

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2854

By: Park

7
8 COMMITTEE SUBSTITUTE

9 [revenue and taxation - Oklahoma Energy Content Tax
10 Act of 2018 - purpose Section 19 of Article X of
11 the Oklahoma Constitution - defining terms - levy -
12 rates of taxation - exemptions - exempting certain
13 wind turbines - exempting energy content -
14 remittance - apportionment - codification]

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

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 7101 of Title 68, unless there
20 is created a duplication in numbering, reads as follows:

21 This act shall be known and may be cited as the "Oklahoma Energy
22 Content Tax Act of 2018".
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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7102 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 Pursuant to the requirements of Section 19 of Article X of the
5 Oklahoma Constitution, the purpose of this act is to provide revenue
6 for general government functions.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 7103 of Title 68, unless there
9 is created a duplication in numbering, reads as follows:

10 As used in this act:

11 1. "British Thermal Unit" means the amount of heat energy
12 required to increase the temperature of one (1) pound of water by
13 one (1) degree Fahrenheit if the water is at its maximum density
14 using an assumed temperature of thirty-nine (39) degrees Fahrenheit;

15 2. "Commercial wind turbine" means a device manufactured for
16 the purpose of producing electric power by means of wind energy and
17 which converts the energy from naturally occurring winds into
18 mechanical energy through the rotation of blades or rotors and the
19 production of an electric current and which has a nameplate capacity
20 of more than fifty kilowatts (50 kw);

21 3. "Electric power generation facility" means an asset owned by
22 a public service corporation as defined by Section 2808 of Title 68
23 of the Oklahoma Statutes or an exempt wholesale generator as defined
24 pursuant to 18 C.F.R. Section 366.1 engaged in the production of

1 electricity by initial means of combustion of oil, natural gas or
2 any other fossil fuel or refined product derived therefrom for the
3 purpose of operating one or more turbines driven by steam or by the
4 flow of other gases to operate one or more turbines in order to
5 generate electricity;

6 4. "Energy content" means the ability of a substance or
7 compound to produce heat as measured by British Thermal Units
8 (BTUs);

9 5. "Gross production tax" means the levy imposed on oil, gas or
10 other minerals pursuant to Section 1001 of Title 68 of the Oklahoma
11 Statutes;

12 6. "Lawfully recognized business entity" means:

- 13 a. a person,
- 14 b. a firm,
- 15 c. a general partnership,
- 16 d. a limited partnership,
- 17 e. a corporation,
- 18 f. a limited liability company,
- 19 g. a limited liability partnership,
- 20 h. a limited liability limited partnership,
- 21 i. a trust,
- 22 j. an estate, or
- 23 k. any other form of legal entity authorized to transact
24 business in the State of Oklahoma;

1 7. "Manufacturer nameplate capacity" means the maximum amount
2 of electric power capable of being produced by a commercial wind
3 turbine according to information affixed to a wind turbine or its
4 associated structures and which nameplate is installed or affixed by
5 the business entity which manufactured the wind turbine;

6 8. "Motor Fuel Tax Code" means Section 500.1 et seq. of Title
7 68 of the Oklahoma Statutes;

8 9. "Qualified tax remitter" means a petroleum refinery, a
9 natural gas processing plant, an electric power generation facility
10 or a lawfully recognized business entity described by Industry No.
11 221114 or 221115 of the North American Industry Classification
12 System (NAICS) engaged in production of electric power by means of
13 solar energy or wind power, respectively; and

14 10. "Qualified energy sources" means:

- 15 a. petroleum used by a refinery in a refinery process or
16 a source of fuel for an electric power generation
17 facility,
- 18 b. natural gas used by a petroleum refinery in a refinery
19 process, used by a natural gas processing plant or
20 used as a source of fuel for an electric power
21 generation facility,
- 22 c. coal used by an electric power generation facility,
- 23 d. electric power produced by a public service
24 corporation,

- e. electric power produced by an exempt wholesale generator,
- f. electric power produced by means of wind, and
- g. electric power produced by means of solar energy.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7104 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this act and except as otherwise exempt pursuant to the provisions of Section 5 of this act, there is hereby imposed a tax on the energy content of qualified energy sources as measured by British Thermal Units (BTUs).

B. The tax shall be imposed as follows:

1. One Dollar and twenty thousand fifty-seven one-hundred-thousandths cents (\$1.20057) per barrel of oil at the time the oil has been delivered to a qualified tax remitter and is ready for consumption by combustion or other processes or for input as feedstock into a petroleum refinery located within the state;

2. Twenty-one thousand seven hundred seventy-seven one-hundred-thousandths cents (\$0.21777) per one thousand cubic feet (mcf) of natural gas at the time the natural gas has been delivered to a qualified tax remitter and is ready for consumption by combustion or other processes or for input into a natural gas processing facility located within the state;

1 3. Four Dollars and two thousand sixty-six one-hundred-
2 thousandths cents (\$4.02066) per short ton on coal at the time the
3 coal is ready for conversion by a combustion process in order to
4 produce electric power by an electric power generation facility
5 located within the state;

6 4. Seven-hundred-sixteen-thousandths cents (\$0.716) per
7 megawatt hour on electrical energy produced by a public service
8 corporation from facilities located within the state;

9 5. Seven-hundred-sixteen-thousandths cents (\$0.716) per
10 megawatt hour on electrical energy produced by an exempt wholesale
11 generator facility from facilities located within the state;

12 6. Seven-hundred-sixteen-thousandths cents (\$0.716) per
13 megawatt hour on electrical energy produced by means of wind by a
14 business described pursuant to Industry No. 221115 of the North
15 American Industry Classification System (NAICS) from facilities
16 located within the state;

17 7. Seven-hundred-sixteen-thousandths cents (\$0.716) per
18 megawatt hour on electrical energy produced by means of solar
19 radiation by a business described pursuant to Industry No. 221114 of
20 the North American Industry Classification System (NAICS) from
21 facilities located within the state; and

22 8. Seven-hundred-sixteen-thousandths cents (\$0.716) per
23 megawatt hour on electrical energy produced by a zero emission
24 facility eligible to claim the tax credit authorized by Section

1 2357.32A of Title 68 of the Oklahoma Statutes unless such zero
2 emission facility is subject to a tax levy pursuant to any other
3 provisions of this section.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 7105 of Title 68, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The tax imposed pursuant to Section 4 of this act shall not
8 be applicable to the oil or natural gas extracted within the state
9 by a lawfully recognized business entity based upon the energy
10 content of the oil or gas at the time the oil or natural gas is
11 produced from a wellhead and brought to the surface of the earth.

12 B. If oil or natural gas described in subsection A of this
13 section is purchased by or delivered to a petroleum refinery, a
14 natural gas processing plant or an electric power generation
15 facility located within the state, the tax imposed pursuant to
16 Section 4 of this act shall be applicable to the energy content of
17 the qualified energy source according to the requirements of this
18 act.

19 C. The tax imposed pursuant to Section 4 of this act shall be
20 imposed based upon the energy content of oil, natural gas or oil and
21 natural gas at the time such substances are delivered to a petroleum
22 refinery, a natural gas processing plant, a public service
23 corporation or an exempt wholesale generator and are ready for
24 either combustion or the refining process with respect to petroleum

1 or ready for combustion or processing with respect to natural gas or
2 ready for combustion with respect to coal.

3 D. No wind turbine with a nameplate capacity of less than fifty
4 kilowatts (50 kw) shall be subject to the tax imposed pursuant to
5 the provisions of Section 4 of this act.

6 E. No wind turbine located on the private property of one or
7 more natural persons which is attached to a single-family
8 residential dwelling or located in close proximity to the single-
9 family residential dwelling and used, in whole or in part, to supply
10 electric power to the dwelling and its occupants shall be subject to
11 the tax imposed pursuant to Section 4 of this act if the wind
12 turbine has a manufacturer nameplate capacity of less than fifty
13 kilowatts (50 kw).

14 F. No wind turbine located on the property of a for-profit
15 business entity, other than a business entity engaged in the
16 production of electric power by wind and having the North American
17 Industry Classification Code (NAICS) 221115, which is attached to
18 improvements used by the business entity to conduct its primary
19 business activity or in close proximity to such improvements and the
20 electric power from which is used, in whole or in part, by the
21 business entity to conduct its for-profit business activity shall be
22 subject to the tax imposed pursuant to the provisions of Section 4
23 of this act if the wind turbine has a nameplate capacity of less
24 than fifty kilowatts (50 kw).

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7106 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 The tax imposed pursuant to Section 4 of this act shall not be
5 applicable to any otherwise qualified energy source during the time
6 that the qualified energy source is in the possession of a lawfully
7 recognized business entity which is:

8 1. A common carrier, including a trucking company or railroad;

9 2. An oil pipeline company prior to delivery of petroleum for
10 purposes of combustion or refining processes;

11 3. A natural gas pipeline company prior to delivery of natural
12 gas for purposes of combustion or natural gas processing;

13 4. Principally engaged in the business of transporting crude
14 oil from a wellhead or tank battery after its extraction for periods
15 of time prior to final delivery of crude oil to a qualified tax
16 remitter; and

17 5. Principally engaged in the initial delivery of natural gas
18 through a system of natural gas gathering lines before the natural
19 gas is delivered to a pipeline requiring extraction of liquids or
20 other substances before further transport or prior to the time of
21 final delivery of natural gas to a qualified tax remitter.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 7107 of Title 68, unless there
24 is created a duplication in numbering, reads as follows:

1 The tax shall be remitted by the qualified energy content
2 remitter not later than the twentieth day of the month following the
3 month of the applicable taxable event with respect to the qualified
4 energy source. The Oklahoma Tax Commission shall prescribe such
5 forms for the reporting of the tax as may be required to implement
6 the provisions of this act.

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 7108 of Title 68, unless there
9 is created a duplication in numbering, reads as follows:

10 If not paid by the date prescribed pursuant to Section 7 of this
11 act, there shall be imposed a penalty of ten percent (10%) of the
12 principal amount of tax due and owing. Interest on delinquent tax
13 amounts shall be imposed pursuant to the provisions of Section 217
14 of Title 68 of the Oklahoma Statutes.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 7109 of Title 68, unless there
17 is created a duplication in numbering, reads as follows:

18 The revenue derived from the tax levied by Section 4 of this act
19 shall be apportioned to the General Revenue Fund of the State
20 Treasury.

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22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
23 03/01/2018 - DO PASS, As Amended.
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