

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 470

By: Brecheen

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5  
6 AS INTRODUCED

7 An Act relating to income tax; amending 68 O.S. 2011,  
8 Section 2357.32A, as amended by Section 2, Chapter  
9 371, O.S.L. 2013 (68 O.S. Supp. 2016, Section  
10 2357.32A), which relates to tax credit for  
11 electricity generated by zero-emission facilities;  
12 modifying time periods during which certain types of  
13 facilities qualify for credit; requiring Oklahoma Tax  
14 Commission to publish certain data; declaring  
15 Legislative intent; providing an effective date; and  
16 declaring an 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 amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2016,  
20 Section 2357.32A), is amended to read as follows:

21 Section 2357.32A. A. Except as otherwise provided in  
22 subsection H of this section, for tax years beginning on or after  
23 January 1, 2003, there shall be allowed a credit against the tax  
24 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, which utilizes eligible renewable  
6 resources as its fuel source. The construction and operation of  
7 such facilities shall result in no pollution or emissions that are  
8 or may be harmful to the environment, pursuant to a determination by  
9 the Department of Environmental Quality; and

10           2. "Eligible renewable resources" means resources derived from:  
11           a. wind,  
12           b. moving water,  
13           c. sun, or  
14           d. geothermal energy.

15           B. For facilities placed in operation on or after January 1,  
16 2003, and before January 1, 2007, the amount of the credit for the  
17 electricity generated on or after January 1, 2003, but prior to  
18 January 1, 2004, shall be seventy-five one-hundredths of one cent  
19 (\$0.0075) for each kilowatt-hour of electricity generated by zero-  
20 emission facilities. For electricity generated on or after January  
21 1, 2004, but prior to January 1, 2007, the amount of the credit  
22 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-  
23 hour for electricity generated by zero-emission facilities. For  
24 electricity generated on or after January 1, 2007, but prior to

1 January 1, 2012, the amount of the credit shall be twenty-five one-  
2 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity  
3 generated by zero-emission facilities. For facilities which  
4 generate electricity utilizing moving water, sun or geothermal  
5 energy which are placed in operation on or after January 1, 2007,  
6 and before January 1, 2021, the amount of the credit for the  
7 electricity generated on or after January 1, 2007, shall be fifty  
8 one-hundredths of one cent (\$0.0050) for each kilowatt-hour of  
9 electricity generated by zero-emission facilities. For facilities  
10 which generate electricity utilizing wind which are placed in  
11 operation on or after January 1, 2007, and before July 1, 2017, the  
12 amount of the credit for the electricity generated on or after  
13 January 1, 2007, shall be fifty one-hundredths of one cent (\$0.0050)  
14 for each kilowatt-hour of electricity generated by zero-emission  
15 facilities.

16 C. Credits may be claimed with respect to electricity generated  
17 on or after January 1, 2003, during a ten-year period following the  
18 date that the facility is placed in operation on or after June 4,  
19 2001.

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

3 2. For credits generated, but not used, on or after January 1,  
4 2014, the Oklahoma Tax Commission shall refund, at the taxpayer's  
5 election, directly to the taxpayer eighty-five percent (85%) of the  
6 face amount of such credits. The direct refund of the credits  
7 pursuant to this paragraph shall be available to all taxpayers,  
8 including, without limitation, pass-through entities and taxpayers  
9 subject to Section 2355 of this title, but shall not be available to  
10 any entities falling within the provisions of subsection E of this  
11 section. The amount of any direct refund of credits actually  
12 received at the eighty-five percent (85%) level by the taxpayer  
13 pursuant to this paragraph shall not be subject to the tax imposed  
14 by Section 2355 of this title. If the pass-through entity does not  
15 file a claim for a direct refund, the pass-through entity shall  
16 allocate the credit to one or more of the shareholders, partners or  
17 members of the pass-through entity; provided, the total of all  
18 credits refunded or allocated shall not exceed the amount of the  
19 credit or refund to which the pass-through entity is entitled. For  
20 the purposes of this paragraph, "pass-through entity" means a  
21 corporation that for the applicable tax year is treated as an S  
22 corporation under the Internal Revenue Code of 1986, as amended,  
23 general partnership, limited partnership, limited liability  
24 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 E. Any nontaxable entities, including agencies of the State of  
4 Oklahoma or political subdivisions thereof, shall be eligible to  
5 establish a transferable tax credit in the amount provided in  
6 subsection B of this section. Such tax credit shall be a property  
7 right available to a state agency or political subdivision of this  
8 state to transfer or sell to a taxable entity, whether individual or  
9 corporate, who shall have an actual or anticipated income tax  
10 liability under Section 2355 of this title. These tax credit  
11 provisions are authorized as an incentive to the State of Oklahoma,  
12 its agencies and political subdivisions to encourage the expenditure  
13 of funds in the development, construction and utilization of  
14 electricity from zero-emission facilities as defined in subsection A  
15 of this section.

16 F. For credits generated prior to January 1, 2014, the amount  
17 of the credit allowed, but not used, shall be freely transferable at  
18 any time during the ten (10) years following the year of  
19 qualification. Any person to whom or to which a tax credit is  
20 transferred shall have only such rights to claim and use the credit  
21 under the terms that would have applied to the entity by whom or by  
22 which the tax credit was transferred. The provisions of this  
23 subsection shall not limit the ability of a tax credit transferee to  
24 reduce the tax liability of the transferee, regardless of the actual

1 tax liability of the tax credit transferor, for the relevant taxable  
2 period. The transferor initially allowed the credit and any  
3 subsequent transferees shall jointly file a copy of any written  
4 transfer agreement with the Oklahoma Tax Commission within thirty  
5 (30) days of the transfer. The written agreement shall contain the  
6 name, address and taxpayer identification number or social security  
7 number of the parties to the transfer, the amount of the credit  
8 being transferred, the year the credit was originally allowed to the  
9 transferor, and the tax year or years for which the credit may be  
10 claimed. The Tax Commission may promulgate rules to permit  
11 verification of the validity and timeliness of the tax credit  
12 claimed upon a tax return pursuant to this subsection but shall not  
13 promulgate any rules that unduly restrict or hinder the transfers of  
14 such tax credit. The tax credit allowed by this section, upon the  
15 election of the taxpayer, may be claimed as a payment of tax, a  
16 prepayment of tax or a payment of estimated tax for purposes of  
17 Section 1803 or Section 2355 of this title.

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

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

15 I. Beginning with data for tax year 2016, and each subsequent  
16 tax year, the Oklahoma Tax Commission shall publish on its website  
17 both the total amount of credits claimed and the amount actually  
18 used by taxpayers pursuant to this section for each of the most  
19 recent five (5) tax years.

20 SECTION 2. NEW LAW A new section of law not to be  
21 codified in the Oklahoma Statutes reads as follows:

22 It is hereby the intent of the Oklahoma Legislature that any  
23 additional income tax revenue collected as a result of the enactment  
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1 of this measure be reflected in any statutorily required  
2 computations intended to reduce the top marginal income tax rate.

3 SECTION 3. This act shall become effective July 1, 2017.

4 SECTION 4. It being immediately necessary for the preservation  
5 of the public peace, health or safety, an emergency is hereby  
6 declared to exist, by reason whereof this act shall take effect and  
7 be in full force from and after its passage and approval.

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