

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 961

By: Brecheen

AS INTRODUCED

An Act relating to income tax credit; 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 income tax credits for zero-emission facilities; limiting total amount of certain credit which may be claimed during specified time periods; setting annual deadline for certain claims; establishing procedure for Oklahoma Tax Commission to determine certain proportionate share of credit; 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 generated by zero-emission facilities located in this state. As used in this section:

1 1. "Electricity generated by zero-emission facilities" means
2 electricity that is exclusively produced by any facility located in
3 this state with a rated production capacity of one megawatt (1 mw)
4 or greater, constructed for the generation of electricity and placed
5 in operation after June 4, 2001, and with respect to electricity
6 generated by wind for any facility placed in operation not later
7 than July 1, 2017, which utilizes eligible renewable resources as
8 its fuel source. The construction and operation of such facilities
9 shall result in no pollution or emissions that are or may be harmful
10 to the environment, pursuant to a determination by the Department of
11 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 or with respect to electricity generated by wind for any facility
8 placed in operation not later than July 1, 2017, the amount of the
9 credit for the electricity generated on or after January 1, 2007,
10 shall be fifty one-hundredths of one cent (\$0.0050) for each
11 kilowatt-hour of electricity generated by zero-emission facilities,
12 except as otherwise provided in subsection I of this section.

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

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

23 2. For credits generated, but not used, on or after January 1,
24 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's

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

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

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

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

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

22 H. No credit otherwise authorized by the provisions of this
23 section may be claimed for any event, transaction, investment,
24 expenditure or other act occurring on or after July 1, 2010, for

1 which the credit would otherwise be allowable until the provisions
2 of this subsection shall cease to be operative on July 1, 2011.
3 Beginning July 1, 2011, the credit authorized by this section may be
4 claimed for any event, transaction, investment, expenditure or other
5 act occurring on or after July 1, 2010, according to the provisions
6 of this section. Any tax credits which accrue during the period of
7 July 1, 2010, through June 30, 2011, may not be claimed for any
8 period prior to the taxable year beginning January 1, 2012. No
9 credits which accrue during the period of July 1, 2010, through June
10 30, 2011, may be used to file an amended tax return for any taxable
11 year prior to the taxable year beginning January 1, 2012.

12 1. 1. The total amount of all refundable credits allowed in a
13 taxable year shall be limited to the percentage calculated by the
14 Oklahoma Tax Commission pursuant to the provisions of this
15 subsection.

16 2. The total amount of all claims allowed for refundable
17 credits for tax year 2018 and all subsequent years shall not exceed
18 Twenty Million Dollars (\$20,000,000.00).

19 3. The total amount of all refundable credits allowed by this
20 subsection shall be claimed before October 15 of any year for
21 electricity generated during the prior tax year. The Tax Commission
22 shall not allow or pay any claim filed on or after October 15 for
23 any electricity generated during the prior tax year.

1 4. If the Tax Commission determines the total amount of
2 refundable credits allowed exceeds the limitations provided in this
3 subsection, the Tax Commission shall determine the percentage of the
4 credit which establishes the proportionate share which may be
5 claimed so that the maximum amount authorized is not exceeded.

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

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