

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1035

By: Thompson

AS INTRODUCED

An Act relating to income tax credits; 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 credits for production of zero-emission electricity; providing exception; limiting total amount of credits which may be claimed for electricity generated by means of eligible renewable resources other than wind for certain time periods; setting annual deadline for certain claims; establishing procedure for Oklahoma Tax Commission to determine certain proportionate share of credit; requiring certain notice regarding amount of credit claimed; 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

1 generated by zero-emission facilities located in this state. As  
2 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, and with respect to electricity  
8 generated by wind for any facility placed in operation not later  
9 than July 1, 2017, which utilizes eligible renewable resources as  
10 its fuel source. The construction and operation of such facilities  
11 shall result in no pollution or emissions that are or may be harmful  
12 to the environment, pursuant to a determination by the Department of  
13 Environmental Quality; and

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

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

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

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

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

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

2. For credits generated, but not used, on or after January 1, 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's election, directly to the taxpayer eighty-five percent (85%) of the face amount of such credits, except as otherwise provided in subsection I of this section. 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

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. 1. The total amount of all refundable credits allowed in a  
16 taxable year shall be limited to the percentage calculated by the  
17 Oklahoma Tax Commission pursuant to the provisions of this  
18 subsection; provided, such limit shall apply only to credits for  
19 electricity generated by means of eligible renewable resources other  
20 than wind.

21 2. The total amount of all claims allowed for refundable  
22 credits pursuant to this subsection for tax year 2018 and all  
23 subsequent years shall not exceed Five Million Dollars  
24 (\$5,000,000.00).

1       3. The total amount of all refundable credits allowed by this  
2 subsection shall be claimed before October 15 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 15 for  
5 any electricity generated during the prior tax year.

6       4. If the Tax Commission determines the total amount of  
7 refundable credits allowed pursuant to this subsection exceeds the  
8 limitations provided in this subsection, the Tax Commission shall  
9 determine the percentage of the credit which establishes the  
10 proportionate share which may be claimed so that the maximum amount  
11 authorized is not exceeded.

12       5. The Tax Commission shall notify the Office of the State  
13 Secretary of Energy and Environment at any time when the amount of  
14 claims for credits allowed pursuant to this subsection reaches  
15 eighty percent (80%) of the total annual limit provided in paragraph  
16 2 of this subsection. Upon such notification, the Secretary shall  
17 provide notice to the Governor, President Pro Tempore of the Senate  
18 and Speaker of the House of Representatives.

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