

1 **SENATE FLOOR VERSION**

2 February 23, 2016

3 **AS AMENDED**

4 SENATE BILL NO. 1443

5 By: Standridge

6 [income tax credits - generation of electricity -
7 time period - effective date]
8

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

10 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
11 amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2015,
12 Section 2357.32A), is amended to read as follows:

13 Section 2357.32A. A. Except as otherwise provided in
14 ~~subsection H~~ subsections H and I of this section, for tax years
15 beginning on or after January 1, 2003, there shall be allowed a
16 credit against the tax imposed by Section 2355 of this title to a
17 taxpayer for the taxpayer's production and sale to an unrelated
18 person of electricity generated by zero-emission facilities located
19 in this state. As used in this section:

20 1. "Electricity generated by zero-emission facilities" means
21 electricity that is exclusively produced by any facility located in
22 this state with a rated production capacity of one megawatt (1 mw)
23 or greater, constructed for the generation of electricity and placed
24 in operation after June 4, 2001, which utilizes eligible renewable

1 resources as its fuel source. The construction and operation of
2 such facilities shall result in no pollution or emissions that are
3 or may be harmful to the environment, pursuant to a determination by
4 the Department of Environmental Quality; and

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

- 6 a. wind,
- 7 b. moving water,
- 8 c. sun, or
- 9 d. geothermal energy.

10 B. For facilities placed in operation on or after January 1,
11 2003, and before January 1, 2007, the amount of the credit for the
12 electricity generated on or after January 1, 2003, but prior to
13 January 1, 2004, shall be seventy-five one-hundredths of one cent
14 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
15 emission facilities. For electricity generated on or after January
16 1, 2004, but prior to January 1, 2007, the amount of the credit
17 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
18 hour for electricity generated by zero-emission facilities. For
19 electricity generated on or after January 1, 2007, but prior to
20 January 1, 2012, the amount of the credit shall be twenty-five one-
21 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
22 generated by zero-emission facilities. ~~For~~ Except as otherwise
23 provided in subsection I of this section, for facilities placed in
24 operation on or after January 1, 2007, and before January 1, 2021,

1 the amount of the credit for the electricity generated on or after
2 January 1, 2007, shall be fifty one-hundredths of one cent (\$0.0050)
3 for each kilowatt-hour of electricity generated by zero-emission
4 facilities.

5 C. Credits may be claimed with respect to electricity generated
6 on or after January 1, 2003, during a ten-year period following the
7 date that the facility is placed in operation on or after June 4,
8 2001.

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

15 2. For credits generated, but not used, on or after January 1,
16 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
17 election, directly to the taxpayer eighty-five percent (85%) of the
18 face amount of such credits. The direct refund of the credits
19 pursuant to this paragraph shall be available to all taxpayers,
20 including, without limitation, pass-through entities and taxpayers
21 subject to Section 2355 of this title, but shall not be available to
22 any entities falling within the provisions of subsection E of this
23 section. The amount of any direct refund of credits actually
24 received at the eighty-five percent (85%) level by the taxpayer

1 pursuant to this paragraph shall not be subject to the tax imposed
2 by Section 2355 of this title. If the pass-through entity does not
3 file a claim for a direct refund, the pass-through entity shall
4 allocate the credit to one or more of the shareholders, partners or
5 members of the pass-through entity; provided, the total of all
6 credits refunded or allocated shall not exceed the amount of the
7 credit or refund to which the pass-through entity is entitled. For
8 the purposes of this paragraph, "pass-through entity" means a
9 corporation that for the applicable tax year is treated as an S
10 corporation under the Internal Revenue Code of 1986, as amended,
11 general partnership, limited partnership, limited liability
12 partnership, trust or limited liability company that for the
13 applicable tax year is not taxed as a corporation for federal income
14 tax purposes.

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

1 of funds in the development, construction and utilization of
2 electricity from zero-emission facilities as defined in subsection A
3 of this section.

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

1 promulgate any rules that unduly restrict or hinder the transfers of
2 such tax credit. The tax credit allowed by this section, upon the
3 election of the taxpayer, may be claimed as a payment of tax, a
4 prepayment of tax or a payment of estimated tax for purposes of
5 Section 1803 or Section 2355 of this title.

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

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

1 30, 2011, may be used to file an amended tax return for any taxable
2 year prior to the taxable year beginning January 1, 2012.

3 I. No credits shall be allowed pursuant to subsection A of this
4 section for generation of wind power on or after January 1, 2018,
5 unless this section is reauthorized by the Oklahoma Legislature
6 after evaluation by the Incentive Evaluation Commission pursuant to
7 Section 7004 of Title 62 of the Oklahoma Statutes.

8 SECTION 2. This act shall become effective November 1, 2016.

9 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
10 February 23, 2016 - DO PASS AS AMENDED

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