

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

SENATE BILL 118

By: Thompson

AS INTRODUCED

An Act relating to income tax credit; amending 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), which relates to income tax credits for zero-emission facilities; limiting total amount of certain credit which may be claimed during specified time period; providing for annual adjustment of total amount of credits subject to certain limit based on specified calculation and prescribing applicable methodology; providing exception to certain limit under specified circumstances; 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 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

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, 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 January 1, 2018, the amount of the credit for the electricity
8 generated on or after January 1, 2007, shall be fifty one-hundredths
9 of one cent (\$0.0050) for each kilowatt-hour of electricity
10 generated by zero-emission facilities.

11 C. Credits may be claimed with respect to electricity generated
12 on or after January 1, 2003, during a ten-year period following the
13 date that the facility is placed in operation on or after June 4,
14 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 Provided, for tax years beginning on or after January 1, 2017, the
22 amount of credits available as an offset in a taxable year shall be
23 limited as provided pursuant to the provisions of subsection I of
24 this section.

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. Provided, for tax years beginning on or after January 1, 2017, the amount of credits available as an offset in a taxable year or received as a direct refund shall be limited as provided pursuant to the provisions of 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,

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

4 E. Any nontaxable entities, including agencies of the State of
5 Oklahoma or political subdivisions thereof, shall be eligible to
6 establish a transferable tax credit in the amount provided in
7 subsection B of this section. Such tax credit shall be a property
8 right available to a state agency or political subdivision of this
9 state to transfer or sell to a taxable entity, whether individual or
10 corporate, who shall have an actual or anticipated income tax
11 liability under Section 2355 of this title. These tax credit
12 provisions are authorized as an incentive to the State of Oklahoma,
13 its agencies and political subdivisions to encourage the expenditure
14 of funds in the development, construction and utilization of
15 electricity from zero-emission facilities as defined in subsection A
16 of this section.

17 F. For credits generated prior to January 1, 2014, the amount
18 of the credit allowed, but not used, shall be freely transferable at
19 any time during the ten (10) years following the year of
20 qualification. Any person to whom or to which a tax credit is
21 transferred shall have only such rights to claim and use the credit
22 under the terms that would have applied to the entity by whom or by
23 which the tax credit was transferred. The provisions of this
24 subsection shall not limit the ability of a tax credit transferee to

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

19 G. For electricity generation produced and sold in a calendar
20 year, the tax credit allowed by the provisions of this section, upon
21 election of the taxpayer, shall be treated and may be claimed as a
22 payment of tax, a prepayment of tax or a payment of estimated tax
23 for purposes of Section 2355 of this title on or after July 1 of the
24 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. For tax years beginning on or after January 1, 2017, the
16 total amount of credits authorized by this section to offset tax or
17 received as a direct refund shall be adjusted annually, as follows:

18 a. for credits generated before January 1, 2014, the
19 total amount of credits used to offset tax in any
20 calendar year shall be adjusted annually to limit the
21 annual amount of such credits to Two Million Dollars
22 (\$2,000,000.00), and

23 b. for credits generated on or after January 1, 2014, the
24 total amount of credits received as a direct refund in

1 any calendar year shall be adjusted annually to limit
2 the annual amount of credits to Ten Million Dollars
3 (\$10,000,000.00).

4 2. The Tax Commission shall annually calculate and publish a
5 percentage by which the credits authorized by this section shall be
6 reduced so the total amount of credits used to offset tax or
7 received as a direct refund does not exceed the applicable annual
8 caps as provided in paragraph 1 of this subsection. The formula to
9 be used for the percentage adjustment shall be the cap amount
10 divided by the applicable credits used to offset tax or received as
11 a direct refund in the second preceding year.

12 3. In the event the total tax credits authorized by this
13 section exceed the applicable annual caps in any calendar year, the
14 Tax Commission shall permit any excess over the applicable cap but
15 shall factor such excess into the percentage adjustment formula for
16 subsequent years.

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

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