

**INDIVIDUAL INCOME TAX AND CORPORATE  
FRANCHISE AND INCOME TAX -  
RENEWABLE ENERGY SYSTEMS TAX  
CREDITS**

2001 FIRST SPECIAL SESSION

STATE OF UTAH

**Sponsor: John E. Swallow**

**This act amends the Individual Income Tax Act and Corporate Franchise and Income Taxes by reinstating tax credits for renewable energy systems for taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, repealing the requirement that an individual taxpayer must be a resident of the state to claim a credit, requiring the Public Utilities and Technology Interim Committee to study the tax credits, and making technical changes. This act has retrospective operation for taxable years beginning on or after January 1, 2001.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**63-55b-159**, as last amended by Chapter 290, Laws of Utah 2001

ENACTS:

**59-7-614**, Utah Code Annotated 1953

**59-10-134**, Utah Code Annotated 1953

This act enacts uncodified material.

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **59-7-614** is enacted to read:

**59-7-614. Renewable energy systems tax credit -- Definitions -- Limitations -- State tax credit in addition to allowable federal credits -- Certification -- Rulemaking authority -- Reimbursement of Uniform School Fund.**

(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 capable of converting organic plant, wood, or waste products into electrical and thermal energy and transferring these forms of energy by a 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, 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 which a business entity uses to transact its business except as provided in Subsection (1)(f)(ii); and

(ii) (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 which a business entity uses to transact its business, a commercial unit is the complete energy system itself.

(g) "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.

(h) "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.

(i) "Office of Energy and Resource Planning" means the Office of Energy and Resource Planning, Department of Natural Resources.

(j) "Passive solar system":

(i) means a direct thermal system which 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.

(k) "Residential energy system" means any active solar, passive solar, wind, or hydroenergy system used to supply energy to or for any residential unit.

(l) "Residential unit" means any house, condominium, apartment, or similar dwelling unit which serves as a dwelling for a person, group of persons, or a family but does not include property subject to the fees in lieu of the ad valorem tax under:

(i) Section 59-2-404;

(ii) Section 59-2-405; or

(iii) Section 59-2-405.1.

(m) "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 or storage.

(2) (a) (i) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, 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 situated in Utah is entitled to a tax credit as provided in this Subsection (2)(a).

(ii) (A) A business entity is entitled to a tax credit equal to 25% of the costs of a residential energy system installed with respect to each residential unit it 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 the credit under this Subsection (2)(a) may not exceed \$2,000 per residential unit.

(C) The credit under this Subsection (2)(a) is allowed for any residential energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(iii) If a business entity sells a residential unit to an individual taxpayer prior to 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 59-10-134.

(b) (i) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, a business entity that purchases or participates in the financing of a commercial energy system is entitled to a tax credit as provided in this Subsection (2)(b) 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 is entitled to a tax credit equal to 10% of the 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) The total amount of the credit under this Subsection (2)(b) may not exceed \$50,000 per commercial unit.

(C) The credit under this Subsection (2)(b) is allowed for any commercial energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(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 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.

(c) (i) A tax credit under this section 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 this section exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried over for a period which does not exceed the next four taxable years.

(3) (a) The tax credits provided for under Subsection (2) are in addition to any tax credits provided under the laws or rules and regulations of the United States.

(b) (i) The Office of Energy and Resource Planning may promulgate standards for residential and commercial energy systems 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) A tax credit may not be taken under Subsection (2) until the Office of Energy and Resource Planning has certified that the energy system has been completely installed and is a viable system for saving or production of energy from renewable resources.

(c) The Office of Energy and Resource Planning and the commission are authorized to promulgate rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, which are necessary to implement this section.

(d) The Uniform School Fund shall be reimbursed by transfers from the General Fund for any credits taken under this section.

Section 2. Section **59-10-134** is enacted to read:

**59-10-134. Renewable energy systems tax credit -- Definitions -- Individual tax credit -- Limitations -- Business tax credit -- Limitations -- State tax credit in addition to allowable federal credits -- Certification -- Rulemaking authority -- Reimbursement of Uniform School Fund.**

(1) As used in this part:

(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 capable of converting organic plant, wood, or waste products into electrical and thermal energy and transferring these forms of energy by a 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, 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 which a business entity uses to transact its business, except as provided in Subsection (1)(f)(ii); and

(ii) (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 which a business entity uses to transact its business, a commercial unit is the complete energy system itself.

(g) "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.

(h) "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.

(i) "Office of Energy and Resource Planning" means the Office of Energy and Resource Planning, Department of Natural Resources.

(j) "Passive solar system":

(i) means a direct thermal system which 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.

(k) "Residential energy system" means any active solar, passive solar, wind, or hydroenergy system used to supply energy to or for any residential unit.

(l) "Residential unit" means any house, condominium, apartment, or similar dwelling unit which serves as a dwelling for a person, group of persons, or a family but does not include property subject to the fees in lieu of the ad valorem tax under:

(i) Section 59-2-404;

(ii) Section 59-2-405; or

(iii) Section 59-2-405.1.

(m) "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 or storage.

(2) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, any individual taxpayer may claim a tax credit as provided in this section if:

(a) the individual taxpayer purchases and completes or participates in the financing of a residential energy system to supply all or part of the energy for the individual taxpayer's residential unit in the state; or

(b) (i) a business entity sells a residential unit to an individual taxpayer prior to making a claim for a tax credit under Subsection (6) or Section 59-7-614; and

(ii) the business entity assigns its right to the tax credit to the individual taxpayer as provided in Subsection (6)(c) or Subsection 59-7-614(2)(a)(iii).

(3) (a) An individual taxpayer meeting the requirements of Subsection (2) is entitled to a tax credit equal to 25% of the costs of the energy system, including installation costs, against any income tax liability of the individual taxpayer under this chapter for the taxable year in which the residential

energy system is completed and placed in service.

(b) The total amount of the credit under this section may not exceed \$2,000 per residential unit.

(c) The credit under this section is allowed for any residential energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(4) (a) The tax credit provided for in this section shall be claimed in the return for the taxable year in which the energy system is completed and placed in service.

(b) Additional residential energy systems or parts of residential energy systems may be similarly claimed in returns for subsequent taxable years as long as the total amount claimed does not exceed \$2,000 per residential unit.

(c) If the amount of the tax credit under this section exceeds the income tax liability of the individual taxpayer for that taxable year, then the amount not used may be carried over for a period which does not exceed the next four taxable years.

(5) (a) Individual taxpayers who lease a residential energy system installed on a residential unit are eligible for the residential energy tax credits if the lessee can confirm that the lessor irrevocably elects not to claim the state tax credit.

(b) Only the principal recovery portion of the lease payments, which is the cost incurred by the taxpayer in acquiring the residential energy system excluding interest charges and maintenance expenses, is eligible for the tax credits.

(c) Individual taxpayers who lease residential energy systems are eligible to use the tax credits for a period no greater than seven years from the initiation of the lease.

(6) (a) 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 situated in Utah is entitled to a tax credit as provided in this Subsection (6).

(b) (i) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2006, a business entity is entitled to a tax credit equal to 25% of the costs of a residential energy system installed with respect to each residential unit it 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.

(ii) The total amount of the credit under this Subsection (6) may not exceed \$2,000 per residential unit.

(iii) The credit under this Subsection (6) is allowed for any residential energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(c) If a business entity sells a residential unit to an individual taxpayer prior to making a claim for the tax credit under this Subsection (6), the business entity may:

(i) assign its right to this tax credit to the individual taxpayer; and

(ii) if the business entity assigns its right to the tax credit to an individual taxpayer under Subsection (6)(c)(i), 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 this section.

(7) (a) A business entity that purchases or participates in the financing of a commercial energy system is entitled to a tax credit as provided in this Subsection (7) if:

(i) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the business entity; or

(ii) the business entity sells all or part of the energy produced by the commercial energy system as a commercial enterprise.

(b) (i) A business entity is entitled to a tax credit equal to 10% of the 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.

(ii) The total amount of the credit under this Subsection (7) may not exceed \$50,000 per commercial unit.

(iii) The credit under this Subsection (7) is allowed for any commercial energy system completed and placed in service on or after January 1, 2001, but on or before December 31, 2006.

(c) A business entity that leases a commercial energy system installed on a commercial unit is eligible for the tax credit under this Subsection (7) if the lessee can confirm that the lessor irrevocably elects not to claim the credit.

(d) 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 (7).

(e) A business entity that leases a commercial energy system is eligible to use the tax credit under this Subsection (7) for a period no greater than seven years from the initiation of the lease.

(8) (a) A tax credit under this section may be claimed for the taxable year in which the energy system is completed and placed in service.

(b) Additional energy systems or parts of energy systems may be claimed for subsequent years.

(c) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried over for a period which does not exceed the next four taxable years.

(9) The tax credits provided for under this section are in addition to any tax credits provided under the laws or rules and regulations of the United States.

(10) (a) The Office of Energy and Resource Planning may promulgate standards for residential and commercial energy systems 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.

(b) A tax credit may not be taken under this section until the Office of Energy and Resource Planning has certified that the energy system has been completely installed and is a viable system for saving or production of energy from renewable resources.

(11) The Office of Energy and Resource Planning and the commission are authorized to promulgate rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, which are necessary to implement this section.

(12) The Uniform School Fund shall be reimbursed by transfers from the General Fund for any credits taken under this section.

Section 3. Section **63-55b-159** is amended to read:

**63-55b-159. Repeal dates -- Title 59.**

(1) Section 59-7-604 is repealed January 1, 2002.

~~[(2) Section 59-7-611 and Sections 59-10-601 through 59-10-604 are repealed January 1, 2001.]~~

~~[(3)]~~ (2) Section 59-9-101.3 is repealed January 1, 2005, and the Labor Commission may not impose an assessment under Section 59-9-101.3 after December 31, 2004.

**Section 4. Study of renewable energy systems tax credits.**

(1) The Public Utilities and Technology Interim Committee shall study the renewable energy systems tax credits provided for in Sections 59-7-614 and 59-10-134 during the 2001 interim, including an analysis of the appropriate credit amounts.

(2) The Public Utilities and Technology Interim Committee:

(a) shall consider on or before the October 2001 interim meeting whether the renewable energy systems tax credits provided for in Sections 59-7-614 and 59-10-134 should be modified; and

(b) may coordinate with the Revenue and Taxation Interim Committee and the Government Revenue and Tax System Task Force in conducting the study required by this section.

**Section 5. Retrospective operation.**

This act has retrospective operation for taxable years beginning on or after January 1, 2001.