

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 2234

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; enacting the
8 Driving on Road Infrastructure with Vehicles of
9 Electricity (DRIVE) Act of 2021; defining terms;
10 stating purpose of tax pursuant to Section 19 of
11 Article X of the Oklahoma Constitution; imposing tax
12 levy on certain transfer of electric power to
13 electric vehicles or hybrid vehicles; providing for
14 rate of tax; providing for first date of tax levy;
15 restricting imposition of tax on certain fees or
16 charges; requiring charging stations to make certain
17 disclosures; prescribing requirements related to
18 remittance of tax; imposing due date; requiring
19 separate statement of tax on billing or invoices;
20 providing exemption from tax for certain charging
21 stations; providing for apportionment of revenue to
22 the Driving on Road Infrastructure with Vehicles of
23 Electricity Revolving Fund; requiring registration of
24 charging stations; imposing time limit for
registration; imposing requirements for metering
systems; authorizing Oklahoma Tax Commission to make
inspections of charging stations; prescribing penalty
for failure to remit tax; requiring electric or
hybrid vehicles to have decals; providing for income
tax credit for charging costs for electric or hybrid
vehicle; imposing limit on credit amount based on
registration fees paid; prohibiting use of credit to
reduce tax liability amount to less than zero;
providing for carryover; providing for additional
vehicle registration fees for electric and hybrid
vehicles; providing for computation of registration
fee amounts; requiring publication of fee amounts on
agency website and in certain publications; providing
for apportionment of fee revenues; creating the
Driving on Road Infrastructure with Vehicles of
Electricity (DRIVE) Revolving Fund; providing for

1 apportionment of revenues to fund; providing for
2 expenditure of funds; amending 68 O.S. 2011, Section
3 1355, as last amended by Section 1, Chapter 356,
4 O.S.L. 2017 (68 O.S. Supp. 2020, Section 1355), which
5 relates to payment of taxes in lieu of sales tax;
6 providing tax on electricity transfers in lieu of
7 state and local sales tax; providing for
8 codification; and providing an effective date.

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

9 SECTION 1. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 6501 of Title 68, unless there
11 is created a duplication in numbering, reads as follows:

12 This act shall be known and may be cited as the "Driving on Road
13 Infrastructure with Vehicles of Electricity (DRIVE) Act of 2021".

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6502 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 As used in this act:

18 1. "Charging station" means equipment by which electric current
19 is transferred to the power system of an electric vehicle or a
20 hybrid vehicle together with the real property upon which such
21 equipment is located or affixed;

22 2. "Charging station operator" means any person, firm, general
23 partnership, limited partnership, limited liability partnership,
24 corporation, limited liability company or any other lawfully

1 recognized business entity that owns or operates or owns and
2 operates a charging station in the state;

3 3. "Electric vehicle" means a passenger or commercial motor
4 vehicle subject to the registration requirements of Section 1132 of
5 Title 47 of the Oklahoma Statutes and which has as its primary
6 method of power for propulsion either a battery or multiple
7 batteries;

8 4. "Hybrid vehicle" means a vehicle that has as its primary
9 method of power for propulsion a combination of electric power from
10 one or more batteries in combination with a conventional internal
11 combustion engine or a vehicle that produces electric power through
12 a fuel cell technology;

13 5. "Public charging station" means a location at which a
14 charging station owner or operator conducts for-profit business
15 using a metered system for the delivery of electric power to an
16 electric vehicle or a hybrid vehicle and charges the customer either
17 for the electricity transferred to the power system of the vehicle
18 or for the duration of time during which electricity is transferred
19 to the power system of the vehicle. Public charging station does
20 not include a private residence at which the owner or occupant of
21 the residence uses electric power paid for by the owner or occupant
22 of the residence which is supplied to the residence by a regulated
23 public utility, an electric cooperative or other wholesale level of
24 electric supply, whether or not supplemented by electric power

1 produced by the owner or occupant using solar energy or other
2 methods to provide electric power to the residence, in order to
3 charge or recharge an electric vehicle or hybrid vehicle; and

4 6. "Legacy chargers" means charging stations in operation prior
5 to November 1, 2021, that have never had a metering system in place
6 capable of measuring electricity transferred from the charging
7 station to the vehicle or are incapable of measuring the time
8 elapsed while actively charging a vehicle, and placing a fee on the
9 charging session.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6503 of Title 68, unless there
12 is created a duplication in numbering, reads as follows:

13 Pursuant to the requirement of Section 19 of Article X of the
14 Oklahoma Constitution, the purpose of the tax imposed pursuant to
15 the provisions of this act is to provide revenue for general
16 government expenditures.

17 SECTION 4. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 6504 of Title 68, unless there
19 is created a duplication in numbering, reads as follows:

20 A. There is hereby imposed a tax of seven cents (\$0.07) per
21 kilowatt hour or its equivalent, as determined by the Oklahoma Tax
22 Commission, on the electric current used to charge or recharge the
23 battery or batteries of an electric vehicle or hybrid vehicle. The
24 tax shall be levied beginning January 1, 2023.

1 B. The amount of tax prescribed or authorized by this section
2 shall not include any fees or charges associated with the method for
3 payment for the charging service, but shall be based only upon the
4 rate of tax and the electricity transferred during the charging
5 process.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 6505 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 A charging station operator shall make a full and conspicuous
10 disclosure at the site of the charging station and on the website
11 maintained by or on behalf of the owner or operator, if applicable,
12 of the rate at which the owner or operator charges for electric
13 power transferred to an electric vehicle or a hybrid vehicle.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 6506 of Title 68, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The tax imposed pursuant to the provisions of Section 4 of
18 this act shall be remitted monthly by each charging station owner or
19 operator. The tax shall be remitted using such forms as the
20 Oklahoma Tax Commission may prescribe for that purpose.

21 B. The tax and any required report shall be filed with the Tax
22 Commission not later than fifteenth day of the month following the
23 month during which the electric charging for an electric vehicle or
24 hybrid vehicle occurred.

1 C. The charging station owner or operator shall separately
2 state on any invoice or billing document provided to the customer
3 the amount of the tax imposed pursuant to Section 4 of this act and
4 shall not include the tax amount in the total amount billed to the
5 customer.

6 D. The provisions of this section shall not prohibit a charging
7 station owner or operator from imposing a fee or charge in addition
8 to the kilowatt hour or other equivalent unit of measurement for the
9 transfer of electric power to an electric vehicle or a hybrid
10 vehicle.

11 E. Legacy chargers shall be exempt from remitting the tax
12 levied in this section until November 1, 2041.

13 F. Public charging stations that have never charged a fee for
14 their use shall be exempt from remitting the tax levied in this
15 section until November 1, 2041.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 6507 of Title 68, unless there
18 is created a duplication in numbering, reads as follows:

19 The revenue derived from the tax levy imposed pursuant to the
20 provisions of Section 4 of this act shall be apportioned to the
21 Driving on Road Infrastructure with Vehicles of Electricity
22 Revolving Fund created pursuant to Section 12 of this act.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6508 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 A. All charging stations in operation prior to the effective
5 date of this act shall register with the Oklahoma Tax Commission not
6 later than January 31, 2023.

7 B. For a charging station which begins operations for the first
8 time on or after November 1, 2021, the charging station owner or
9 operator shall register with the Oklahoma Tax Commission not later
10 than fifteen (15) days after the date as of which the first business
11 operations at the station site begin or by January 31, 2023,
12 whichever is later.

13 C. Any public charging station for an electric vehicle or
14 hybrid vehicle constructed or which begins operations for the first
15 time on or after November 1, 2021, shall use a metering system that
16 is capable of imposing the cost for the charging service using a
17 unit per kilowatt hour or a comparable measurement as determined by
18 the Tax Commission, such as time elapsed while charging and the
19 charging capacity of the charging station. The metering system
20 shall include a system by which an audit of the electricity supplied
21 through the system may be performed to determine the amount of
22 electricity transferred to a customer and the cost charged by the
23 charging station owner or operator for each unit of electricity
24 transferred.

1 D. The Oklahoma Tax Commission shall have the authority to
2 inspect the premises and equipment of any charging station owner or
3 operator to enforce compliance with the provisions of this section.

4 E. If a charging station owner or operator fails to remit the
5 tax as required by the provisions of this act, the Oklahoma Tax
6 Commission shall begin proceedings to terminate the charging station
7 owner or operator license to do business for failure to remit in the
8 same manner as prescribed by law for failure to remit sales tax.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 6509 of Title 68, unless there
11 is created a duplication in numbering, reads as follows:

12 Each electric vehicle and each hybrid vehicle registered in the
13 state shall have a decal, the design of which shall be prescribed by
14 the Oklahoma Tax Commission, to be displayed either on the front or
15 rear windshield of the vehicle or on the license plate to clearly
16 identify that the vehicle is either an electric vehicle or a hybrid
17 vehicle.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 6510 of Title 68, unless there
20 is created a duplication in numbering, reads as follows:

21 A. As used in this section, "electric vehicle" or "hybrid
22 vehicle" shall have the same meaning as provided in Section 2 of
23 this act.

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1 B. For taxable years beginning after December 31, 2021, there
2 shall be allowed as a credit against the tax imposed pursuant to
3 Section 2355 of Title 68 of the Oklahoma Statutes in the amount of
4 electric vehicle or hybrid vehicle charging costs.

5 C. With respect to a natural person filing either a single
6 status income tax return or persons filing a married status joint
7 return, the amount of the credit otherwise authorized by this
8 section shall not exceed the total amount of registration fees for
9 either electric vehicles or hybrid vehicles paid by the person or
10 persons during the taxable year for which the tax credit is claimed.

11 D. With respect to a taxpayer that is not a natural person, the
12 amount of the credit otherwise authorized by this section shall not
13 exceed the total amount of registration fees for either electric
14 vehicles or hybrid vehicles paid by the taxpayer during the taxable
15 year for which the tax credit is claimed.

16 E. The credit authorized by the provisions of this section
17 shall not be used to reduce the tax liability to less than zero (0).

18 F. To the extent not used, the credit authorized by the
19 provisions of this section may be carried over, in order, to each of
20 the five (5) succeeding taxable years.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6511 of Title 68, unless there
23 is created a duplication in numbering, reads as follows:

1 A. In addition to the registration fees required pursuant to
2 the provisions of Section 1132 of Title 47 of the Oklahoma Statutes,
3 at the time of initial and renewal registration for any electric
4 vehicle or any hybrid vehicle, there shall be a fee which shall be
5 determined by the rules of the Oklahoma Tax Commission and shall be
6 effective for the period beginning January 1, 2022, and for each
7 year thereafter.

8 B. The Oklahoma Tax Commission shall establish a correlation
9 between the battery capacity and miles traveled using vehicle
10 categories including subcategories to address different models or
11 body or chassis styles for both passenger and commercial vehicles
12 together with an analysis of the motor fuel tax revenues foregone to
13 the State of Oklahoma attributable to the use of electric vehicles
14 or hybrid vehicles. The registration fee amount shall have a
15 reasonable correlation to the amount of motor fuel tax likely to be
16 remitted to the State of Oklahoma by a comparable vehicle having
17 only an internal combustion engine as its system of power for
18 propulsion and shall also take into account the weight differential
19 between electric or hybrid electric vehicle models and comparable
20 combustion engine-only powered models.

21 C. The Oklahoma Tax Commission shall establish the registration
22 fee amount for each calendar year and such fee amount shall be
23 published on the Corporation Commission website and shall be
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1 communicated to the Oklahoma Tax Commission which shall also publish
2 the fee amount on its website.

3 D. The fee amount shall also be communicated to each motor
4 license agent in the state and shall be included in any information
5 distributed by the Tax Commission or motor license agents that also
6 includes registration fee information for other passenger or
7 commercial motor vehicles.

8 E. All revenues derived from the additional registration fee
9 provided by this section shall be apportioned to the Driving on Road
10 Infrastructure with Vehicles of Electricity (DRIVE) Revolving Fund.

11 SECTION 12. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6512 of Title 68, unless there
13 is created a duplication in numbering, reads as follows:

14 There is hereby created in the State Treasury a revolving fund
15 for the Oklahoma Tax Commission to be designated the "Driving on
16 Road Infrastructure with Vehicles of Electricity (DRIVE) Revolving
17 Fund". The fund shall be a continuing fund, not subject to fiscal
18 year limitations, and shall consist of all monies received by the
19 Oklahoma Tax Commission from sources provided by law. All monies
20 accruing to the credit of said fund are hereby appropriated and may
21 be budgeted and expended by the Oklahoma Tax Commission for the
22 purpose of administering the provisions of this act. Expenditures
23 from said fund shall be made upon warrants issued by the State
24 Treasurer against claims filed as prescribed by law with the

1 Director of the Office of Management and Enterprise Services for
2 approval and payment.

3 SECTION 13. AMENDATORY 68 O.S. 2011, Section 1355, as
4 last amended by Section 1, Chapter 356, O.S.L. 2017 (68 O.S. Supp.
5 2020, Section 1355), is amended to read as follows:

6 Section 1355. There are hereby specifically exempted from the
7 tax levied pursuant to the provisions of Section 1350 et seq. of
8 this title:

9 1. Sale of gasoline, motor fuel, methanol, "M-85" which is a
10 mixture of methanol and gasoline containing at least eighty-five
11 percent (85%) methanol, compressed natural gas, liquefied natural
12 gas, or liquefied petroleum gas on which the Motor Fuel Tax,
13 Gasoline Excise Tax, Special Fuels Tax or the fee in lieu of Special
14 Fuels Tax levied in Section 500.1 et seq., Section 601 et seq. or
15 Section 701 et seq. of this title has been, or will be paid;

16 2. For the sale of motor vehicles or any optional equipment or
17 accessories attached to motor vehicles on which the Oklahoma Motor
18 Vehicle Excise Tax levied in Section 2101 et seq. of this title has
19 been, or will be paid, all but a portion of the levy provided under
20 Section 1354 of this title, equal to one and twenty-five-hundredths
21 percent (1.25%) of the gross receipts of such sales. Provided, the
22 sale of motor vehicles shall not be subject to any sales and use
23 taxes levied by cities, counties or other jurisdictions of the
24 state;

1 3. Sale of crude petroleum or natural or casinghead gas and
2 other products subject to gross production tax pursuant to the
3 provisions of Section 1001 et seq. and Section 1101 et seq. of this
4 title. This exemption shall not apply when such products are sold
5 to a consumer or user for consumption or use, except when used for
6 injection into the earth for the purpose of promoting or
7 facilitating the production of oil or gas. This paragraph shall not
8 operate to increase or repeal the gross production tax levied by the
9 laws of this state;

10 4. Sale of aircraft on which the tax levied pursuant to the
11 provisions of Sections 6001 through 6007 of this title has been, or
12 will be paid or which are specifically exempt from such tax pursuant
13 to the provisions of Section 6003 of this title;

14 5. Sales from coin-operated devices on which the fee imposed by
15 Sections 1501 through 1512 of this title has been paid;

16 6. Leases of twelve (12) months or more of motor vehicles in
17 which the owners of the vehicles have paid the vehicle excise tax
18 levied by Section 2103 of this title;

19 7. Sales of charity game equipment on which a tax is levied
20 pursuant to the Oklahoma Charity Games Act, Section 401 et seq. of
21 Title 3A of the Oklahoma Statutes, or which is sold to an
22 organization that is:

- 23 a. a veterans' organization exempt from taxation pursuant
24 to the provisions of paragraph (4), (7), (8), (10) or

1 (19) of subsection (c) of Section 501 of the United
2 States Internal Revenue Code of 1986, as amended, 26
3 U.S.C., Section 501(c) et seq.,

4 b. a group home for mentally disabled individuals exempt
5 from taxation pursuant to the provisions of paragraph
6 (3) of subsection (c) of Section 501 of the United
7 States Internal Revenue Code of 1986, as amended, 26
8 U.S.C., Section 501(c) et seq., or

9 c. a charitable healthcare organization which is exempt
10 from taxation pursuant to the provisions of paragraph
11 (3) of subsection (c) of Section 501 of the United
12 States Internal Revenue Code of 1986, as amended, 26
13 U.S.C., Section 501(c) et seq.;

14 8. Sales of cigarettes or tobacco products to:

15 a. a federally recognized Indian tribe or nation which
16 has entered into a compact with the State of Oklahoma
17 pursuant to the provisions of subsection C of Section
18 346 of this title or to a licensee of such a tribe or
19 nation, upon which the payment in lieu of taxes
20 required by the compact has been paid, or

21 b. a federally recognized Indian tribe or nation or to a
22 licensee of such a tribe or nation upon which the tax
23 levied pursuant to the provisions of Section 349.1 or
24 Section 426 of this title has been paid;

1 9. Leases of aircraft upon which the owners have paid the
2 aircraft excise tax levied by Section 6001 et seq. of this title or
3 which are specifically exempt from such tax pursuant to the
4 provisions of Section 6003 of this title;

5 10. The sale of low-speed or medium-speed electrical vehicles
6 on which the Oklahoma Motor Vehicle Excise Tax levied in Section
7 2101 et seq. of this title has been or will be paid; ~~and~~

8 11. Effective January 1, 2005, sales of cigarettes on which the
9 tax levied in Section 301 et seq. of this title or tobacco products
10 on which the tax levied in Section 401 et seq. of this title has
11 been paid; and

12 12. Sales of electricity at charging stations as defined by
13 Section 2 of this act when the electricity is sold by a charging
14 station owner or operator for purposes of charging an electric
15 vehicle or a hybrid vehicle as defined by Section 2 of this act and
16 the tax imposed pursuant to Section 4 of this act is collected and
17 remitted to the Oklahoma Tax Commission.

18 SECTION 14. This act shall become effective November 1, 2021.

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