~F.~~ For credits generated prior to January 1, 2014, the amount
10 of the credit allowed, but not used, shall be freely transferable at
11 any time during the ten (10) years following the year of
12 qualification. Any person to whom or to which a tax credit is
13 transferred shall have only such rights to claim and use the credit
14 under the terms that would have applied to the entity by whom or by
15 which the tax credit was transferred. The provisions of this
16 subsection shall not limit the ability of a tax credit transferee to
17 reduce the tax liability of the transferee, regardless of the actual
18 tax liability of the tax credit transferor, for the relevant taxable
19 period. The transferor initially allowed the credit and any
20 subsequent transferees shall jointly file a copy of any written
21 transfer agreement with the Oklahoma Tax Commission within thirty
22 (30) days of the transfer. The written agreement shall contain the
23 name, address and taxpayer identification number or Social Security
24 number of the parties to the transfer, the amount of the credit

1 being transferred, the year the credit was originally allowed to the
2 transferor, and the tax year or years for which the credit may be
3 claimed. The Tax Commission may promulgate rules to permit
4 verification of the validity and timeliness of the tax credit
5 claimed upon a tax return pursuant to this subsection but shall not
6 promulgate any rules that unduly restrict or hinder the transfers of
7 such tax credit. The tax credit allowed by this section, upon the
8 election of the taxpayer, may be claimed as a payment of tax, a
9 prepayment of tax or a payment of estimated tax for purposes of
10 Section 1803 or Section 2355 of this title.

11 ~~G.~~ F. For electricity generation produced and sold in a
12 calendar year, the tax credit allowed by the provisions of this
13 section, upon election of the taxpayer, shall be treated and may be
14 claimed as a payment of tax, a prepayment of tax or a payment of
15 estimated tax for purposes of Section 2355 of this title on or after
16 July 1 of the following calendar year.

17 ~~H.~~ G. No credit otherwise authorized by the provisions of this
18 section may be claimed for any event, transaction, investment,
19 expenditure or other act occurring on or after July 1, 2010, for
20 which the credit would otherwise be allowable until the provisions
21 of this subsection shall cease to be operative on July 1, 2011.
22 Beginning July 1, 2011, the credit authorized by this section may be
23 claimed for any event, transaction, investment, expenditure or other
24 act occurring on or after July 1, 2010, according to the provisions

1 of this section. Any tax credits which accrue during the period of
2 July 1, 2010, through June 30, 2011, may not be claimed for any
3 period prior to the taxable year beginning January 1, 2012. No
4 credits which accrue during the period of July 1, 2010, through June
5 30, 2011, may be used to file an amended tax return for any taxable
6 year prior to the taxable year beginning January 1, 2012.

7
8 56-2-10509 JM 04/27/18
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24