

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 HOUSE BILL 2272

By: O'Donnell, Lepak and Calvey
of the House

5 and

6 Dahm of the Senate

7
8
9 AS INTRODUCED

10 **[revenue and taxation - zero emission facilities -**

11 **tax years - fiscal year cap - effective date -**

12 **emergency]**

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

16 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
17 amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2016,
18 Section 2357.32A), is amended to read as follows:

19 Section 2357.32A A. Except as otherwise provided in subsection
20 H or subsection I of this section, for tax years beginning on or
21 after January 1, 2003, and ending not later than June 30, 2017, with
22 respect to electric power produced on or after July 1, 2017, there
23 shall be allowed a credit against the tax imposed by Section 2355 of
24 this title to a taxpayer for the taxpayer's production and sale to

1 an unrelated person of electricity generated by zero-emission
2 facilities located in this state. As used in this 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, which utilizes eligible renewable
8 resources as its fuel source. The construction and operation of
9 such facilities shall result in no pollution or emissions that are
10 or may be harmful to the environment, pursuant to a determination by
11 the Department of Environmental Quality; and

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

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

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

1 hour for electricity generated by zero-emission facilities. For
2 electricity generated on or after January 1, 2007, but prior to
3 January 1, 2012, the amount of the credit shall be twenty-five one-
4 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
5 generated by zero-emission facilities. For facilities placed in
6 operation on or after January 1, 2007, and before ~~January 1, 2021~~
7 July 1, 2017, the amount of the credit for the electricity generated
8 on or after January 1, 2007, but prior to July 1, 2017, shall be
9 fifty one-hundredths of one cent (\$0.0050) for each kilowatt-hour of
10 electricity generated by zero-emission facilities.

11 C. ~~Credits~~ Except as otherwise provided by this section,
12 credits may be claimed with respect to electricity generated on or
13 after January 1, 2003, during a ten-year period following the date
14 that the facility is placed in operation on or after June 4, 2001.

15 D. 1. For credits generated prior to January 1, 2014, if the
16 credit allowed pursuant to this section exceeds the amount of income
17 taxes due or if there are no state income taxes due on the income of
18 the taxpayer, the amount of the credit allowed but not used in any
19 tax year may be carried forward as a credit against subsequent
20 income tax liability for a period not exceeding ten (10) years.

21 2. For credits generated, but not used, on or after January 1,
22 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
23 election, directly to the taxpayer eighty-five percent (85%) of the
24 face amount of such credits. The direct refund of the credits

pursuant to this paragraph shall be available to all taxpayers, including, without limitation, pass-through entities and taxpayers subject to Section 2355 of this title, but shall not be available to any entities falling within the provisions of subsection E of this section. The amount of any direct refund of credits actually received at the eighty-five percent (85%) level by the taxpayer pursuant to this paragraph shall not be subject to the tax imposed by Section 2355 of this title. If the pass-through entity does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity; provided, the total of all credits refunded or allocated shall not exceed the amount of the credit or refund to which the pass-through entity is entitled. For the purposes of this paragraph, "pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation under the Internal Revenue Code of 1986, as amended, general partnership, limited partnership, limited liability partnership, trust or limited liability company that for the applicable tax year is not taxed as a corporation for federal income tax purposes.

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

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

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

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

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

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

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

8 I. For the fiscal year beginning July 1, 2017, and for each
9 fiscal year thereafter, the total amount of tax credits which may be
10 used to either reduce tax liability amounts on returns and which may
11 be paid in the form of cash as authorized by subsection D of this
12 section shall not exceed Seven Million Dollars (\$7,000,000.00) each
13 fiscal year. Any credits otherwise claimable which are in excess of
14 the fiscal year cap amount prescribed by this section shall be
15 nullified and shall not be used in any succeeding taxable or fiscal
16 year.

17 SECTION 2. This act shall become effective July 1, 2017.

18 SECTION 3. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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23 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
24 03/02/2017 - DO PASS, As Amended and Coauthored.