

1 **INDIVIDUAL INCOME TAX AND CORPORATE**
2 **FRANCHISE AND INCOME TAX -**
3 **RENEWABLE ENERGY SYSTEMS TAX**
4 **CREDITS**

5 2001 FIRST SPECIAL SESSION

6 STATE OF UTAH

7 **Sponsor: John E. Swallow**

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

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

16 AMENDS:

17 **63-55b-159**, as last amended by Chapter 290, Laws of Utah 2001

18 ENACTS:

19 **59-7-614**, Utah Code Annotated 1953

20 **59-10-134**, Utah Code Annotated 1953

21 This act enacts uncodified material.

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

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

24 **59-7-614. Renewable energy systems tax credit -- Definitions -- Tax credit in addition**
25 **to other credits -- Limitations -- Certification -- Rulemaking authority -- Reimbursement of**
26 **Uniform School Fund.**

27 (1) As used in this section:



- 28 (a) "Active solar system":
- 29 (i) means a system of equipment capable of collecting and converting incident solar
- 30 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy by
- 31 a separate apparatus to storage or to the point of use; and
- 32 (ii) includes water heating, space heating or cooling, and electrical or mechanical energy
- 33 generation.
- 34 (b) "Biomass system" means any system of apparatus and equipment capable of converting
- 35 organic plant, wood, or waste products into electrical and thermal energy and transferring these
- 36 forms of energy by a separate apparatus to the point of use or storage.
- 37 (c) "Business entity" means any sole proprietorship, estate, trust, partnership, association,
- 38 corporation, cooperative, or other entity under which business is conducted or transacted.
- 39 (d) "Commercial energy system" means any active solar, passive solar, wind, hydroenergy,
- 40 or biomass system used to supply energy to a commercial unit or as a commercial enterprise.
- 41 (e) "Commercial enterprise" means a business entity whose purpose is to produce
- 42 electrical, mechanical, or thermal energy for sale from a commercial energy system.
- 43 (f) (i) "Commercial unit" means any building or structure which a business entity uses to
- 44 transact its business except as provided in Subsection (1)(f)(ii); and
- 45 (ii) (A) in the case of an active solar system used for agricultural water pumping or a wind
- 46 system, each individual energy generating device shall be a commercial unit; and
- 47 (B) if an energy system is the building or structure which a business entity uses to transact
- 48 its business, a commercial unit is the complete energy system itself.
- 49 (g) "Hydroenergy system" means a system of apparatus and equipment capable of
- 50 intercepting and converting kinetic water energy into electrical or mechanical energy and
- 51 transferring this form of energy by separate apparatus to the point of use or storage.
- 52 (h) "Individual taxpayer" means any person who is a taxpayer as defined in Section
- 53 59-10-103 and an individual as defined in Section 59-10-103.
- 54 (i) "Office of Energy and Resource Planning" means the Office of Energy and Resource
- 55 Planning, Department of Natural Resources.
- 56 (j) "Passive solar system":
- 57 (i) means a direct thermal system which utilizes the structure of a building and its operable
- 58 components to provide for collection, storage, and distribution of heating or cooling during the

59 appropriate times of the year by utilizing the climate resources available at the site; and

60 (ii) includes those portions and components of a building that are expressly designed and
61 required for the collection, storage, and distribution of solar energy.

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

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

67 (i) Section 59-2-404;

68 (ii) Section 59-2-405; or

69 (iii) Section 59-2-405.1.

70 (m) "Wind system" means a system of apparatus and equipment capable of intercepting
71 and converting wind energy into mechanical or electrical energy and transferring these forms of
72 energy by a separate apparatus to the point of use or storage.

73 (2) (a) (i) For taxable years beginning on or after January 1, 2001, but beginning on or
74 before December 31, 2006, a business entity that purchases and completes or participates in the
75 financing of a residential energy system to supply all or part of the energy required for a residential
76 unit owned or used by the business entity and situated in Utah is entitled to a tax credit as provided
77 in this Subsection (2)(a).

78 (ii) (A) A business entity is entitled to a tax credit equal to 25% of the costs of a residential
79 energy system installed with respect to each residential unit it owns or uses, including installation
80 costs, against any tax due under this chapter for the taxable year in which the energy system is
81 completed and placed in service.

82 (B) The total amount of the credit under this Subsection (2)(a) may not exceed \$2,000 per
83 residential unit.

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

86 (iii) If a business entity sells a residential unit to an individual taxpayer prior to making
87 a claim for the tax credit under this Subsection (2)(a), the business entity may:

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

89 (B) if the business entity assigns its right to the tax credit to an individual taxpayer under

90 Subsection (2)(a)(iii)(A), the individual taxpayer may claim the tax credit as if the individual
91 taxpayer had completed or participated in the costs of the residential energy system under Section
92 59-10-134.

93 (b) (i) For taxable years beginning on or after January 1, 2001, but beginning on or before
94 December 31, 2006, a business entity that purchases or participates in the financing of a
95 commercial energy system is entitled to a tax credit as provided in this Subsection (2)(b) if:

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

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

100 (ii) (A) A business entity is entitled to a tax credit equal to 10% of the costs of any
101 commercial energy system installed, including installation costs, against any tax due under this
102 chapter for the taxable year in which the commercial energy system is completed and placed in
103 service.

104 (B) The total amount of the credit under this Subsection (2)(b) may not exceed \$50,000
105 per commercial unit.

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

108 (iii) A business entity that leases a commercial energy system installed on a commercial
109 unit is eligible for the tax credit under this Subsection (2)(b) if the lessee can confirm that the
110 lessor irrevocably elects not to claim the credit.

111 (iv) Only the principal recovery portion of the lease payments, which is the cost incurred
112 by a business entity in acquiring a commercial energy system, excluding interest charges and
113 maintenance expenses, is eligible for the tax credit under this Subsection (2)(b).

114 (v) A business entity that leases a commercial energy system is eligible to use the tax credit
115 under this Subsection (2)(b) for a period no greater than seven years from the initiation of the lease.

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

118 (ii) Additional energy systems or parts of energy systems may be claimed for subsequent
119 years.

120 (iii) If the amount of a tax credit under this section exceeds a business entity's tax liability

121 under this chapter for a taxable year, the amount of the credit exceeding the liability may be carried
122 over for a period which does not exceed the next four taxable years.

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

125 (b) (i) The Office of Energy and Resource Planning may promulgate standards for
126 residential and commercial energy systems that cover the safety, reliability, efficiency, leasing, and
127 technical feasibility of the systems to ensure that the systems eligible for the tax credit use the
128 state's renewable and nonrenewable energy resources in an appropriate and economic manner.

129 (ii) A tax credit may not be taken under Subsection (2) until the Office of Energy and
130 Resource Planning has certified that the energy system has been completely installed and is a
131 viable system for saving or production of energy from renewable resources.

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

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

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

138 **59-10-134. Renewable energy systems tax credit -- Definitions -- Individual tax credit**
139 **-- Limitations -- Business tax credit -- Limitations -- Tax credit in addition to other credits**
140 **-- Certification -- Rulemaking authority -- Reimbursement of Uniform School Fund.**

141 (1) As used in this part:

142 (a) "Active solar system":

143 (i) means a system of equipment capable of collecting and converting incident solar
144 radiation into thermal, mechanical, or electrical energy, and transferring these forms of energy by
145 a separate apparatus to storage or to the point of use; and

146 (ii) includes water heating, space heating or cooling, and electrical or mechanical energy
147 generation.

148 (b) "Biomass system" means any system of apparatus and equipment capable of converting
149 organic plant, wood, or waste products into electrical and thermal energy and transferring these
150 forms of energy by a separate apparatus to the point of use or storage.

151 (c) "Business entity" means any sole proprietorship, estate, trust, partnership, association,

152 corporation, cooperative, or other entity under which business is conducted or transacted.

153 (d) "Commercial energy system" means any active solar, passive solar, wind, hydroenergy,
154 or biomass system used to supply energy to a commercial unit or as a commercial enterprise.

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

157 (f) (i) "Commercial unit" means any building or structure which a business entity uses to
158 transact its business, except as provided in Subsection (1)(f)(ii); and

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

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

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

166 (h) "Individual taxpayer" means any person who is a taxpayer as defined in Section
167 59-10-103 and an individual as defined in Section 59-10-103.

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

170 (j) "Passive solar system":

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

174 (ii) includes those portions and components of a building that are expressly designed and
175 required for the collection, storage, and distribution of solar energy.

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

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

181 (i) Section 59-2-404;

182 (ii) Section 59-2-405; or

183 (iii) Section 59-2-405.1.

184 (m) "Wind system" means a system of apparatus and equipment capable of intercepting
185 and converting wind energy into mechanical or electrical energy and transferring these forms of
186 energy by a separate apparatus to the point of use or storage.

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

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

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

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

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

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

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

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

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

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

212 (5) (a) Individual taxpayers who lease a residential energy system installed on a residential
213 unit are eligible for the residential energy tax credits if the lessee can confirm that the lessor

214 irrevocably elects not to claim the state tax credit.

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

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

220 (6) (a) A business entity that purchases and completes or participates in the financing of
221 a residential energy system to supply all or part of the energy required for a residential unit owned
222 or used by the business entity and situated in Utah is entitled to a tax credit as provided in this
223 Subsection (6).

224 (b) (i) For taxable years beginning on or after January 1, 2001, but beginning on or before
225 December 31, 2006, a business entity is entitled to a tax credit equal to 25% of the costs of a
226 residential energy system installed with respect to each residential unit it owns or uses, including
227 installation costs, against any tax due under this chapter for the taxable year in which the energy
228 system is completed and placed in service.

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

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

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

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

236 (ii) if the business entity assigns its right to the tax credit to an individual taxpayer under
237 Subsection (6)(c)(i), the individual taxpayer may claim the tax credit as if the individual taxpayer
238 had completed or participated in the costs of the residential energy system under this section.

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

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

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

245 (b) (i) A business entity is entitled to a tax credit equal to 10% of the costs of any
246 commercial energy system installed, including installation costs, against any tax due under this
247 chapter for the taxable year in which the commercial energy system is completed and placed in
248 service.

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

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

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

256 (d) Only the principal recovery portion of the lease payments, which is the cost incurred
257 by a business entity in acquiring a commercial energy system, excluding interest charges and
258 maintenance expenses, is eligible for the tax credit under this Subsection (7).

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

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

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

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

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

270 (10) (a) The Office of Energy and Resource Planning may promulgate standards for
271 residential and commercial energy systems that cover the safety, reliability, efficiency, leasing, and
272 technical feasibility of the systems to ensure that the systems eligible for the tax credit use the
273 state's renewable and nonrenewable energy resources in an appropriate and economic manner.

274 (b) A tax credit may not be taken under this section until the Office of Energy and
275 Resource Planning has certified that the energy system has been completely installed and is a

276 viable system for saving or production of energy from renewable resources.

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

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

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

283 **63-55b-159. Repeal dates -- Title 59.**

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

285 [~~(2) Section 59-7-611 and Sections 59-10-601 through 59-10-604 are repealed January 1,~~
 286 ~~2001.]~~

287 [~~(3)~~ (2) Section 59-9-101.3 is repealed January 1, 2005, and the Labor Commission may
 288 not impose an assessment under Section 59-9-101.3 after December 31, 2004.

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

290 (1) The Public Utilities and Technology Interim Committee shall study the renewable
 291 energy systems tax credits provided for in Sections 59-7-614 and 59-10-134 during the 2001
 292 interim ~~h~~, INCLUDING AN ANALYSIS OF THE APPROPRIATE CREDIT AMOUNTS ~~h~~.

293 (2) The Public Utilities and Technology Interim Committee:

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

297 (b) may coordinate with the Revenue and Taxation Interim Committee ~~h~~ AND THE
 297a GOVERNMENT REVENUE AND TAX SYSTEM TASK FORCE ~~h~~ in conducting the
 298 study required by this section.

299 Section 5. **Retrospective operation.**

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

Legislative Review Note as of 6-19-01 9:11 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel