

1 ENGROSSED SENATE  
2 BILL NO. 501

By: Mazzei, Brecheen, Allen,  
Shortey, Quinn, Halligan,  
Ford, Fields and Newberry  
of the Senate

4 and

5 Sears of the House

6  
7 [ income tax credits - credits for certain activities  
8 - exception - credit allowed - effective date ]  
9

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

11 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as  
12 amended by Section 2, Chapter 371, O.S.L. 2013 (68 O.S. Supp. 2014,  
13 Section 2357.32A), is amended to read as follows:

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

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

1 in operation after June 4, 2001, which utilizes eligible renewable  
2 resources as its fuel source. The construction and operation of  
3 such facilities shall result in no pollution or emissions that are  
4 or may be harmful to the environment, pursuant to a determination by  
5 the Department of Environmental Quality; and

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

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

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

1        2. For facilities placed in operation on or after January 1,  
2 2007, and before ~~January 1, 2021~~ January 1, 2016, the amount of the  
3 credit for the electricity generated on or after January 1, 2007,  
4 shall be fifty one-hundredths of one cent (\$0.0050) for each  
5 kilowatt-hour of electricity generated by zero-emission facilities.

6        3. For facilities placed in operation on or after January 1,  
7 2016, and before January 1, 2021, unless reauthorized by the  
8 Oklahoma Legislature after review of the report required pursuant to  
9 Section 1 of Senate Bill No. 72 of the 1st Session of the 55th  
10 Oklahoma Legislature, the amount of the credit for each kilowatt-  
11 hour of electricity generated shall be as follows:

12        a. for the first 12 months of operation, fifty one-  
13 hundredths of one cent (\$0.0050),

14        b. for the second 12 months of operation, forty one-  
15 hundredths of one cent (\$0.0040),

16        c. for the third 12 months of operation, thirty one-  
17 hundredths of one cent (\$0.0030),

18        d. for the fourth 12 months of operation, twenty one-  
19 hundredths of one cent (\$0.0020), and

20        e. for all months of operation after the first forty-  
21 eight (48), ten one-hundredths of one cent (\$0.0010).

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  
24

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.

24

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 facilities placed in service on or after January 1,  
22 2016, total credits allowed pursuant to this section for all  
23 taxpayers shall not exceed Six Million Dollars (\$6,000,000.00)

24

1 annually. Such credits shall be allocated by the Tax Commission on  
2 a first-come, first-served basis.

3 SECTION 2. This act shall become effective November 1, 2015.

4 Passed the Senate the 10th day of March, 2015.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

\_\_\_\_\_  
Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2015.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives