

**Effective 1/1/2015**

**Superseded 5/12/2015**

**59-7-614 Renewable energy systems tax credit -- Definitions -- Limitations -- Certification -- Rulemaking authority.**

(1) As used in this section:

(a) "Active solar system":

- (i) means a system of equipment capable of collecting and converting incident solar radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy by a separate apparatus to storage or to the point of use; and
- (ii) includes water heating, space heating or cooling, and electrical or mechanical energy generation.

(b) "Biomass system" means any system of apparatus and equipment for use in converting material into biomass energy, as defined in Section 59-12-102, and transporting that energy by separate apparatus to the point of use or storage.

(c) "Business entity" means any sole proprietorship, estate, trust, partnership, association, corporation, cooperative, or other entity under which business is conducted or transacted.

(d) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise.

(e) "Commercial enterprise" means a business entity whose purpose is to produce electrical, mechanical, or thermal energy for sale from a commercial energy system.

(f)

(i) "Commercial unit" means any building or structure that a business entity uses to transact its business.

(ii) Notwithstanding Subsection (1)(f)(i):

(A) in the case of an active solar system used for agricultural water pumping or a wind system, each individual energy generating device shall be a commercial unit; and

(B) if an energy system is the building or structure that a business entity uses to transact its business, a commercial unit is the complete energy system itself.

(g) "Direct-use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, and aquaculture.

(h) "Geothermal electricity" means energy contained in heat that continuously flows outward from the earth that is used as a sole source of energy to produce electricity.

(i) "Geothermal heat-pump system" means a system of apparatus and equipment enabling the use of thermal properties contained in the earth at temperatures well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure.

(j) "Hydroenergy system" means a system of apparatus and equipment capable of intercepting and converting kinetic water energy into electrical or mechanical energy and transferring this form of energy by separate apparatus to the point of use or storage.

(k) "Individual taxpayer" means any person who is a taxpayer as defined in Section 59-10-103 and an individual as defined in Section 59-10-103.

(l) "Office" means the Office of Energy Development created in Section 63M-4-401.

(m) "Passive solar system":

- (i) means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site; and

- (ii) includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.
  - (n) "Residential energy system" means any active solar, passive solar, biomass, direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to supply energy to or for any residential unit.
  - (o) "Residential unit" means any house, condominium, apartment, or similar dwelling unit that serves as a dwelling for a person, group of persons, or a family but does not include property subject to a fee under:
    - (i) Section 59-2-404;
    - (ii) Section 59-2-405;
    - (iii) Section 59-2-405.1;
    - (iv) Section 59-2-405.2; or
    - (v) Section 59-2-405.3.
  - (p) "Wind system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.
- (2)
- (a)
    - (i) A business entity that purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy required for a residential unit owned or used by the business entity and located in the state may claim a nonrefundable tax credit as provided in this Subsection (2)(a).
    - (ii)
      - (A) The tax credit is equal to 25% of the reasonable costs of each residential energy system installed with respect to each residential unit the business entity owns or uses, including installation costs, against any tax due under this chapter for the taxable year in which the energy system is completed and placed in service.
      - (B) The total amount of each tax credit under this Subsection (2)(a) may not exceed \$2,000 per residential unit.
      - (C) The tax credit under this Subsection (2)(a) is allowed for any residential energy system completed and placed in service on or after January 1, 2007.
    - (iii) If a business entity sells a residential unit to an individual taxpayer before making a claim for the tax credit under this Subsection (2)(a), the business entity may:
      - (A) assign its right to this tax credit to the individual taxpayer; and
      - (B) if the business entity assigns its right to the tax credit to an individual taxpayer under Subsection (2)(a)(iii)(A), the individual taxpayer may claim the tax credit as if the individual taxpayer had completed or participated in the costs of the residential energy system under Section 59-10-1014.
  - (b)
    - (i) A business entity that purchases or participates in the financing of a commercial energy system situated in Utah may claim a refundable tax credit as provided in this Subsection (2)(b) if the commercial energy system does not use wind, geothermal electricity, solar, or biomass equipment capable of producing a total of 660 or more kilowatts of electricity or if the commercial energy system does not use solar equipment capable of producing 2,000 or more kilowatts of electricity, and:
      - (A) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity; or

- (B) the business entity sells all or part of the energy produced by the commercial energy system as a commercial enterprise.
- (ii)
  - (A) A business entity is entitled to a tax credit of up to 10% of the reasonable costs of any commercial energy system installed, including installation costs, against any tax due under this chapter for the taxable year in which the commercial energy system is completed and placed in service.
  - (B) Notwithstanding Subsection (2)(b)(ii)(A), the total amount of the tax credit under this Subsection (2)(b) may not exceed \$50,000 per commercial unit.
  - (C) The tax credit under this Subsection (2)(b) is allowed for any commercial energy system completed and placed in service on or after January 1, 2007.
- (iii) A business entity that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(b) if the lessee can confirm that the lessor irrevocably elects not to claim the tax credit.
- (iv) Only the principal recovery portion of the lease payments, which is the cost incurred by a business entity in acquiring a commercial energy system, excluding interest charges and maintenance expenses, is eligible for the tax credit under this Subsection (2)(b).
- (v) A business entity that leases a commercial energy system is eligible to use the tax credit under this Subsection (2)(b) for a period no greater than seven years from the initiation of the lease.
- (vi) A tax credit allowed by this Subsection (2)(b) may not be carried forward or carried back.
- (c)
  - (i) A business entity that owns a commercial energy system located in the state using wind, geothermal electricity, or biomass equipment capable of producing a total of 660 or more kilowatts of electricity may claim a refundable tax credit as provided in this Subsection (2)(c) if:
    - (A) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity; or
    - (B) the business entity sells all or part of the energy produced by the commercial energy system as a commercial enterprise.
  - (ii)
    - (A) A business entity may claim a tax credit under this section equal to the product of:
      - (I) 0.35 cents; and
      - (II) the kilowatt hours of electricity produced and either used or sold during the taxable year.
    - (B)
      - (I) The tax credit calculated under Subsection (2)(c)(ii)(A) may be claimed for production occurring during a period of 48 months beginning with the month in which the commercial energy system is placed in commercial service.
      - (II) The tax credit allowed by this Subsection (2)(c) for each year may not be carried forward or carried back.
    - (C) The tax credit under this Subsection (2)(c) is allowed for any commercial energy system completed and placed in service on or after January 1, 2007.
  - (iii) A business entity that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this Subsection (2)(c) if the lessee can confirm that the lessor irrevocably elects not to claim the tax credit.
- (d)
  - (i) A tax credit under Subsection (2)(a) or (b) may be claimed for the taxable year in which the energy system is completed and placed in service.

- (ii) Additional energy systems or parts of energy systems may be claimed for subsequent years.
  - (iii) If the amount of a tax credit under Subsection (2)(a) exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the tax credit exceeding the liability may be carried forward for a period that does not exceed the next four taxable years.
- (3)
- (a) A business entity that owns a commercial energy system located in the state that uses solar equipment capable of producing a total of 660 or more kilowatts of electricity may claim a refundable tax credit as provided in this Subsection (3) if:
    - (i)
      - (A) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity; or
      - (B) the business entity sells all or part of the energy produced by the commercial energy system as a commercial enterprise; and
    - (ii) the business entity does not claim a tax credit under Subsection (2)(b).
  - (b) A business entity may claim a tax credit under this section equal to the product of:
    - (i) 0.35 cents; and
    - (ii) the kilowatt hours of electricity produced and either used or sold during the taxable year.
  - (c) The tax credit under this Subsection (3) may be claimed for production occurring during a period of 48 months beginning with the month in which the commercial energy system is placed in commercial service.
  - (d) The tax credit under this Subsection (3) may not be carried forward or carried back.
  - (e) The tax credit under this Subsection (3) is allowed for a commercial energy system completed and placed in service on or after January 1, 2015.
  - (f) A business entity that leases a commercial energy system installed on a commercial unit may claim a tax credit under this Subsection (3) if the business entity that is the lessee can confirm that the lessor irrevocably elects not to claim the tax credit.
- (4)
- (a) Except as provided in Subsection (4)(b), the tax credits provided for under Subsection (2) or (3) are in addition to any tax credits provided under the laws or rules and regulations of the United States.
  - (b) A purchaser of one or more solar units that claims a tax credit under Section 59-7-614.3 for the purchase of the one or more solar units may not claim a tax credit under this section for that purchase.
  - (c)
    - (i) The office may set standards for residential and commercial energy systems claiming a tax credit under Subsections (2)(a) and (b) that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate and economic manner.
    - (ii) The office may set standards for residential and commercial energy systems that establish the reasonable costs of an energy system, as used in Subsections (2)(a)(ii)(A) and (2)(b)(ii)(A), as an amount per unit of energy production.
    - (iii) A tax credit may not be taken under Subsection (2) or (3) until the office has certified that the energy system has been completely installed and is a viable system for saving or production of energy from renewable resources.
  - (d) The office and the commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement this section.
- (5)

- (a) On or before October 1, 2012, and every five years thereafter, the Revenue and Taxation Interim Committee shall review each tax credit provided by this section and report its recommendations to the Legislative Management Committee concerning whether the tax credit should be continued, modified, or repealed.
- (b) The Revenue and Taxation Interim Committee's report under Subsection (5)(a) shall include information concerning the cost of the tax credit, the purpose and effectiveness of the tax credit, and the state's benefit from the tax credit.