

1 **RENEWABLE ENERGY TAX CREDIT AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ralph Okerlund**

5 House Sponsor: Michael E. Noel

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies certain tax credits related to renewable energy.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies certain tax credits related to renewable energy;
- 13 ▶ enacts a tax credit related to renewable energy; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill takes effect for a taxable year beginning on or after January 1, ~~Ŝ~~→ [2016] 2015 ←Ŝ .

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **59-7-614**, as last amended by Laws of Utah 2012, Chapter 37

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

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

25 **59-7-614. Renewable energy systems tax credit -- Definitions -- Limitations --**

26 **Certification -- Rulemaking authority.**

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
31 by 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
33 energy generation.
- 34 (b) "Biomass system" means any system of apparatus and equipment for use in
35 converting material into biomass energy, as defined in Section [59-12-102](#), and transporting that
36 energy by separate apparatus to the point of use or storage.
- 37 (c) "Business entity" means any sole proprietorship, estate, trust, partnership,
38 association, corporation, cooperative, or other entity under which business is conducted or
39 transacted.
- 40 (d) "Commercial energy system" means any active solar, passive solar, geothermal
41 electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or
42 biomass system used to supply energy to a commercial unit or as a commercial enterprise.
- 43 (e) "Commercial enterprise" means a business entity whose purpose is to produce
44 electrical, mechanical, or thermal energy for sale from a commercial energy system.
- 45 (f) (i) "Commercial unit" means any building or structure that a business entity uses to
46 transact its business.
47 (ii) Notwithstanding Subsection (1)(f)(i):
48 (A) in the case of an active solar system used for agricultural water pumping or a wind
49 system, each individual energy generating device shall be a commercial unit; and
50 (B) if an energy system is the building or structure that a business entity uses to
51 transact its business, a commercial unit is the complete energy system itself.
- 52 (g) "Direct-use geothermal system" means a system of apparatus and equipment
53 enabling the direct use of thermal energy, generally between 100 and 300 degrees Fahrenheit,
54 that is contained in the earth to meet energy needs, including heating a building, an industrial
55 process, and aquaculture.
- 56 (h) "Geothermal electricity" means energy contained in heat that continuously flows
57 outward from the earth that is used as a sole source of energy to produce electricity.
- 58 (i) "Geothermal heat-pump system" means a system of apparatus and equipment

59 enabling the use of thermal properties contained in the earth at temperatures well below 100
60 degrees Fahrenheit to help meet heating and cooling needs of a structure.

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

64 (k) "Individual taxpayer" means any person who is a taxpayer as defined in Section
65 59-10-103 and an individual as defined in Section 59-10-103.

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

67 (m) "Passive solar system":

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

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

74 (n) "Residential energy system" means any active solar, passive solar, biomass,
75 direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system used to
76 supply energy to or for any residential unit.

77 (o) "Residential unit" means any house, condominium, apartment, or similar dwelling
78 unit that serves as a dwelling for a person, group of persons, or a family but does not include
79 property subject to a fee under:

80 (i) Section 59-2-404;

81 (ii) Section 59-2-405;

82 (iii) Section 59-2-405.1;

83 (iv) Section 59-2-405.2; or

84 (v) Section 59-2-405.3.

85 (p) "Wind system" means a system of apparatus and equipment capable of intercepting
86 and converting wind energy into mechanical or electrical energy and transferring these forms of
87 energy by a separate apparatus to the point of use, sale, or storage.

88 (2) (a) (i) [~~For taxable years beginning on or after January 1, 2007, a~~] A business entity
89 that purchases and completes or participates in the financing of a residential energy system to

90 supply all or part of the energy required for a residential unit owned or used by the business
 91 entity and ~~[situated in Utah is entitled to]~~ located in the state may claim a nonrefundable tax
 92 credit as provided in this Subsection (2)(a).

93 (ii) (A) ~~[A business entity is entitled to a]~~ The tax credit is equal to 25% of the
 94 reasonable costs of each residential energy system installed with respect to each residential unit
 95 ~~[it]~~ the business entity owns or uses, including installation costs, against any tax due under this
 96 chapter for the taxable year in which the energy system is completed and placed in service.

97 (B) The total amount of each tax credit under this Subsection (2)(a) may not exceed
 98 \$2,000 per residential unit.

99 (C) The tax credit under this Subsection (2)(a) is allowed for any residential energy
 100 system completed and placed in service on or after January 1, 2007.

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

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

104 (B) if the business entity assigns its right to the tax credit to an individual taxpayer
 105 under Subsection (2)(a)(iii)(A), the individual taxpayer may claim the tax credit as if the
 106 individual taxpayer had completed or participated in the costs of the residential energy system
 107 under Section 59-10-1014.

108 (b) (i) ~~[For taxable years beginning on or after January 1, 2007, a]~~ A business entity
 109 that purchases or participates in the financing of a commercial energy system situated in Utah
 110 ~~[is entitled to]~~ may claim a refundable tax credit as provided in this Subsection (2)(b) if the
 111 commercial energy system does not use wind, geothermal electricity, solar, or biomass
 112 equipment capable of producing a total of 660 or more kilowatts of electricity ~~Ŝ~~ **→ or if the**
 112a **commercial energy system does not use solar equipment capable of producing 2,000 or more**
 112b **kilowatts of electricity** ~~←Ŝ~~ , and:

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

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

117 (ii) (A) A business entity is entitled to a tax credit of up to 10% of the reasonable costs
 118 of any commercial energy system installed, including installation costs, against any tax due
 119 under this chapter for the taxable year in which the commercial energy system is completed and
 120 placed in service.

121 (B) Notwithstanding Subsection (2)(b)(ii)(A), the total amount of the tax credit under
122 this Subsection (2)(b) may not exceed \$50,000 per commercial unit.

123 (C) The tax credit under this Subsection (2)(b) is allowed for any commercial energy
124 system completed and placed in service on or after January 1, 2007.

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

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

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

134 (vi) A tax credit allowed by this Subsection (2)(b) may not be carried forward or
135 carried back.

136 (c) (i) [~~For taxable years beginning on or after January 1, 2007, a~~] A business entity
137 that owns a commercial energy system [~~situated in Utah~~] located in the state using wind,
138 geothermal electricity, or biomass equipment capable of producing a total of 660 or more
139 kilowatts of electricity [~~is entitled to~~] may claim a refundable tax credit as provided in this
140 Subsection (2)(c) if:

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

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

145 (ii) (A) A business entity [~~is entitled to~~] may claim a tax credit under this section equal
146 to the product of:

147 (I) 0.35 cents; and

148 (II) the kilowatt hours of electricity produced and either used or sold during the taxable
149 year.

150 (B) (I) The tax credit calculated under Subsection (2)(c)(ii)(A) may be claimed for
151 production occurring during a period of 48 months beginning with the month in which the

152 commercial energy system is placed in commercial service.

153 (II) The tax credit allowed by this Subsection (2)(c) for each year may not be carried
154 forward or carried back.

155 (C) The tax credit under this Subsection (2)(c) is allowed for any commercial energy
156 system completed and placed in service on or after January 1, 2007.

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

160 (d) (i) A tax credit under Subsection (2)(a) or (b) may be claimed for the taxable year
161 in which the energy system is completed and placed in service.

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

164 (iii) If the amount of a tax credit under Subsection (2)(a) exceeds a business entity's tax
165 liability under this chapter for a taxable year, the amount of the tax credit exceeding the
166 liability may be carried forward for a period [~~which~~] that does not exceed the next four taxable
167 years.

168 (3) (a) A business entity that owns a commercial energy system located in the state that
169 uses solar equipment capable of producing a total of 660 or more kilowatts of electricity may
170 claim a refundable tax credit as provided in this Subsection (3) if:

171 (i) ~~Ŝ~~→ (A) ←~~Ŝ~~ the commercial energy system supplies all or part of the energy required by
172 commercial units owned or used by the business entity; or

173 Ŝ→ [(ii)] (B) ←~~Ŝ~~ the business entity sells all or part of the energy produced by the
173a commercial

174 energy system as a commercial enterprise ~~Ŝ~~→ ; **and**

174a **(ii) the business entity does not claim a tax credit under Subsection (2)(b)** ←~~Ŝ~~ .

175 (b) A business entity may claim a tax credit under this section equal to the product of:

176 (i) 0.35 cents; and

177 (ii) the kilowatt hours of electricity produced and either used or sold during the taxable
178 year.

179 (c) The tax credit under this Subsection (3) may be claimed for production occurring
180 during a period of 48 months beginning with the month in which the ~~Ŝ~~→ **[commercial]**

180a **commercial** ←~~Ŝ~~ energy

181 system is placed in commercial service.

182 (d) The tax credit under this Subsection (3) may not be carried forward or carried back.

183 (e) The tax credit under this Subsection (3) is allowed for a ~~§~~ ~~commercial~~
 183a commercial ~~§~~ energy system

184 completed and placed in service on or after January 1, ~~§~~ ~~2016~~ 2015 ~~§~~ .

185 (f) A business entity that leases a ~~§~~ ~~commercial~~ commercial ~~§~~ energy system
 185a installed on a commercial

186 unit may claim a tax credit under this Subsection (3) if the business entity that is the lessee can
 187 confirm that the lessor irrevocably elects not to claim the tax credit.

188 ~~[(3)]~~ (4) (a) Except as provided in Subsection ~~[(3)]~~ (4)(b), the tax credits provided for
 189 under Subsection (2) or (3) are in addition to any tax credits provided under the laws or rules
 190 and regulations of the United States.

191 (b) A purchaser of one or more solar units that claims a tax credit under Section
 192 [59-7-614.3](#) for the purchase of the one or more solar units may not claim a tax credit under this
 193 section for that purchase.

194 (c) (i) The office may set standards for residential and commercial energy systems
 195 claiming a tax credit under Subsections (2)(a) and (b) that cover the safety, reliability,
 196 efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible
 197 for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate
 198 and economic manner.

199 (ii) The office may set standards for residential and commercial energy systems that
 200 establish the reasonable costs of an energy system, as used in Subsections (2)(a)(ii)(A) and
 201 (2)(b)(ii)(A), as an amount per unit of energy production.

202 (iii) A tax credit may not be taken under Subsection (2) or (3) until the office has
 203 certified that the energy system has been completely installed and is a viable system for saving
 204 or production of energy from renewable resources.

205 (d) The office and the commission may make rules in accordance with Title 63G,
 206 Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement this section.

207 ~~[(4)]~~ (5) (a) On or before October 1, 2012, and every five years thereafter, the Revenue
 208 and Taxation Interim Committee shall review each tax credit provided by this section and
 209 report its recommendations to the Legislative Management Committee concerning whether the
 210 tax credit should be continued, modified, or repealed.

211 (b) The Revenue and Taxation Interim Committee's report under Subsection ~~[(4)]~~
 212 (5)(a) shall include information concerning the cost of the tax credit, the purpose and
 213 effectiveness of the tax credit, and the state's benefit from the tax credit.

214 Section 2. **Effective date.**

215 This bill takes effect for a taxable year beginning on or after January 1, ~~2016~~ 2015 .

Legislative Review Note
as of 2-20-14 10:31 AM

Office of Legislative Research and General Counsel