

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3711 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Kevin Wallace _____

Reading Clerk

1 STATE OF OKLAHOMA

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

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3711

By: Wallace and Casey of the
House

7 and

8 David and Fields of the
9 Senate

10
11 PROPOSED COMMITTEE SUBSTITUTE

12 An Act relating to revenue and taxation; amending 68
13 O.S. 2011, Section 2357.32A, as last amended by
14 Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
15 2017, Section 2357.32A), which relates to tax credits
16 for electricity generated from certain zero-emission
17 facilities; modifying provisions related to
18 computation of tax credit amount; modifying
19 provisions related to payment of cash amounts based
20 upon tax credits; and providing an effective date.

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

22 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.32A, as
23 last amended by Section 1, Chapter 44, O.S.L. 2017 (68 O.S. Supp.
24 2017, 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,

1 2003, there shall be allowed a credit against the tax imposed by
2 Section 2355 of this title to a taxpayer for the taxpayer's
3 production and sale to an unrelated person of electricity generated
4 by zero-emission facilities located in this state. As used in this
5 section:

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

17 2. "Eligible renewable resources" means resources derived from:
18 a. wind,
19 b. moving water,
20 c. sun, or
21 d. geothermal energy.

22 B. For facilities placed in operation on or after January 1,
23 2003, and before January 1, 2007, the amount of the credit for the
24 electricity generated on or after January 1, 2003, but prior to

1 January 1, 2004, shall be seventy-five one-hundredths of one cent
2 (\$0.0075) for each kilowatt-hour of electricity generated by zero-
3 emission facilities. For electricity generated on or after January
4 1, 2004, but prior to January 1, 2007, the amount of the credit
5 shall be fifty one-hundredths of one cent (\$0.0050) per kilowatt-
6 hour for electricity generated by zero-emission facilities. For
7 electricity generated on or after January 1, 2007, but prior to
8 January 1, 2012, the amount of the credit shall be twenty-five one-
9 hundredths of one cent (\$0.0025) per kilowatt-hour of electricity
10 generated by zero-emission facilities. For facilities placed in
11 operation on or after January 1, 2007, and before January 1, 2021,
12 or with respect to electricity generated by wind for any facility
13 placed in operation not later than July 1, 2017, the amount of the
14 credit for the electricity generated on or after January 1, 2007,
15 shall be fifty one-hundredths of one cent (\$0.0050) for each
16 kilowatt-hour of electricity generated by zero-emission facilities.

17 C. Credits may be claimed with respect to electricity generated
18 on or after January 1, 2003, during a ten-year period following the
19 date that the facility is placed in operation on or after June 4,
20 2001.

21 D. 1. For credits generated prior to January 1, 2014, if the
22 credit allowed pursuant to this section exceeds the amount of income
23 taxes due or if there are no state income taxes due on the income of
24 the taxpayer, the amount of the credit allowed but not used in any

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~~ 2019, the Oklahoma Tax Commission shall refund, at the
5 taxpayer's election, directly to the taxpayer ~~eighty-five percent~~
6 ~~(85%)~~ forty-two and five-tenths percent (42.5%) of the face amount
7 of such credits. The direct refund of the credits pursuant to this
8 paragraph shall be available to all taxpayers, including, without
9 limitation, pass-through entities and taxpayers subject to Section
10 2355 of this title, but shall not be available to any entities
11 falling within the provisions of subsection E of this section. The
12 amount of any direct refund of credits actually received at the
13 ~~eighty-five percent (85%)~~ forty-two and five-tenths percent (42.5%)
14 level by the taxpayer pursuant to this paragraph shall not be
15 subject to the tax imposed by Section 2355 of this title. If the
16 pass-through entity does not file a claim for a direct refund, the
17 pass-through entity shall allocate the credit to one or more of the
18 shareholders, partners or members of the pass-through entity;
19 provided, the total of all credits refunded or allocated shall not
20 exceed the amount of the credit or refund to which the pass-through
21 entity is entitled. For the purposes of this paragraph, "pass-
22 through entity" means a corporation that for the applicable tax year
23 is treated as an S corporation under the Internal Revenue Code of
24 1986, as amended, general partnership, limited partnership, limited

1 liability partnership, trust or limited liability company that for
2 the applicable tax year is not taxed as a corporation for federal
3 income tax purposes.

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

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

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

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

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 SECTION 2. This act shall become effective November 1, 2018.

16

17 56-2-10233 MAH 03/21/18

18

19

20

21

22

23

24