

STATE OF OKLAHOMA

1st Session of the 60th Legislature (2025)

SENATE BILL 239

By: Wingard

AS INTRODUCED

An Act relating to income tax; amending 68 O.S. 2021, Section 2357.32A, which relates to credit on the sale of electricity generated by zero-emission facilities; limiting credit to certain tax years; limiting carry forward provisions; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2021, 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~~ 2003 through 2025, but with respect to tax credits for eligible renewable 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 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 C. Credits may be claimed with respect to electricity generated
13 on or after January 1, 2003, during a ten-year period following the
14 date that the facility is placed in operation on or after June 4,
15 2001, or through tax year 2025, whichever occurs earlier.

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

22 2. Except as provided by paragraph 3 of this subsection, for
23 credits generated, but not used, on or after January 1, 2014, the
24 Oklahoma Tax Commission shall refund, at the taxpayer's election,
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1 directly to the taxpayer eighty-five percent (85%) of the face
2 amount of such credits. The direct refund of the credits pursuant
3 to this paragraph shall be available to all taxpayers, including,
4 without limitation, pass-through entities and taxpayers subject to
5 Section 2355 of this title, but shall not be available to any
6 entities falling within the provisions of subsection E of this
7 section. The amount of any direct refund of credits actually
8 received at the eighty-five percent (85%) level by the taxpayer
9 pursuant to this paragraph shall not be subject to the tax imposed
10 by Section 2355 of this title. If the pass-through entity does not
11 file a claim for a direct refund, the pass-through entity shall
12 allocate the credit to one or more of the shareholders, partners or
13 members of the pass-through entity; provided, the total of all
14 credits refunded or allocated shall not exceed the amount of the
15 credit or refund to which the pass-through entity is entitled. For
16 the purposes of this paragraph, "pass-through entity" means a
17 corporation that for the applicable tax year is treated as an S
18 corporation under the Internal Revenue Code of 1986, as amended,
19 general partnership, limited partnership, limited liability
20 partnership, trust or limited liability company that for the
21 applicable tax year is not taxed as a corporation for federal income
22 tax purposes.

23 3. With respect to credits claimed for the first time on or
24 after July 1, 2019, ~~or the effective date of this act, whichever~~

1 ~~date last occurs,~~ a taxpayer may irrevocably elect to not receive a
2 direct refund for a given tax year. Any credits not directly
3 refunded may be carried forward as a credit against subsequent
4 income tax liability for a period not exceeding ten (10) years, but
5 in no event shall credit be carried forward to tax year 2026 or
6 subsequent tax years. If a taxpayer makes the irrevocable election
7 to carry over credits for a given tax year pursuant to this
8 paragraph, any credits remaining in the tenth year of carry forward
9 or tax year 2025, whichever occurs first, shall be refunded at
10 eighty-five percent (85%).

11 E. Any nontaxable entities, including agencies of the State of
12 Oklahoma or political subdivisions thereof, shall be eligible to
13 establish a transferable tax credit in the amount provided in
14 subsection B of this section. Such tax credit shall be a property
15 right available to a state agency or political subdivision of this
16 state to transfer or sell to a taxable entity, whether individual or
17 corporate, who shall have an actual or anticipated income tax
18 liability under Section 2355 of this title. These tax credit
19 provisions are authorized as an incentive to the State of Oklahoma,
20 its agencies and political subdivisions to encourage the expenditure
21 of funds in the development, construction and utilization of
22 electricity from zero-emission facilities as defined in subsection A
23 of this section.
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1 F. For credits generated prior to January 1, 2014, the amount
2 of the credit allowed, but not used, shall be freely transferable at
3 any time during the ten (10) years following the year of
4 qualification. Any person to whom or to which a tax credit is
5 transferred shall have only such rights to claim and use the credit
6 under the terms that would have applied to the entity by whom or by
7 which the tax credit was transferred. The provisions of this
8 subsection shall not limit the ability of a tax credit transferee to
9 reduce the tax liability of the transferee, regardless of the actual
10 tax liability of the tax credit transferor, for the relevant taxable
11 period. The transferor initially allowed the credit and any
12 subsequent transferees shall jointly file a copy of any written
13 transfer agreement with the Oklahoma Tax Commission within thirty
14 (30) days of the transfer. The written agreement shall contain the
15 name, address and taxpayer identification number or Social Security
16 number of the parties to the transfer, the amount of the credit
17 being transferred, the year the credit was originally allowed to the
18 transferor, and the tax year or years for which the credit may be
19 claimed. The Tax Commission may promulgate rules to permit
20 verification of the validity and timeliness of the tax credit
21 claimed upon a tax return pursuant to this subsection but shall not
22 promulgate any rules that unduly restrict or hinder the transfers of
23 such tax credit. The tax credit allowed by this section, upon the
24 election of the taxpayer, may be claimed as a payment of tax, a

1 prepayment of tax or a payment of estimated tax for purposes of
2 Section 1803 or Section 2355 of this title.

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

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

23 I. For tax years beginning on or after January 1, 2019, the
24 total amount of credits authorized by this section with respect to

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

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

21 K. Any credits authorized by this section with respect to
22 eligible renewable resources described by subparagraphs b, c and d
23 of paragraph 2 of subsection A of this section not used or unable to
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1 be used because of the provisions of subsection I or J of this
2 section may be carried over until such credits are fully used.

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

14 SECTION 2. This act shall become effective November 1, 2025.

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