

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 893

By: Quinn of the Senate

and

Sears of the House

8
9
10 COMMITTEE SUBSTITUTE

11 An Act relating to revenue and taxation; amending 68
12 O.S. 2011, Section 2357.32A, as last amended by
13 Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
14 2017, Section 2357.32A), which relates to tax credits
15 for certain zero-emission facilities; imposing cap on
16 tax credits; prescribing formula for adjustment to
17 tax credit amounts; providing for applicability of
18 tax credit cap to certain zero-emission facilities;
19 authorizing carryover of unused credits; requiring
20 Tax Commission to prepare annual report; requiring
21 report by the Secretary of Energy and Environment;
22 and providing an effective date.

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

24 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:

1 Section 2357.32A A. Except as otherwise provided in subsection
2 H of this section, for tax years beginning on or after January 1,
3 2003, but with respect to tax credits for eligible renewable
4 resources described by subparagraphs b, c and d of paragraph 2 of
5 this subsection, for tax years ending not later than December 31,
6 2021, there shall be allowed a credit against the tax imposed by
7 Section 2355 of this title to a taxpayer for the taxpayer's
8 production and sale to an unrelated person of electricity generated
9 by zero-emission facilities located in this state. As used in this
10 section:

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

22 2. "Eligible renewable resources" means resources derived from:
23 a. wind,
24 b. moving water,

1 c. sun, or

2 d. geothermal energy.

3 B. For facilities placed in operation on or after January 1,
4 2003, and before January 1, 2007, the amount of the credit for the
5 electricity generated on or after January 1, 2003, but prior to
6 January 1, 2004, shall be seventy-five one-hundredths of one cent
7 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
8 emission facilities. For electricity generated on or after January
9 1, 2004, but prior to January 1, 2007, the amount of the credit
10 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
11 hour for electricity generated by zero-emission facilities. For
12 electricity generated on or after January 1, 2007, but prior to
13 January 1, 2012, the amount of the credit shall be twenty-five one-
14 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
15 generated by zero-emission facilities. For facilities placed in
16 operation on or after January 1, 2007, and before January 1, 2021,
17 or with respect to electricity generated by wind for any facility
18 placed in operation not later than July 1, 2017, the amount of the
19 credit for the electricity generated on or after January 1, 2007,
20 shall be fifty one-hundredths of one cent (\$0.0050) for each
21 kilowatt-hour of electricity generated by zero-emission facilities.

22 C. Credits may be claimed with respect to electricity generated
23 on or after January 1, 2003, during a ten-year period following the
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1 date that the facility is placed in operation on or after June 4,
2 2001.

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

9 2. For credits generated, but not used, on or after January 1,
10 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's
11 election, directly to the taxpayer eighty-five percent (85%) of the
12 face amount of such credits. The direct refund of the credits
13 pursuant to this paragraph shall be available to all taxpayers,
14 including, without limitation, pass-through entities and taxpayers
15 subject to Section 2355 of this title, but shall not be available to
16 any entities falling within the provisions of subsection E of this
17 section. The amount of any direct refund of credits actually
18 received at the eighty-five percent (85%) level by the taxpayer
19 pursuant to this paragraph shall not be subject to the tax imposed
20 by Section 2355 of this title. If the pass-through entity does not
21 file a claim for a direct refund, the pass-through entity shall
22 allocate the credit to one or more of the shareholders, partners or
23 members of the pass-through entity; provided, the total of all
24 credits refunded or allocated shall not exceed the amount of the

1 credit or refund to which the pass-through entity is entitled. For
2 the purposes of this paragraph, "pass-through entity" means a
3 corporation that for the applicable tax year is treated as an S
4 corporation under the Internal Revenue Code of 1986, as amended,
5 general partnership, limited partnership, limited liability
6 partnership, trust or limited liability company that for the
7 applicable tax year is not taxed as a corporation for federal income
8 tax purposes.

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

22 F. For credits generated prior to January 1, 2014, the amount
23 of the credit allowed, but not used, shall be freely transferable at
24 any time during the ten (10) years following the year of

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

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

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

21 I. For tax years beginning on or after January 1, 2019, the
22 total amount of credits authorized by this section with respect to
23 eligible renewable resources described by subparagraphs b, c and d
24 of paragraph 2 of subsection A of this section used to offset tax or

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

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

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

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

12 SECTION 2. This act shall become effective January 1, 2019.

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14 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
15 04/10/2018 - DO PASS, As Amended and Coauthored.

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