

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 994

By: Bergstrom

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; authorizing certain credits to be claimed under specified circumstances; and declaring an emergency.

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. "Electricity generated by zero-emission facilities" means electricity that is exclusively produced by any facility located in this state with a rated production capacity of one megawatt (1 mw) or greater, constructed for the generation of electricity and placed in operation after June 4, 2001, and with respect to electricity generated by wind for any facility placed in operation not later than July 1, 2017, which utilizes eligible renewable resources as its fuel source. The construction and operation of such facilities shall result in no pollution or emissions that are or may be harmful to the environment, pursuant to a determination by the Department of Environmental Quality; and

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

- a. wind,
- b. moving water,
- c. sun, or
- d. geothermal energy.

B. For facilities placed in operation on or after January 1, 2003, and before January 1, 2007, the amount of the credit for the electricity generated on or after January 1, 2003, but prior to January 1, 2004, shall be seventy-five one-hundredths of one cent (\$0.0075) for each kilowatt-hour of electricity generated by zero-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; provided, to the extent that any taxpayer's credits are not
19 allowed due to the total statewide annual limitations provided in
20 subsection I of this section, such credits may be carried forward as
21 provided in subsection D of this section.

22 D. 1. For credits generated prior to January 1, 2014, if the
23 credit allowed pursuant to this section exceeds the amount of income
24 taxes due or if there are no state income taxes due on the income of

1 the taxpayer, the amount of the credit allowed but not used in any
2 tax year may be carried forward as a credit against subsequent
3 income tax liability for a period not exceeding ten (10) years.

4 2. For credits generated, but not used, on or after January 1,
5 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
6 election, directly to the taxpayer eighty-five percent (85%) of the
7 face amount of such credits; except as otherwise provided in
8 subsection I of this section. The direct refund of the credits
9 pursuant to this paragraph shall be available to all taxpayers,
10 including, without limitation, pass-through entities and taxpayers
11 subject to Section 2355 of this title, but shall not be available to
12 any entities falling within the provisions of subsection E of this
13 section. The amount of any direct refund of credits actually
14 received at the eighty-five percent (85%) level by the taxpayer
15 pursuant to this paragraph shall not be subject to the tax imposed
16 by Section 2355 of this title. If the pass-through entity does not
17 file a claim for a direct refund, the pass-through entity shall
18 allocate the credit to one or more of the shareholders, partners or
19 members of the pass-through entity; provided, the total of all
20 credits refunded or allocated shall not exceed the amount of the
21 credit or refund to which the pass-through entity is entitled. For
22 the purposes of this paragraph, "pass-through entity" means a
23 corporation that for the applicable tax year is treated as an S
24 corporation under the Internal Revenue Code of 1986, as amended,

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

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

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

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

21 G. For electricity generation produced and sold in a calendar
22 year, the tax credit allowed by the provisions of this section, upon
23 election of the taxpayer, shall be treated and may be claimed as a
24 payment of tax, a prepayment of tax or a payment of estimated tax

1 for purposes of Section 2355 of this title on or after July 1 of the
2 following calendar year.

3 H. No credit otherwise authorized by the provisions of this
4 section may be claimed for any event, transaction, investment,
5 expenditure or other act occurring on or after July 1, 2010, for
6 which the credit would otherwise be allowable until the provisions
7 of this subsection shall cease to be operative on July 1, 2011.
8 Beginning July 1, 2011, the credit authorized by this section may be
9 claimed for any event, transaction, investment, expenditure or other
10 act occurring on or after July 1, 2010, according to the provisions
11 of this section. Any tax credits which accrue during the period of
12 July 1, 2010, through June 30, 2011, may not be claimed for any
13 period prior to the taxable year beginning January 1, 2012. No
14 credits which accrue during the period of July 1, 2010, through June
15 30, 2011, may be used to file an amended tax return for any taxable
16 year prior to the taxable year beginning January 1, 2012.

17 I. 1. The total amount of all refundable credits allowed in a
18 taxable year shall be limited to the percentage calculated by the
19 Oklahoma Tax Commission pursuant to the provisions of this
20 subsection.

21 2. The total amount of all claims allowed for credits refunded
22 for tax year 2018 and all subsequent years shall not exceed Twenty-
23 five Million Dollars (\$25,000,000.00).

1 3. The total amount of all credits allowed by this subsection
2 shall be claimed before October 15 of any year for electricity
3 generated during the prior tax year, including any carryover from
4 credits generated prior to January 1, 2014. The Tax Commission
5 shall not allow or pay any claim filed on or after October 15 for
6 any electricity generated during the prior tax year or credit
7 carried forward during the prior tax year.

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

14 5. The remaining balance of refundable credit claimed over the
15 limitations provided in this subsection shall be paid in subsequent
16 years subject to the limitations provided and in the same manner
17 provided in this subsection.

18 SECTION 2. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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