

1 ENGROSSED HOUSE
2 BILL NO. 1263

By: Hilbert of the House

3 and

4 Pugh of the Senate
5

6 An Act relating to revenue and taxation; amending 68
7 O.S. 2011, Section 2357.32A, as last amended by
8 Section 1, Chapter 264, O.S.L. 2018 (68 O.S. Supp.
9 2018, Section 2357.32A), which relates to tax credits
10 for electricity generated from certain zero-emission
11 facilities; providing for election regarding
12 refundability of tax credits; providing for
13 carryover; requiring refund with respect to certain
14 tax credits; prescribing percentage of refund amount;
15 providing an effective date; and declaring an
16 emergency.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
19 last amended by Section 1, Chapter 264, O.S.L. 2018 (68 O.S. Supp.
20 2018, Section 2357.32A), is amended to read as follows:

21 Section 2357.32A A. Except as otherwise provided in subsection
22 H of this section, for tax years beginning on or after January 1,
23 2003, but with respect to tax credits for eligible renewable
24 resources described by subparagraphs b, c and d of paragraph 2 of
this subsection, for tax years ending not later than December 31,
2021, there shall be allowed a credit against the tax imposed by
Section 2355 of this title to a taxpayer for the taxpayer's

1 production and sale to an unrelated person of electricity generated
2 by zero-emission facilities located in this state. As used in this
3 section:

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

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

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

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

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

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.

1 2. ~~For~~ Except as provided by paragraph 3 of this subsection,
2 for credits generated, but not used, on or after January 1, 2014,
3 the Oklahoma Tax Commission shall refund, at the taxpayer's
4 election, directly to the taxpayer eighty-five percent (85%) of the
5 face amount of such credits. The direct refund of the credits
6 pursuant to this paragraph shall be available to all taxpayers,
7 including, without limitation, pass-through entities and taxpayers
8 subject to Section 2355 of this title, but shall not be available to
9 any entities falling within the provisions of subsection E of this
10 section. The amount of any direct refund of credits actually
11 received at the eighty-five percent (85%) level by the taxpayer
12 pursuant to this paragraph shall not be subject to the tax imposed
13 by Section 2355 of this title. If the pass-through entity does not
14 file a claim for a direct refund, the pass-through entity shall
15 allocate the credit to one or more of the shareholders, partners or
16 members of the pass-through entity; provided, the total of all
17 credits refunded or allocated shall not exceed the amount of the
18 credit or refund to which the pass-through entity is entitled. For
19 the purposes of this paragraph, "pass-through entity" means a
20 corporation that for the applicable tax year is treated as an S
21 corporation under the Internal Revenue Code of 1986, as amended,
22 general partnership, limited partnership, limited liability
23 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 3. With respect to credits claimed for the first time on or
4 after July 1, 2019, or the effective date of this act, whichever
5 date last occurs, a taxpayer may irrevocably elect to not receive a
6 direct refund for a given tax year. Any credits not directly
7 refunded may be carried forward as a credit against subsequent
8 income tax liability for a period not exceeding ten (10) years. If
9 a taxpayer makes the irrevocable election to carry over credits for
10 a given tax year pursuant to this paragraph, any credits remaining
11 in the tenth year of carry forward shall be refunded at eighty-five
12 percent (85%).

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

3 F. For credits generated prior to January 1, 2014, the amount
4 of the credit allowed, but not used, shall be freely transferable at
5 any time during the ten (10) years following the year of
6 qualification. Any person to whom or to which a tax credit is
7 transferred shall have only such rights to claim and use the credit
8 under the terms that would have applied to the entity by whom or by
9 which the tax credit was transferred. The provisions of this
10 subsection shall not limit the ability of a tax credit transferee to
11 reduce the tax liability of the transferee, regardless of the actual
12 tax liability of the tax credit transferor, for the relevant taxable
13 period. The transferor initially allowed the credit and any
14 subsequent transferees shall jointly file a copy of any written
15 transfer agreement with the Oklahoma Tax Commission within thirty
16 (30) days of the transfer. The written agreement shall contain the
17 name, address and taxpayer identification number or Social Security
18 number of the parties to the transfer, the amount of the credit
19 being transferred, the year the credit was originally allowed to the
20 transferor, and the tax year or years for which the credit may be
21 claimed. The Tax Commission may promulgate rules to permit
22 verification of the validity and timeliness of the tax credit
23 claimed upon a tax return pursuant to this subsection but shall not
24 promulgate any rules that unduly restrict or hinder the transfers of

1 such tax credit. The tax credit allowed by this section, upon the
2 election of the taxpayer, may be claimed as a payment of tax, a
3 prepayment of tax or a payment of estimated tax for purposes of
4 Section 1803 or Section 2355 of this title.

5 G. For electricity generation produced and sold in a calendar
6 year, the tax credit allowed by the provisions of this section, upon
7 election of the taxpayer, shall be treated and may be claimed as a
8 payment of tax, a prepayment of tax or a payment of estimated tax
9 for purposes of Section 2355 of this title on or after July 1 of the
10 following calendar year.

11 H. No credit otherwise authorized by the provisions of this
12 section may be claimed for any event, transaction, investment,
13 expenditure or other act occurring on or after July 1, 2010, for
14 which the credit would otherwise be allowable until the provisions
15 of this subsection shall cease to be operative on July 1, 2011.
16 Beginning July 1, 2011, the credit authorized by this section may be
17 claimed for any event, transaction, investment, expenditure or other
18 act occurring on or after July 1, 2010, according to the provisions
19 of this section. Any tax credits which accrue during the period of
20 July 1, 2010, through June 30, 2011, may not be claimed for any
21 period prior to the taxable year beginning January 1, 2012. No
22 credits which accrue during the period of July 1, 2010, through June
23 30, 2011, may be used to file an amended tax return for any taxable
24 year prior to the taxable year beginning January 1, 2012.

1 I. For tax years beginning on or after January 1, 2019, the
2 total amount of credits authorized by this section with respect to
3 eligible renewable resources described by subparagraphs b, c and d
4 of paragraph 2 of subsection A of this section used to offset tax or
5 paid as a refund shall be adjusted annually to limit the annual
6 amount of credits to Five Hundred Thousand Dollars (\$500,000.00).
7 The Tax Commission shall annually calculate and publish a percentage
8 by which the credits authorized by subparagraphs b, c and d of
9 paragraph 2 of subsection A of this section shall be reduced so the
10 total amount of credits used to offset tax or paid as a refund does
11 not exceed Five Hundred Thousand Dollars (\$500,000.00) per year.
12 The formula to be used for the percentage adjustment shall be Five
13 Hundred Thousand Dollars (\$500,000.00) divided by the credits
14 claimed in the second preceding year.

15 J. Pursuant to subsection I of this section, in the event the
16 total tax credits authorized by this section with respect to
17 eligible renewable resources described by subparagraphs b, c and d
18 of paragraph 2 of subsection A of this section exceed Five Hundred
19 Thousand Dollars (\$500,000.00) in any calendar year, the Tax
20 Commission shall permit any excess over Five Hundred Thousand
21 Dollars (\$500,000.00) but shall factor such excess into the
22 percentage adjustment formula for subsequent years.

23 K. Any credits authorized by this section with respect to
24 eligible renewable resources described by subparagraphs b, c and d

1 of paragraph 2 of subsection A of this section not used or unable to
2 be used because of the provisions of subsection I or J of this
3 section may be carried over until such credits are fully used.

4 L. The Tax Commission shall prepare an annual report and submit
5 it to the Office of the State Secretary of Energy and Environment,
6 the Governor, the Speaker of the Oklahoma House of Representatives
7 and the President Pro Tempore of the Oklahoma State Senate
8 summarizing the amount of credits allowed pursuant to subparagraphs
9 b, c and d of paragraph 2 of subsection A of this section. The
10 Secretary of Energy and Environment shall submit recommendations for
11 changes to the tax credit to the Governor, the Speaker of the
12 Oklahoma House of Representatives and the President Pro Tempore of
13 the Oklahoma State Senate within sixty (60) days after receipt of
14 the report from the Oklahoma Tax Commission.

15 SECTION 2. This act shall become effective July 1, 2019.

16 SECTION 3. It being immediately necessary for the preservation
17 of the public peace, health or safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.
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1 Passed the House of Representatives the 20th day of February,
2 2019.

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4 Presiding Officer of the House
5 of Representatives

6 Passed the Senate the ____ day of _____, 2019.

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8 Presiding Officer of the Senate