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March 1, 2017

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 118

By: Thompson of the Senate

and

Sears of the House

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[ income tax credit - zero-emission facilities -
proportionate share of credit - effective date ]
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2016, 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

1 this state with a rated production capacity of one megawatt (1 mw)
2 or greater, constructed for the generation of electricity and placed
3 in operation after June 4, 2001, which utilizes eligible renewable
4 resources as its fuel source. The construction and operation of
5 such facilities shall result in no pollution or emissions that are
6 or may be harmful to the environment, pursuant to a determination by
7 the Department of Environmental Quality; and

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

- 9 a. wind,
- 10 b. moving water,
- 11 c. sun, or
- 12 d. geothermal energy.

13 B. For facilities placed in operation on or after January 1,
14 2003, and before January 1, 2007, the amount of the credit for the
15 electricity generated on or after January 1, 2003, but prior to
16 January 1, 2004, shall be seventy-five one-hundredths of one cent
17 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
18 emission facilities. For electricity generated on or after January
19 1, 2004, but prior to January 1, 2007, the amount of the credit
20 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
21 hour for electricity generated by zero-emission facilities. For
22 electricity generated on or after January 1, 2007, but prior to
23 January 1, 2012, the amount of the credit shall be twenty-five one-
24 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity

1 generated by zero-emission facilities. For facilities placed in
2 operation on or after January 1, 2007, and before ~~January 1, 2021~~
3 January 1, 2018, the amount of the credit for the electricity
4 generated on or after January 1, 2007, shall be fifty one-hundredths
5 of one cent (\$0.0050) for each kilowatt-hour of electricity
6 generated by zero-emission facilities.

7 C. Credits may be claimed with respect to electricity generated
8 on or after January 1, 2003, during a ten-year period following the
9 date that the facility is placed in operation on or after June 4,
10 2001.

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

17 2. For credits generated, but not used, on or after January 1,
18 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
19 election, directly to the taxpayer eighty-five percent (85%) of the
20 face amount of such credits. Provided, for tax years beginning on
21 or after January 1, 2017, the amount of credits allowed in a taxable
22 year shall be limited as provided pursuant to the provisions of
23 subsection I of this section. The direct refund of the credits
24 pursuant to this paragraph shall be available to all taxpayers,

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

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. Provided, for tax years beginning on or after
13 January 1, 2017, the amount of credits allowed in a taxable year
14 shall be limited as provided pursuant to the provisions of
15 subsection I of this section. Any person to whom or to which a tax
16 credit is transferred shall have only such rights to claim and use
17 the credit under the terms that would have applied to the entity by
18 whom or by which the tax credit was transferred. The provisions of
19 this subsection shall not limit the ability of a tax credit
20 transferee to reduce the tax liability of the transferee, regardless
21 of the actual tax liability of the tax credit transferor, for the
22 relevant taxable period. The transferor initially allowed the
23 credit and any subsequent transferees shall jointly file a copy of
24 any written transfer agreement with the Oklahoma Tax Commission

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

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

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

Beginning July 1, 2011, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, according to the provisions of this section. Any tax credits which accrue during the period of July 1, 2010, through June 30, 2011, may not be claimed for any period prior to the taxable year beginning January 1, 2012. No credits which accrue during the period of July 1, 2010, through June 30, 2011, may be used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2012.

I. For tax years beginning on or after January 1, 2017, the total amount of all credits allowed in a taxable year shall be limited as follows:

1. For credits generated before January 1, 2014, the total payment of all allowed claims shall not exceed Two Million Dollars (\$2,000,000.00) in fiscal year 2019 and each fiscal year thereafter. The total amount of all credits allowed pursuant to this subsection shall be claimed before October 1 of any year for electricity generated during the prior tax year, including any carryover. The Tax Commission shall not allow or pay any claim filed on or after October 1 for any electricity generated or credit carried forward during the prior tax year;

2. For credits generated on or after January 1, 2014, the total payment of all allowed claims shall not exceed Ten Million Dollars (\$10,000,000.00) in fiscal year 2019 and each fiscal year

1 thereafter. The total amount of all credits allowed pursuant to
2 this subsection shall be claimed before October 1 of any year for
3 electricity generated during the prior tax year. The Tax Commission
4 shall not allow or pay any claim filed on or after October 1 for any
5 electricity generated during the prior tax year;

6 3. If the Tax Commission determines the total amount of credits
7 allowed exceeds the amounts provided in paragraph 1 or 2 of this
8 subsection, the Tax Commission shall determine the percentage of the
9 credit which establishes the proportionate share which may be
10 claimed so that the maximum amount authorized is not exceeded; and

11 4. The remaining balance of credit claimed over the limitations
12 provided in paragraphs 1 and 2 of this subsection shall be paid in
13 subsequent fiscal years subject to the limitations provided and in
14 the same manner provided in this subsection.

15 SECTION 2. This act shall become effective November 1, 2017.

16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
17 March 1, 2017 - DO PASS AS AMENDED
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