

1 **RENEWABLE ENERGY TAX CREDIT AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ralph Okerlund**

5 House Sponsor: Brad L. Dee

7 **LONG TITLE**

8 **Committee Note:**

9 The Revenue and Taxation Interim Committee recommended this bill.

10 **General Description:**

11 This bill addresses renewable energy tax credits.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ addresses renewable energy tax credits; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides a special effective date.

21 This bill provides for retrospective operation.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **59-2-102**, as last amended by Laws of Utah 2014, Chapters 65 and 411

25 **59-7-614**, as last amended by Laws of Utah 2014, Chapter 407

26 **59-10-1014**, as last amended by Laws of Utah 2012, Chapter 37

27 **59-10-1106**, as last amended by Laws of Utah 2012, Chapter 37



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

Section 1. Section **59-2-102** is amended to read:

59-2-102. Definitions.

As used in this chapter and title:

(1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of engaging in dispensing activities directly affecting agriculture or horticulture with an airworthiness certificate from the Federal Aviation Administration certifying the aircraft or rotorcraft's use for agricultural and pest control purposes.

(2) "Air charter service" means an air carrier operation which requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.

(3) "Air contract service" means an air carrier operation available only to customers who engage the services of the carrier through a contractual agreement and excess capacity on any trip and is not available to the public at large.

(4) "Aircraft" is as defined in Section [72-10-102](#).

(5) (a) Except as provided in Subsection (5)(b), "airline" means an air carrier that:

(i) operates:

(A) on an interstate route; and

(B) on a scheduled basis; and

(ii) offers to fly one or more passengers or cargo on the basis of available capacity on a regularly scheduled route.

(b) "Airline" does not include an:

(i) air charter service; or

(ii) air contract service.

(6) "Assessment roll" means a permanent record of the assessment of property as assessed by the county assessor and the commission and may be maintained manually or as a computerized file as a consolidated record or as multiple records by type, classification, or categories.

(7) (a) "Certified revenue levy" means a property tax levy that provides an amount of ad valorem property tax revenue equal to the sum of:

- 59 (i) the amount of ad valorem property tax revenue to be generated statewide in the
60 previous year from imposing a school minimum basic tax rate, as specified in Subsection
61 [53A-17a-135\(1\)\(a\)](#), or multicounty assessing and collecting levy, as specified in Section
62 [59-2-1602](#); and
- 63 (ii) the product of:
- 64 (A) new growth, as defined in:
- 65 (I) Section [59-2-924](#); and
- 66 (II) rules of the commission; and
- 67 (B) the school minimum basic tax rate or multicounty assessing and collecting levy
68 certified by the commission for the previous year.
- 69 (b) For purposes of this Subsection (7), "ad valorem property tax revenue" does not
70 include property tax revenue received by a taxing entity from personal property that is:
- 71 (i) assessed by a county assessor in accordance with Part 3, County Assessment; and
- 72 (ii) semiconductor manufacturing equipment.
- 73 (c) For purposes of calculating the certified revenue levy described in this Subsection
74 (7), the commission shall use:
- 75 (i) the taxable value of real property assessed by a county assessor contained on the
76 assessment roll;
- 77 (ii) the taxable value of real and personal property assessed by the commission; and
- 78 (iii) the taxable year end value of personal property assessed by a county assessor
79 contained on the prior year's assessment roll.
- 80 (8) "County-assessed commercial vehicle" means:
- 81 (a) any commercial vehicle, trailer, or semitrailer which is not apportioned under
82 Section [41-1a-301](#) and is not operated interstate to transport the vehicle owner's goods or
83 property in furtherance of the owner's commercial enterprise;
- 84 (b) any passenger vehicle owned by a business and used by its employees for
85 transportation as a company car or vanpool vehicle; and
- 86 (c) vehicles that are:
- 87 (i) especially constructed for towing or wrecking, and that are not otherwise used to
88 transport goods, merchandise, or people for compensation;
- 89 (ii) used or licensed as taxicabs or limousines;

- 90 (iii) used as rental passenger cars, travel trailers, or motor homes;
- 91 (iv) used or licensed in this state for use as ambulances or hearses;
- 92 (v) especially designed and used for garbage and rubbish collection; or
- 93 (vi) used exclusively to transport students or their instructors to or from any private,
- 94 public, or religious school or school activities.

95 (9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801,
96 "designated tax area" means a tax area created by the overlapping boundaries of only the
97 following taxing entities:

- 98 (i) a county; and
- 99 (ii) a school district.

100 (b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created
101 by the overlapping boundaries of:

- 102 (i) the taxing entities described in Subsection (9)(a); and
- 103 (ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a)
104 and the boundaries of the city or town are identical; or

105 (B) a special service district if the boundaries of the school district under Subsection
106 (9)(a) are located entirely within the special service district.

107 (10) "Eligible judgment" means a final and unappealable judgment or order under
108 Section 59-2-1330:

109 (a) that became a final and unappealable judgment or order no more than 14 months
110 prior to the day on which the notice required by Section 59-2-919.1 is required to be mailed;
111 and

112 (b) for which a taxing entity's share of the final and unappealable judgment or order is
113 greater than or equal to the lesser of:

- 114 (i) \$5,000; or
- 115 (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the
116 previous fiscal year.

117 (11) (a) "Escaped property" means any property, whether personal, land, or any
118 improvements to the property, subject to taxation and is:

119 (i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed
120 to the wrong taxpayer by the assessing authority;

121 (ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to
122 comply with the reporting requirements of this chapter; or

123 (iii) undervalued because of errors made by the assessing authority based upon
124 incomplete or erroneous information furnished by the taxpayer.

125 (b) Property that is undervalued because of the use of a different valuation
126 methodology or because of a different application of the same valuation methodology is not
127 "escaped property."

128 (12) "Fair market value" means the amount at which property would change hands
129 between a willing buyer and a willing seller, neither being under any compulsion to buy or sell
130 and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair
131 market value" shall be determined using the current zoning laws applicable to the property in
132 question, except in cases where there is a reasonable probability of a change in the zoning laws
133 affecting that property in the tax year in question and the change would have an appreciable
134 influence upon the value.

135 (13) "Farm machinery and equipment," for purposes of the exemption provided under
136 Section [59-2-1101](#), means tractors, milking equipment and storage and cooling facilities, feed
137 handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage
138 tools, scales, combines, spreaders, sprayers, haying equipment, including balers and cubers,
139 and any other machinery or equipment used primarily for agricultural purposes; but does not
140 include vehicles required to be registered with the Motor Vehicle Division or vehicles or other
141 equipment used for business purposes other than farming.

142 (14) "Geothermal fluid" means water in any form at temperatures greater than 120
143 degrees centigrade naturally present in a geothermal system.

144 (15) "Geothermal resource" means:

145 (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade;
146 and

147 (b) the energy, in whatever form, including pressure, present in, resulting from, created
148 by, or which may be extracted from that natural heat, directly or through a material medium.

149 (16) (a) "Goodwill" means:

150 (i) acquired goodwill that is reported as goodwill on the books and records:

151 (A) of a taxpayer; and

152 (B) that are maintained for financial reporting purposes; or
153 (ii) the ability of a business to:
154 (A) generate income:
155 (I) that exceeds a normal rate of return on assets; and
156 (II) resulting from a factor described in Subsection (16)(b); or
157 (B) obtain an economic or competitive advantage resulting from a factor described in
158 Subsection (16)(b).

159 (b) The following factors apply to Subsection (16)(a)(ii):

- 160 (i) superior management skills;
- 161 (ii) reputation;
- 162 (iii) customer relationships;
- 163 (iv) patronage; or
- 164 (v) a factor similar to Subsections (16)(b)(i) through (iv).
- 165 (c) "Goodwill" does not include:
 - 166 (i) the intangible property described in Subsection (20)(a) or (b);
 - 167 (ii) locational attributes of real property, including:
 - 168 (A) zoning;
 - 169 (B) location;
 - 170 (C) view;
 - 171 (D) a geographic feature;
 - 172 (E) an easement;
 - 173 (F) a covenant;
 - 174 (G) proximity to raw materials;
 - 175 (H) the condition of surrounding property; or
 - 176 (I) proximity to markets;
 - 177 (iii) value attributable to the identification of an improvement to real property,

178 including:

- 179 (A) reputation of the designer, builder, or architect of the improvement;
- 180 (B) a name given to, or associated with, the improvement; or
- 181 (C) the historic significance of an improvement; or
- 182 (iv) the enhancement or assemblage value specifically attributable to the interrelation

183 of the existing tangible property in place working together as a unit.

184 (17) "Governing body" means:

185 (a) for a county, city, or town, the legislative body of the county, city, or town;

186 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -

187 Local Districts, the local district's board of trustees;

188 (c) for a school district, the local board of education; or

189 (d) for a special service district under Title 17D, Chapter 1, Special Service District

190 Act:

191 (i) the legislative body of the county or municipality that created the special service
192 district, to the extent that the county or municipal legislative body has not delegated authority
193 to an administrative control board established under Section 17D-1-301; or

194 (ii) the administrative control board, to the extent that the county or municipal
195 legislative body has delegated authority to an administrative control board established under
196 Section 17D-1-301.

197 (18) (a) For purposes of Section 59-2-103:

198 (i) "household" means the association of persons who live in the same dwelling,
199 sharing its furnishings, facilities, accommodations, and expenses; and

200 (ii) "household" includes married individuals, who are not legally separated, that have
201 established domiciles at separate locations within the state.

202 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
203 commission may make rules defining the term "domicile."

204 (19) (a) Except as provided in Subsection (19)(c), "improvement" means a building,
205 structure, fixture, fence, or other item that is permanently attached to land, regardless of
206 whether the title has been acquired to the land, if:

207 (i) (A) attachment to land is essential to the operation or use of the item; and

208 (B) the manner of attachment to land suggests that the item will remain attached to the
209 land in the same place over the useful life of the item; or

210 (ii) removal of the item would:

211 (A) cause substantial damage to the item; or

212 (B) require substantial alteration or repair of a structure to which the item is attached.

213 (b) "Improvement" includes:

- 214 (i) an accessory to an item described in Subsection (19)(a) if the accessory is:
- 215 (A) essential to the operation of the item described in Subsection (19)(a); and
- 216 (B) installed solely to serve the operation of the item described in Subsection (19)(a);

217 and

- 218 (ii) an item described in Subsection (19)(a) that:
- 219 (A) is temporarily detached from the land for repairs; and
- 220 (B) remains located on the land.

221 (c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:

- 222 (i) an item considered to be personal property pursuant to rules made in accordance
- 223 with Section 59-2-107;

224 (ii) a moveable item that is attached to land:

- 225 (A) for stability only; or
- 226 (B) for an obvious temporary purpose;

227 (iii) (A) manufacturing equipment and machinery; or

228 (B) essential accessories to manufacturing equipment and machinery;

229 (iv) an item attached to the land in a manner that facilitates removal without substantial

230 damage to:

231 (A) the land; or

232 (B) the item; or

233 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that

234 transportable factory-built housing unit is considered to be personal property under Section

235 59-2-1503.

236 (20) "Intangible property" means:

237 (a) property that is capable of private ownership separate from tangible property,

238 including:

239 (i) money;

240 (ii) credits;

241 (iii) bonds;

242 (iv) stocks;

243 (v) representative property;

244 (vi) franchises;

- 245 (vii) licenses;
- 246 (viii) trade names;
- 247 (ix) copyrights; and
- 248 (x) patents;
- 249 (b) a low-income housing tax credit;
- 250 (c) goodwill; or
- 251 (d) a renewable energy tax credit or incentive, including:
- 252 (i) a federal renewable energy production tax credit under Section 45, Internal Revenue
- 253 Code;
- 254 (ii) a federal energy credit for qualified renewable electricity production facilities under
- 255 Section 48, Internal Revenue Code;
- 256 (iii) a federal grant for a renewable energy property under American Recovery and
- 257 Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1603; and
- 258 (iv) a tax credit under Subsection ~~59-7-614(2)(c)~~(5).
- 259 (21) "Livestock" means:
- 260 (a) a domestic animal;
- 261 (b) a fur-bearing animal;
- 262 (c) a honeybee; or
- 263 (d) poultry.
- 264 (22) "Low-income housing tax credit" means:
- 265 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;
- 266 or
- 267 (b) a low-income housing tax credit under:
- 268 (i) Section ~~59-7-607~~; or
- 269 (ii) Section ~~59-10-1010~~.
- 270 (23) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.
- 271 (24) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
- 272 valuable mineral.
- 273 (25) "Mining" means the process of producing, extracting, leaching, evaporating, or
- 274 otherwise removing a mineral from a mine.
- 275 (26) (a) "Mobile flight equipment" means tangible personal property that is:

276 (i) owned or operated by an:
277 (A) air charter service;
278 (B) air contract service; or
279 (C) airline; and
280 (ii) (A) capable of flight;
281 (B) attached to an aircraft that is capable of flight; or
282 (C) contained in an aircraft that is capable of flight if the tangible personal property is
283 intended to be used:
284 (I) during multiple flights;
285 (II) during a takeoff, flight, or landing; and
286 (III) as a service provided by an air charter service, air contract service, or airline.
287 (b) (i) "Mobile flight equipment" does not include a spare part other than a spare
288 engine that is rotated:
289 (A) at regular intervals; and
290 (B) with an engine that is attached to the aircraft.
291 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
292 commission may make rules defining the term "regular intervals."
293 (27) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts,
294 sand, rock, gravel, and all carboniferous materials.
295 (28) "Part-year residential property" means property that is not residential property on
296 January 1 of a calendar year but becomes residential property after January 1 of the calendar
297 year.
298 (29) "Personal property" includes:
299 (a) every class of property as defined in Subsection (30) that is the subject of
300 ownership and not included within the meaning of the terms "real estate" and "improvements";
301 (b) gas and water mains and pipes laid in roads, streets, or alleys;
302 (c) bridges and ferries;
303 (d) livestock; and
304 (e) outdoor advertising structures as defined in Section [72-7-502](#).
305 (30) (a) "Property" means property that is subject to assessment and taxation according
306 to its value.

307 (b) "Property" does not include intangible property as defined in this section.

308 (31) "Public utility," for purposes of this chapter, means the operating property of a
309 railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline
310 company, electrical corporation, telephone corporation, sewerage corporation, or heat
311 corporation where the company performs the service for, or delivers the commodity to, the
312 public generally or companies serving the public generally, or in the case of a gas corporation
313 or an electrical corporation, where the gas or electricity is sold or furnished to any member or
314 consumers within the state for domestic, commercial, or industrial use. Public utility also
315 means the operating property of any entity or person defined under Section 54-2-1 except water
316 corporations.

317 (32) (a) Subject to Subsection (32)(b), "qualifying exempt primary residential rental
318 personal property" means household furnishings, furniture, and equipment that:

319 (i) are used exclusively within a dwelling unit that is the primary residence of a tenant;

320 (ii) are owned by the owner of the dwelling unit that is the primary residence of a
321 tenant; and

322 (iii) after applying the residential exemption described in Section 59-2-103, are exempt
323 from taxation under this chapter in accordance with Subsection 59-2-1115(2).

324 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
325 commission may by rule define the term "dwelling unit" for purposes of this Subsection (32)
326 and Subsection (35).

327 (33) "Real estate" or "real property" includes:

328 (a) the possession of, claim to, ownership of, or right to the possession of land;

329 (b) all mines, minerals, and quarries in and under the land, all timber belonging to
330 individuals or corporations growing or being on the lands of this state or the United States, and
331 all rights and privileges appertaining to these; and

332 (c) improvements.

333 (34) "Relationship with an owner of the property's land surface rights" means a
334 relationship described in Subsection 267(b), Internal Revenue Code:

335 (a) except that notwithstanding Subsection 267(b), Internal Revenue Code, the term
336 25% shall be substituted for the term 50% in Subsection 267(b), Internal Revenue Code; and

337 (b) using the ownership rules of Subsection 267(c), Internal Revenue Code, for

338 determining the ownership of stock.

339 (35) (a) Subject to Subsection (35)(b), "residential property," for the purposes of the
340 reductions and adjustments under this chapter, means any property used for residential
341 purposes as a primary residence.

342 (b) Subject to Subsection (35)(c), "residential property":

343 (i) except as provided in Subsection (35)(b)(ii), includes household furnishings,
344 furniture, and equipment if the household furnishings, furniture, and equipment are:

345 (A) used exclusively within a dwelling unit that is the primary residence of a tenant;

346 and

347 (B) owned by the owner of the dwelling unit that is the primary residence of a tenant;

348 and

349 (ii) does not include property used for transient residential use.

350 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
351 commission may by rule define the term "dwelling unit" for purposes of Subsection (32) and
352 this Subsection (35).

353 (36) "Split estate mineral rights owner" means a person who:

354 (a) has a legal right to extract a mineral from property;

355 (b) does not hold more than a 25% interest in:

356 (i) the land surface rights of the property where the wellhead is located; or

357 (ii) an entity with an ownership interest in the land surface rights of the property where
358 the wellhead is located;

359 (c) is not an entity in which the owner of the land surface rights of the property where
360 the wellhead is located holds more than a 25% interest; and

361 (d) does not have a relationship with an owner of the land surface rights of the property
362 where the wellhead is located.

363 (37) (a) "State-assessed commercial vehicle" means:

364 (i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate
365 to transport passengers, freight, merchandise, or other property for hire; or

366 (ii) any commercial vehicle, trailer, or semitrailer which operates interstate and
367 transports the vehicle owner's goods or property in furtherance of the owner's commercial
368 enterprise.

369 (b) "State-assessed commercial vehicle" does not include vehicles used for hire which
370 are specified in Subsection (8)(c) as county-assessed commercial vehicles.

371 (38) "Taxable value" means fair market value less any applicable reduction allowed for
372 residential property under Section 59-2-103.

373 (39) "Tax area" means a geographic area created by the overlapping boundaries of one
374 or more taxing entities.

375 (40) "Taxing entity" means any county, city, town, school district, special taxing
376 district, local district under Title 17B, Limited Purpose Local Government Entities - Local
377 Districts, or other political subdivision of the state with the authority to levy a tax on property.

378 (41) "Tax roll" means a permanent record of the taxes charged on property, as extended
379 on the assessment roll and may be maintained on the same record or records as the assessment
380 roll or may be maintained on a separate record properly indexed to the assessment roll. It
381 includes tax books, tax lists, and other similar materials.

382 Section 2. Section 59-7-614 is amended to read:

383 **59-7-614. Renewable energy systems tax credits -- Definitions -- Certification --**
384 **Rulemaking authority -- Revenue and Taxation Interim Committee study.**

385 (1) As used in this section:

386 (a) (i) "Active solar system"~~[-(i)]~~ means a system of equipment that is capable of:

387 (A) collecting and converting incident solar radiation into thermal, mechanical, or
388 electrical energy~~[-];~~ and

389 (B) transferring [these forms] a form of energy described in Subsection (1)(a)(i)(A) by
390 a separate apparatus to storage or to the point of use~~[-and].~~

391 (ii) "Active solar system" includes water heating, space heating or cooling, and
392 electrical or mechanical energy generation.

393 (b) "Biomass system" means ~~[any]~~ a system of apparatus and equipment for use in:

394 (i) converting material into biomass energy, as defined in Section 59-12-102~~[-];~~ and

395 (ii) transporting [that] the biomass energy by separate apparatus to the point of use or
396 storage.

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

400 ~~[(d)]~~ (c) "Commercial energy system" means ~~[any active solar, passive solar,~~
 401 ~~geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind,~~
 402 ~~hydroenergy, or biomass system used]~~ a system that is:

403 (i) (A) an active solar system;

404 (B) a biomass system;

405 (C) a direct use geothermal system;

406 (D) a geothermal electricity system;

407 (E) a geothermal heat pump system;

408 (F) a hydroenergy system;

409 (G) a passive solar system; or

410 (H) a wind system;

411 (ii) located in the state; and

412 (iii) used:

413 (A) to supply energy to a commercial unit; or

414 (B) as a commercial enterprise.

415 ~~[(e)]~~ (d) "Commercial enterprise" means ~~[a business]~~ an entity ~~[whose], the purpose of~~
 416 which is to produce electrical, mechanical, or thermal energy for sale from a commercial
 417 energy system.

418 ~~[(f)]~~ (e) (i) "Commercial unit" means ~~[any]~~ a building or structure that ~~[a business]~~ an
 419 entity uses to transact ~~[its]~~ business.

420 (ii) Notwithstanding Subsection (1)~~[(f)]~~(e)(i):

421 (A) ~~[in the case of]~~ with respect to an active solar system used for agricultural water
 422 pumping or a wind system, each individual energy generating device ~~[shall]~~ is considered to be
 423 a commercial unit; [and] or

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

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

430 ~~[(h)]~~ (g) "Geothermal electricity" means energy that is:

- 431 (i) contained in heat that continuously flows outward from the earth ~~[that is]~~; and
- 432 (ii) used as a sole source of energy to produce electricity.
- 433 (h) "Geothermal energy" means energy generated by heat that is contained in the earth.
- 434 (i) "Geothermal heat pump system" means a system of apparatus and equipment
- 435 ~~[enabling]~~ that:
- 436 (i) enables the use of thermal properties contained in the earth at temperatures well
- 437 below 100 degrees Fahrenheit ~~[to help]~~; and
- 438 (ii) helps meet heating and cooling needs of a structure.
- 439 (j) "Hydroenergy system" means a system of apparatus and equipment that is capable
- 440 of:
- 441 (i) intercepting and converting kinetic water energy into electrical or mechanical
- 442 energy; and
- 443 (ii) transferring this form of energy by separate apparatus to the point of use or storage.
- 444 ~~[(k) "Individual taxpayer" means any person who is a taxpayer as defined in Section~~
- 445 ~~59-10-103 and an individual as defined in Section 59-10-103.]~~
- 446 ~~[(t)]~~ (k) "Office" means the Office of Energy Development created in Section
- 447 ~~63M-4-401.~~
- 448 ~~[(m)]~~ (l) (i) "Passive solar system" ~~[-(i)]~~ means a direct thermal system that utilizes the
- 449 structure of a building and its operable components to provide for collection, storage, and
- 450 distribution of heating or cooling during the appropriate times of the year by utilizing the
- 451 climate resources available at the site ~~[-and]~~.
- 452 (ii) "Passive solar system" includes those portions and components of a building that
- 453 are expressly designed and required for the collection, storage, and distribution of solar energy.
- 454 (m) (i) "Principal recovery portion" means the portion of a lease payment that
- 455 constitutes the cost a person incurs in acquiring a commercial energy system.
- 456 (ii) "Principal recovery portion" does not include:
- 457 (A) an interest charge; or
- 458 (B) a maintenance expense.
- 459 (n) "Residential energy system" means ~~[any active solar, passive solar, biomass,~~
- 460 ~~direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system]~~ the
- 461 following used to supply energy to or for ~~[any]~~ a residential unit ~~[-]~~:

- 462 (i) an active solar system;
 463 (ii) a biomass system;
 464 (iii) a direct use geothermal system;
 465 (iv) a geothermal heat pump system;
 466 (v) a hydroenergy system;
 467 (vi) a passive solar system; or
 468 (vii) a wind system.

469 (o) (i) "Residential unit" means [any] a house, condominium, apartment, or similar
 470 dwelling unit that:

471 (A) is located in the state; and
 472 (B) serves as a dwelling for a person, group of persons, or a family [but].

473 (ii) "Residential unit" does not include property subject to a fee under:

- 474 [(i)] (A) Section 59-2-404;
 475 [(ii)] (B) Section 59-2-405;
 476 [(iii)] (C) Section 59-2-405.1;
 477 [(iv)] (D) Section 59-2-405.2; or
 478 [(v)] (E) Section 59-2-405.3.

479 (p) "Wind system" means a system of apparatus and equipment that is capable of:

- 480 (i) intercepting and converting wind energy into mechanical or electrical energy; and
 481 (ii) transferring these forms of energy by a separate apparatus to the point of use, sale,
 482 or storage.

483 ~~[(2)(a)(i) A business entity that purchases and completes or participates in the~~
 484 ~~financing of a residential energy system to supply all or part of the energy required for a~~
 485 ~~residential unit owned or used by the business entity and located in the state may claim a~~
 486 ~~nonrefundable tax credit as provided in this Subsection (2)(a).]~~

487 (2) A taxpayer may claim an energy system tax credit as provided in this section
 488 against a tax due under this chapter for a taxable year.

489 (3) (a) Subject to the other provisions of this Subsection (3), a taxpayer may claim a
 490 nonrefundable tax credit under this Subsection (3) with respect to a residential unit the taxpayer
 491 owns or uses if:

492 (i) the taxpayer:

493 (A) purchases and completes a residential energy system to supply all or part of the
 494 energy required for the residential unit; or

495 (B) participates in the financing of a residential energy system to supply all or part of
 496 the energy required for the residential unit;

497 (ii) the residential energy system is completed and placed in service on or after January
 498 1, 2007; and

499 (iii) the taxpayer obtains a written certification from the office in accordance with
 500 Subsection (7).

501 ~~[(ii)(A) The]~~ (b) (i) Subject to Subsections (3)(b)(ii) through (v), the tax credit is equal
 502 to 25% of the reasonable costs of each residential energy system installed with respect to each
 503 residential unit the [business entity] taxpayer owns or uses[, including].

504 (ii) A tax credit under this Subsection (3) may include installation costs[~~, against any~~
 505 tax due under this chapter].

506 (iii) A taxpayer may claim a tax credit under this Subsection (3) for the taxable year in
 507 which the residential energy system is completed and placed in service.

508 (iv) If the amount of a tax credit under this Subsection (3) exceeds a taxpayer's tax
 509 liability under this chapter for a taxable year, the amount of the tax credit exceeding the
 510 liability may be carried forward for a period that does not exceed the next four taxable years.

511 ~~[(B)]~~ (v) The total amount of [each] tax credit a taxpayer may claim under this
 512 Subsection [(2)(a)] (3) may not exceed \$2,000 per residential unit.

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

515 ~~[(iii)]~~ (c) If a [business entity] taxpayer sells a residential unit to [an individual
 516 taxpayer] another person before [making a claim for] the taxpayer claims the tax credit under
 517 this Subsection [(2)(a)] (3)[~~, the business entity may]:~~

518 ~~[(A)]~~ (i) the taxpayer may assign [its right to this] the tax credit to the [individual
 519 taxpayer] other person; and

520 ~~[(B)]~~ (ii) (A) [if the business entity assigns its right to the tax credit to an individual
 521 taxpayer under Subsection (2)(a)(iii)(A), the individual taxpayer] if the other person files a
 522 return under this chapter, the other person may claim the tax credit under this section as if the
 523 [individual taxpayer had completed or participated in the costs of the residential energy system

524 ~~under Section 59-10-1014.]~~ other person had met the requirements of this section to claim the
 525 tax credit; or

526 (B) if the other person files a return under Chapter 10, Individual Income Tax Act, the
 527 other person may claim the tax credit under Section 59-10-1014 as if the other person had met
 528 the requirements of Section 59-10-1014 to claim the tax credit.

529 ~~[(b) (i) A business entity that purchases or participates in the financing of a commercial~~
 530 ~~energy system situated in Utah may claim a refundable tax credit as provided in this Subsection~~
 531 ~~(2)(b) if the commercial energy system does not use wind, geothermal electricity, solar, or~~
 532 ~~biomass equipment capable of producing a total of 660 or more kilowatts of electricity or if the~~
 533 ~~commercial energy system does not use solar equipment capable of producing 2,000 or more~~
 534 ~~kilowatts of electricity, and:]~~

535 (4) (a) Subject to the other provisions of this Subsection (4), a taxpayer may claim a
 536 refundable tax credit under this Subsection (4) with respect to a commercial energy system if:

537 (i) the commercial energy system does not use:

538 (A) wind, geothermal electricity, solar, or biomass equipment capable of producing a
 539 total of 660 or more kilowatts of electricity; or

540 (B) solar equipment capable of producing 2,000 or more kilowatts of electricity;

541 (ii) the corporation purchases or participates in the financing of the commercial energy
 542 system;

543 (iii) (A) the commercial energy system supplies all or part of the energy required by
 544 commercial units owned or used by the [business entity] taxpayer; or

545 (B) the [business entity] taxpayer sells all or part of the energy produced by the
 546 commercial energy system as a commercial enterprise[.];

547 (iv) the commercial energy system is completed and placed in service on or after
 548 January 1, 2007; and

549 (v) the taxpayer obtains a written certification from the office in accordance with
 550 Subsection (7).

551 ~~[(ii) (A) A business entity is entitled to a]~~ (b) (i) Subject to Subsections (4)(b)(ii)
 552 through (v), the tax credit [of up] is equal to 10% of the reasonable costs of [any] the
 553 commercial energy system [installed, including].

554 (ii) A tax credit under this Subsection (4) may include installation costs[, against any

555 tax due under this chapter].

556 (iii) A taxpayer may claim a tax credit under this Subsection (4) for the taxable year in
557 which the commercial energy system is completed and placed in service.

558 (iv) A tax credit under this Subsection (4) may not be carried forward or carried back.

559 ~~[(B) Notwithstanding Subsection (2)(b)(ii)(A), the]~~

560 (v) The total amount of [the] tax credit a taxpayer may claim under this Subsection
561 [~~(2)(b)~~] (4) may not exceed \$50,000 per commercial unit.

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

564 ~~[(iii) (c) (i) [A business entity that leases] Subject to Subsections (4)(c)(ii) and (iii), a~~
565 ~~taxpayer that is a lessee of a commercial energy system installed on a commercial unit [is~~
566 ~~eligible for the] may claim a tax credit under this Subsection [~~(2)(b)~~] (4) if the [lessee can~~
567 ~~confirm] taxpayer confirms that the lessor irrevocably elects not to claim the tax credit.~~

568 ~~[(iv) Only] (ii) A taxpayer described in Subsection (4)(c)(i) may claim as a tax credit~~
569 ~~under this Subsection (4) only the principal recovery portion of the lease payments[, which is~~
570 ~~the cost incurred by a business entity in acquiring a commercial energy system, excluding~~
571 ~~interest charges and maintenance expenses, is eligible for the tax credit under this Subsection~~
572 ~~(2)(b)].~~

573 ~~[(v) A business entity that leases a commercial energy system is eligible to use the]~~

574 (iii) A taxpayer described in Subsection (4)(c)(i) may claim a tax credit under this
575 Subsection [~~(2)(b)~~] (4) for a period [no greater than] that does not exceed seven taxable years
576 [from the initiation of the lease] after the date the lease begins, as stated in the lease agreement.

577 ~~[(vi) A tax credit allowed by this Subsection (2)(b) may not be carried forward or~~
578 ~~carried back.]~~

579 ~~[(c) (i) A business entity that owns a commercial energy system located in the state~~
580 ~~using wind, geothermal electricity, or biomass equipment capable of producing a total of 660 or~~
581 ~~more kilowatts of electricity may claim a refundable tax credit as provided in this Subsection~~
582 ~~(2)(c) if:]~~

583 (5) (a) Subject to the other provisions of this Subsection (5), a taxpayer may claim a
584 refundable tax credit under this Subsection (5) with respect to a commercial energy system if:

585 (i) the commercial energy system uses wind, geothermal electricity, or biomass

586 equipment capable of producing a total of 660 or more kilowatts of electricity;

587 (ii) (A) the commercial energy system supplies all or part of the energy required by
588 commercial units owned or used by the ~~[business entity]~~ taxpayer; or

589 (B) the ~~[business entity]~~ taxpayer sells all or part of the energy produced by the
590 commercial energy system as a commercial enterprise[-];

591 (iii) the commercial energy system is completed and placed in service on or after
592 January 1, 2007; and

593 (iv) the taxpayer obtains a written certification from the office in accordance with
594 Subsection (7).

595 ~~[(ii) (A) A business entity may claim]~~

596 (b) (i) Subject to Subsections (5)(b)(ii) and (iii), a tax credit under this [section]
597 Subsection (5) is equal to the product of:

598 ~~[(F) (A) 0.35 cents; and~~

599 ~~[(H) (B) the kilowatt hours of electricity produced and [either] used or sold during the~~
600 ~~taxable year.~~

601 ~~[(B) (F) The tax credit calculated under Subsection (2)(c)(ii)(A)]~~

602 (ii) A tax credit under this Subsection (5) may be claimed for production occurring
603 during a period of 48 months beginning with the month in which the commercial energy
604 system is placed in commercial service.

605 ~~[(H) The tax credit allowed by this Subsection (2)(c) for each year]~~

606 (iii) A tax credit under this Subsection (5) may not be carried forward or carried back.
607 ~~[(C) The tax credit under this Subsection (2)(c) is allowed for any commercial energy~~
608 ~~system completed and placed in service on or after January 1, 2007.]~~

609 ~~[(iii) A business entity that leases]~~

610 (c) A taxpayer that is a lessee of a commercial energy system installed on a commercial
611 unit [is eligible for the] may claim a tax credit under this Subsection [(2)(c)] (5) if the [lessee
612 can confirm] taxpayer confirms that the lessor irrevocably elects not to claim the tax credit.

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

615 ~~[(ii) Additional energy systems or parts of energy systems may be claimed for~~
616 ~~subsequent years.]~~

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

620 ~~[(3) (a) A business entity that owns a commercial energy system located in the state~~
 621 ~~that uses solar equipment capable of producing a total of 660 or more kilowatts of electricity]~~

622 (6) (a) Subject to the other provisions of this Subsection (6), a taxpayer may claim a
 623 refundable tax credit as provided in this Subsection [(3)] (6) if:

624 (i) the taxpayer owns a commercial energy system that uses solar equipment capable of
 625 producing a total of 660 or more kilowatts of electricity;

626 ~~[(i)]~~ (ii) (A) the commercial energy system supplies all or part of the energy required
 627 by commercial units owned or used by the [business entity] taxpayer; or

628 (B) the [business entity] taxpayer sells all or part of the energy produced by the
 629 commercial energy system as a commercial enterprise; [and]

630 ~~[(ii)]~~ (iii) the [business entity] taxpayer does not claim a tax credit under Subsection
 631 [(2)(b)] (4);

632 (iv) the commercial energy system is completed and placed in service on or after
 633 January 1, 2015; and

634 (v) the taxpayer obtains a written certification from the office in accordance with
 635 Subsection (7).

636 ~~(b) [A business entity may claim]~~ (i) Subject to Subsections (6)(b)(ii) and (iii), a tax
 637 credit under this [section] Subsection (6) is equal to the product of:

638 ~~[(i)]~~ (A) 0.35 cents; and

639 ~~[(ii)]~~ (B) the kilowatt hours of electricity produced and [either] used or sold during the
 640 taxable year.

641 ~~[(c) The]~~ (ii) A tax credit under this Subsection [(3)] (6) may be claimed for
 642 production occurring during a period of 48 months beginning with the month in which the
 643 commercial energy system is placed in commercial service.

644 ~~[(d) The]~~ (iii) A tax credit under this Subsection [(3)] (6) may not be carried forward
 645 or carried back.

646 ~~[(e) The tax credit under this Subsection (3) is allowed for a commercial energy system~~
 647 ~~completed and placed in service on or after January 1, 2015.]~~

648 ~~[(f)]~~ (c) A ~~[business entity that leases]~~ taxpayer that is a lessee of a commercial energy
649 system installed on a commercial unit may claim a tax credit under this Subsection ~~[(3)]~~ (6) if
650 the ~~[business entity that is the lessee can confirm]~~ taxpayer confirms that the lessor irrevocably
651 elects not to claim the tax credit.

652 ~~[(4)(a) Except as provided in Subsection (4)(b), the tax credits provided for under~~
653 ~~Subsection (2) or (3) are]~~

654 (7) (a) Before a taxpayer may claim a tax credit under this section, the taxpayer shall
655 obtain a written certification from the office.

656 (b) The office shall issue a taxpayer a written certification if the office determines that:

657 (i) the taxpayer meets the requirements of this section to receive a tax credit; and

658 (ii) the residential energy system or commercial energy system with respect to which
659 the taxpayer seeks to claim a tax credit:

660 (A) has been completely installed;

661 (B) is a viable system for saving or producing energy from renewable resources; and

662 (C) is safe, reliable, efficient, and technically feasible to ensure that the residential

663 energy system or commercial energy system uses the state's renewable and nonrenewable

664 energy resources in an appropriate and economic manner.

665 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
666 office may make rules:

667 (i) for determining whether a residential energy system or commercial energy system
668 meets the requirements of Subsection (7)(b)(ii); and

669 (ii) for purposes of a tax credit under Subsection (3) or (4), establishing the reasonable
670 costs of a residential energy system or a commercial energy system, as an amount per unit of
671 energy production.

672 (d) A taxpayer that obtains a written certification from the office shall retain the
673 certification for the same time period a person is required to keep books and records under
674 Section [59-1-1406](#).

675 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
676 commission may make rules to address the certification of a tax credit under this section.

677 (9) A tax credit under this section is in addition to any tax credits provided under the
678 laws or rules and regulations of the United States.

679 ~~[(b)]~~ (10) A purchaser of one or more solar units that claims a tax credit under Section
 680 59-7-614.3 for the purchase of the one or more solar units may not claim a tax credit under this
 681 section for that purchase.

682 ~~[(c) (i) The office may set standards for residential and commercial energy systems
 683 claiming a tax credit under Subsections (2)(a) and (b) that cover the safety, reliability,
 684 efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible
 685 for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate
 686 and economic manner.]~~

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

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

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

695 ~~[(5)]~~ (11) (a) On or before October 1, ~~[2012]~~ 2017, and every five years ~~[thereafter]~~
 696 after 2017, the Revenue and Taxation Interim Committee shall review each tax credit provided
 697 by this section and report its recommendations to the Legislative Management Committee
 698 concerning whether the tax credit should be continued, modified, or repealed.

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

702 Section 3. Section **59-10-1014** is amended to read:

703 **59-10-1014. Nonrefundable renewable energy systems tax credits -- Definitions --**
 704 **Certification -- Rulemaking authority -- Revenue and Taxation Interim Committee study.**

705 (1) As used in this ~~[part]~~ section:

706 (a) (i) "Active solar system"~~[-(i)]~~ means a system of equipment that is capable of:

707 (A) collecting and converting incident solar radiation into thermal, mechanical, or
 708 electrical energy~~[-];~~ and

709 (B) transferring ~~[these forms]~~ a form of energy described in Subsection (1)(a)(i)(A) by

710 a separate apparatus to storage or to the point of use~~[-and]~~.

711 (ii) "Active solar system" includes water heating, space heating or cooling, and
712 electrical or mechanical energy generation.

713 (b) "Biomass system" means ~~[any]~~ a system of apparatus and equipment for use in:

714 (i) converting material into biomass energy, as defined in Section 59-12-102~~[-]~~; and

715 (ii) transporting [that] the biomass energy by separate apparatus to the point of use or
716 storage.

717 ~~[(c)]~~ "Business entity" means ~~any entity under which business is conducted or~~
718 ~~transacted.]~~

719 ~~[(d)]~~ (c) "Direct use geothermal system" means a system of apparatus and equipment
720 ~~[enabling] that enables the direct use of [thermal] geothermal energy[-, generally between 100~~
721 ~~and 300 degrees Fahrenheit, that is contained in the earth]~~ to meet energy needs, including
722 heating a building, an industrial process, and aquaculture.

723 ~~[(e)]~~ (d) "Geothermal electricity" means energy that is:

724 (i) contained in heat that continuously flows outward from the earth [that is]; and

725 (ii) used as a sole source of energy to produce electricity.

726 (e) "Geothermal energy" means energy generated by heat that is contained in the earth.

727 (f) "Geothermal heat pump system" means a system of apparatus and equipment
728 ~~[enabling] that:~~

729 (i) enables the use of thermal properties contained in the earth at temperatures well
730 below 100 degrees Fahrenheit ~~[to help]; and~~

731 (ii) helps meet heating and cooling needs of a structure.

732 (g) "Hydroenergy system" means a system of apparatus and equipment that is capable
733 of:

734 (i) intercepting and converting kinetic water energy into electrical or mechanical
735 energy; and

736 (ii) transferring this form of energy by separate apparatus to the point of use or storage.

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

738 (i) (i) "Passive solar system"~~[-(i)]~~ means a direct thermal system that utilizes the
739 structure of a building and its operable components to provide for collection, storage, and
740 distribution of heating or cooling during the appropriate times of the year by utilizing the

741 climate resources available at the site~~;~~ ~~and~~].

742 (ii) "Passive solar system" includes those portions and components of a building that
743 are expressly designed and required for the collection, storage, and distribution of solar energy.

744 (j) (i) "Principal recovery portion" means the portion of a lease payment that
745 constitutes the cost a person incurs in acquiring a residential energy system.

746 (ii) "Principal recovery portion" does not include:

747 (A) an interest charge; or

748 (B) a maintenance expense.

749 ~~(j)~~ (k) "Residential energy system" means ~~[any active solar, passive solar, biomass,~~
750 ~~direct-use geothermal, geothermal heat-pump system, wind, or hydroenergy system]~~ the
751 following used to supply energy to or for [any] a residential unit[-]:

752 (i) an active solar system;

753 (ii) a biomass system;

754 (iii) a direct use geothermal system;

755 (iv) a geothermal heat pump system;

756 (v) a hydroenergy system;

757 (vi) a passive solar system; or

758 (vii) a wind system.

759 ~~(k)~~ (l) (i) "Residential unit" means ~~[any] a~~ house, condominium, apartment, or similar
760 dwelling unit that:

761 (A) is located in the state; and

762 (B) serves as a dwelling for a person, group of persons, or a family [but].

763 (ii) "Residential unit" does not include property subject to a fee under:

764 ~~(i)~~ (A) Section 59-2-404;

765 ~~(ii)~~ (B) Section 59-2-405;

766 ~~(iii)~~ (C) Section 59-2-405.1;

767 ~~(iv)~~ (D) Section 59-2-405.2; or

768 ~~(v)~~ (E) Section 59-2-405.3.

769 ~~(j)~~ (m) "Wind system" means a system of apparatus and equipment that is capable of:

770 (i) intercepting and converting wind energy into mechanical or electrical energy; and

771 (ii) transferring these forms of energy by a separate apparatus to the point of use or

772 storage.

773 ~~[(2) For taxable years beginning on or after January 1, 2007, a claimant, estate, or trust~~
774 ~~may claim a nonrefundable tax credit as provided in this section if:]~~

775 ~~[(a) a claimant, estate, or trust that is not a business entity purchases and completes or~~
776 ~~participates in the financing of a residential energy system to supply all or part of the energy for~~
777 ~~the claimant's, estate's, or trust's residential unit in the state; or]~~

778 ~~[(b) (i) a claimant, estate, or trust that is a business entity sells a residential unit to~~
779 ~~another claimant, estate, or trust that is not a business entity before making a claim for a tax~~
780 ~~credit under Subsection (6) or Section 59-7-614; and]~~

781 ~~[(ii) the claimant, estate, or trust that is a business entity assigns its right to the tax~~
782 ~~credit to the claimant, estate, or trust that is not a business entity as provided in Subsection~~
783 ~~(6)(c) or Subsection 59-7-614(2)(a)(iii).]~~

784 (2) A claimant, estate, or trust may claim an energy system tax credit as provided in
785 this section against a tax due under this chapter for a taxable year.

786 (3) (a) Subject to the other provisions of this Subsection (3), a claimant, estate, or trust
787 may claim a nonrefundable tax credit under this Subsection (3) with respect to a residential unit
788 the claimant, estate, or trust owns or uses if:

789 (i) the claimant, estate, or trust:

790 (A) purchases and completes a residential energy system to supply all or part of the
791 energy required for the residential unit; or

792 (B) participates in the financing of a residential energy system to supply all or part of
793 the energy required for the residential unit;

794 (ii) the residential energy system is completed and placed in service on or after January
795 1, 2007; and

796 (iii) the claimant, estate, or trust obtains a written certification from the office in
797 accordance with Subsection (4).

798 ~~[(3) (a) The] (b) (i) Subject to Subsections (3)(b)(ii) through (vi), the tax credit~~
799 ~~[described in Subsection (2)] is equal to 25% of the reasonable costs of each residential energy~~
800 ~~system[, including installation costs, against any income tax liability of the claimant, estate, or~~
801 ~~trust under this chapter for the taxable year in which the residential energy system is completed~~
802 ~~and placed in service] installed with respect to each residential unit the claimant, estate, or trust~~

803 owns or uses.

804 ~~[(b) The total amount of each tax credit under this section may not exceed \$2,000 per~~
805 ~~residential unit.]~~

806 ~~[(c) The tax credit under this section is allowed for any residential energy system~~
807 ~~completed and placed in service on or after January 1, 2007.]~~

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

810 (ii) A tax credit under this Subsection (3) may include installation costs.

811 (iii) A claimant, estate, or trust may claim a tax credit under this Subsection (3) for the
812 taxable year in which the residential energy system is completed and placed in service.

813 (iv) If the amount of a tax credit under this Subsection (3) exceeds a claimant's,
814 estate's, or trust's tax liability under this chapter for a taxable year, the amount of the tax credit
815 exceeding the liability may be carried forward for a period that does not exceed the next four
816 taxable years.

817 (v) The total amount of tax credit a claimant, estate, or trust may claim under this
818 Subsection (3) may not exceed \$2,000 per residential unit.

819 ~~[(b) Additional]~~ (vi) A claimant, estate, or trust may claim a tax credit with respect to
820 additional residential energy systems or parts of residential energy systems [may be similarly
821 claimed in returns] for a subsequent taxable [years as long as] year if the total amount
822 [claimed] of tax credit the claimant, estate, or trust claims does not exceed \$2,000 per
823 residential unit.

824 ~~[(c) If the amount of the tax credit under this section exceeds the income tax liability of~~
825 ~~the claimant, estate, or trust claiming the tax credit under this section for that taxable year, then~~
826 ~~the amount not used may be carried over for a period that does not exceed the next four taxable~~
827 ~~years.]~~

828 ~~[(5) (a) A]~~ (c) (i) Subject to Subsections (3)(c)(ii) and (iii), a claimant, estate, or trust
829 [that is not a business entity] that leases a residential energy system installed on a residential
830 unit [is eligible for the residential energy] may claim a tax credit under this Subsection (3) if
831 [that] the claimant, estate, or trust confirms that the lessor irrevocably elects not to claim the
832 tax credit.

833 ~~[(b) Only]~~ (ii) A claimant, estate, or trust described in Subsection (3)(c)(i) that leases a

834 residential energy system may claim as a tax credit under this Subsection (3) only the principal
835 recovery portion of the lease payments~~[, which is the cost incurred by the claimant, estate, or~~
836 trust in acquiring the residential energy system excluding interest charges and maintenance
837 expenses, is eligible for the tax credits].

838 ~~[(c)]~~ (iii) A claimant, estate, or trust described in [this] Subsection [(5)] (3)(c)(i) that
839 leases a residential energy system may [use the tax credits] claim a tax credit under this
840 Subsection (3) for a period that does not exceed seven taxable years [from the initiation of the
841 lease.] after the date the lease begins, as stated in the lease agreement.

842 (d) If a claimant, estate, or trust sells a residential unit to another person before the
843 claimant, estate, or trust claims the tax credit under this Subsection (3):

844 (i) the claimant, estate, or trust may assign the tax credit to the other person; and

845 (ii) (A) if the other person files a return under Chapter 7, Corporate Franchise and
846 Income Taxes, the other person may claim the tax credit as if the other person had met the
847 requirements of Section 59-7-614 to claim the tax credit; or

848 (B) if the other person files a return under this chapter, the other person may claim the
849 tax credit under this section as if the other person had met the requirements of this section to
850 claim the tax credit.

851 ~~[(6) (a) A claimant, estate, or trust that is a business entity that purchases and~~
852 ~~completes or participates in the financing of a residential energy system to supply all or part of~~
853 ~~the energy required for a residential unit owned or used by the claimant, estate, or trust that is a~~
854 ~~business entity and situated in Utah is entitled to a nonrefundable tax credit as provided in this~~
855 ~~Subsection (6).]~~

856 ~~[(b) (i) For taxable years beginning on or after January 1, 2007, a claimant, estate, or~~
857 ~~trust that is a business entity is entitled to a nonrefundable tax credit equal to 25% of the~~
858 ~~reasonable costs of a residential energy system installed with respect to each residential unit it~~
859 ~~owns or uses, including installation costs, against any tax due under this chapter for the taxable~~
860 ~~year in which the energy system is completed and placed in service.]~~

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

863 ~~[(iii) The tax credit under this Subsection (6) is allowed for any residential energy~~
864 ~~system completed and placed in service on or after January 1, 2007.]~~

865 ~~[(c) If a claimant, estate, or trust that is a business entity sells a residential unit to a~~
866 ~~claimant, estate, or trust that is not a business entity before making a claim for the tax credit~~
867 ~~under this Subsection (6), the claimant, estate, or trust that is a business entity may:]~~

868 ~~[(i) assign its right to this tax credit to the claimant, estate, or trust that is not a business~~
869 ~~entity; and]~~

870 ~~[(ii) if the claimant, estate, or trust that is a business entity assigns its right to the tax~~
871 ~~credit to a claimant, estate, or trust that is not a business entity under Subsection (6)(c)(i), the~~
872 ~~claimant, estate, or trust that is not a business entity may claim the tax credit as if that claimant,~~
873 ~~estate, or trust that is not a business entity had completed or participated in the costs of the~~
874 ~~residential energy system under this section.]~~

875 ~~[(7) (a) A tax credit under this section may be claimed for the taxable year in which the~~
876 ~~residential energy system is completed and placed in service.]~~

877 ~~[(b) Additional residential energy systems or parts of residential energy systems may be~~
878 ~~claimed for subsequent years.]~~

879 ~~[(c) If the amount of a tax credit under this section exceeds the tax liability of the~~
880 ~~claimant, estate, or trust claiming the tax credit under this section for a taxable year, the amount~~
881 ~~of the tax credit exceeding the tax liability may be carried over for a period which does not~~
882 ~~exceed the next four taxable years.]~~

883 ~~[(8) (a) Except as provided in Subsection (8)(b), tax credits provided for under this~~
884 ~~section are]~~

885 (4) (a) Before a claimant, estate, or trust may claim a tax credit under this section, the
886 claimant, estate, or trust shall obtain a written certification from the office.

887 (b) The office shall issue a claimant, estate, or trust a written certification if the office
888 determines that:

889 (i) the claimant, estate, or trust meets the requirements of this section to receive a tax
890 credit; and

891 (ii) the office determines that the residential energy system with respect to which the
892 claimant, estate, or trust seeks to claim a tax credit:

893 (A) has been completely installed;

894 (B) is a viable system for saving or producing energy from renewable resources; and

895 (C) is safe, reliable, efficient, and technically feasible to ensure that the residential

896 energy system uses the state's renewable and nonrenewable energy resources in an appropriate
897 and economic manner.

898 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
899 office may make rules:

900 (i) for determining whether a residential energy system meets the requirements of
901 Subsection (4)(b)(ii); and

902 (ii) for purposes of a tax credit under Subsection (3), establishing the reasonable costs
903 of a residential energy system, as an amount per unit of energy production.

904 (d) A claimant, estate, or trust that obtains a written certification from the office shall
905 retain the certification for the same time period a person is required to keep books and records
906 under Section [59-1-1406](#).

907 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
908 commission may make rules to address the certification of a tax credit under this section.

909 (6) A tax credit under this section is in addition to any tax credits provided under the
910 laws or rules and regulations of the United States.

911 ~~[(b)]~~ (7) A purchaser of one or more solar units that claims a tax credit under Section
912 [59-10-1024](#) for the purchase of the one or more solar units may not claim a tax credit under this
913 section for that purchase.

914 ~~[(9)(a) The office may set standards for residential energy systems that cover the~~
915 ~~safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that the~~
916 ~~systems eligible for the tax credit use the state's renewable and nonrenewable energy resources~~
917 ~~in an appropriate and economic manner.]~~

918 ~~[(b) The office may set standards for residential and commercial energy systems that~~
919 ~~establish the reasonable costs of an energy system, as used in Subsections (3)(a) and (6)(b)(i);~~
920 ~~as an amount per unit of energy production.]~~

921 ~~[(c) A tax credit may not be taken under this section until the office has certified that~~
922 ~~the energy system has been completely installed and is a viable system for saving or production~~
923 ~~of energy from renewable resources.]~~

924 ~~[(10) The office and the commission may make rules in accordance with Title 63G,~~
925 ~~Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement this section.]~~

926 ~~[(H)]~~ (8) (a) On or before October 1, ~~[2012]~~ 2017, and every five years ~~[thereafter]~~

927 after 2017, the Revenue and Taxation Interim Committee shall review each tax credit provided
 928 by this section and report its recommendations to the Legislative Management Committee
 929 concerning whether the tax credit should be continued, modified, or repealed.

930 (b) The Revenue and Taxation Interim Committee's report under Subsection ~~[(11)]~~
 931 (8)(a) shall include information concerning the cost of the tax credit, the purpose and
 932 effectiveness of the tax credit, and the state's benefit from the tax credit.

933 Section 4. Section **59-10-1106** is amended to read:

934 **59-10-1106. Refundable renewable energy systems tax credits -- Definitions --**
 935 **Certification -- Rulemaking authority -- Revenue and Taxation Interim Committee study.**

936 (1) As used in this section:

937 (a) "Active solar system" ~~[is]~~ has the same meaning as defined in Section 59-10-1014.

938 (b) "Biomass system" ~~[is]~~ has the same meaning as defined in Section 59-10-1014.

939 ~~[(c) "Business entity" is as defined in Section 59-10-1014.]~~

940 ~~[(d) (c) "Commercial energy system" [means any active solar, passive solar,~~
 941 ~~geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind,~~
 942 ~~hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial~~
 943 ~~enterprise] has the same meaning as defined in Section 59-7-614.~~

944 ~~[(e) (d) "Commercial enterprise" [means a business entity that:]~~ has the same meaning
 945 as defined in Section 59-7-614.

946 ~~[(i) is a claimant, estate, or trust; and]~~

947 ~~[(ii) has the purpose of producing electrical, mechanical, or thermal energy for sale~~
 948 ~~from a commercial energy system.]~~

949 ~~[(f) (e) (i) "Commercial unit" [means any building or structure that a business entity~~
 950 ~~that is a claimant, estate, or trust uses to transact its business] has the same meaning as defined~~
 951 in Section 59-7-614.

952 (ii) Notwithstanding Subsection (1)~~[(f)]~~(e)(i):

953 (A) ~~[in the case of]~~ with respect to an active solar system used for agricultural water
 954 pumping or a wind system, each individual energy generating device ~~[shall]~~ is considered to be
 955 a commercial unit; ~~[and]~~ or

956 (B) if an energy system is the building or structure that ~~[a business entity that is]~~ a
 957 claimant, estate, or trust uses to transact ~~[its]~~ business, a commercial unit is the complete

958 energy system itself.

959 ~~[(g)]~~ (f) "Direct use geothermal system" [is] has the same meaning as defined in
960 Section 59-10-1014.

961 ~~[(h)]~~ (g) "Geothermal electricity" [is] has the same meaning as defined in Section
962 59-10-1014.

963 (h) "Geothermal energy" has the same meaning as defined in Section 59-10-1014.

964 (i) "Geothermal heat pump system" [is] has the same meaning as defined in Section
965 59-10-1014.

966 (j) "Hydroenergy system" [is] has the same meaning as defined in Section 59-10-1014.

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

968 (l) "Passive solar system" [is] has the same meaning as defined in Section 59-10-1014.

969 (m) "Principal recovery portion" has the same meaning as defined in Section
970 59-10-1014.

971 ~~[(m)]~~ (n) "Wind system" [is] has the same meaning as defined in Section 59-10-1014.

972 ~~[(2)(a)(i) A business entity that is a claimant, estate, or trust that purchases or~~
973 ~~participates in the financing of a commercial energy system situated in Utah is entitled to a~~
974 ~~refundable tax credit as provided in this Subsection (2)(a) if the commercial energy system~~
975 ~~does not use wind, geothermal electricity, or biomass equipment capable of producing a total of~~
976 ~~660 or more kilowatts of electricity and:]~~

977 (2) A claimant, estate, or trust may claim an energy system tax credit as provided in
978 this section against a tax due under this chapter for a taxable year.

979 (3) (a) Subject to the other provisions of this Subsection (3), a claimant, estate, or trust
980 may claim a refundable tax credit under this Subsection (3) with respect to a commercial
981 energy system if:

982 (i) the commercial energy system does not use:

983 (A) wind, geothermal electricity, solar, or biomass equipment capable of producing a
984 total of 660 or more kilowatts of electricity; or

985 (B) solar equipment capable of producing 2,000 or more kilowatts of electricity;

986 (ii) the claimant, estate, or trust purchases or participates in the financing of the
987 commercial energy system;

988 (iii) (A) the commercial energy system supplies all or part of the energy required by

989 commercial units owned or used by the ~~[business entity that is a]~~ claimant, estate, or trust; or

990 (B) the ~~[business entity that is a]~~ claimant, estate, or trust sells all or part of the energy
991 produced by the commercial energy system as a commercial enterprise~~[-]~~;

992 (iv) the commercial energy system is completed and placed in service on or after
993 January 1, 2007; and

994 (v) the claimant, estate, or trust obtains a written certification from the office in
995 accordance with Subsection (6).

996 ~~[(ii)(A) A business entity that is a claimant, estate, or trust is entitled to a]~~ (b) (i)
997 Subject to Subsections (3)(b)(ii) through (v), the tax credit [of up] is equal to 10% of the
998 reasonable costs of [any] the commercial energy system [installed, including].

999 (ii) A tax credit under this Subsection (3) may include installation costs~~[-, against any~~
1000 ~~tax due under this chapter].~~

1001 (iii) A claimant, estate, or trust may claim a tax credit under this Subsection (3) for the
1002 taxable year in which the commercial energy system is completed and placed in service.

1003 (iv) A tax credit under this Subsection (3) may not be carried forward or carried back.

1004 ~~[(B) Notwithstanding Subsection (2)(a)(ii)(A), the]~~

1005 (v) The total amount of [the] tax credit a claimant, estate, or trust may claim under this
1006 Subsection ~~[(2)(a)] (3) may not exceed \$50,000 per commercial unit.~~

1007 ~~[(C) The credit under this Subsection (2)(a) is allowed for any commercial energy~~
1008 ~~system completed and placed in service on or after January 1, 2007.]~~

1009 ~~[(iii)] (c) (i) [A business entity that is a claimant, estate, or trust that leases]~~ Subject to
1010 Subsections (3)(c)(ii) and (iii), a claimant, estate, or trust that is a lessee of a commercial
1011 energy system installed on a commercial unit [is eligible for the] may claim a tax credit under
1012 this Subsection ~~[(2)(a)] (3) if the [lessee can confirm] claimant, estate, or trust confirms that the~~
1013 lessor irrevocably elects not to claim the tax credit.

1014 ~~[(iv) Only]~~ (ii) A claimant, estate, or trust described in Subsection (3)(c)(i) may claim
1015 as a tax credit under this Subsection (3) only the principal recovery portion of the lease
1016 payments~~[-, which is the cost incurred by a business entity that is a claimant, estate, or trust in~~
1017 ~~acquiring a commercial energy system, excluding interest charges and maintenance expenses,~~
1018 ~~is eligible for the tax credit under this Subsection (2)(a)].~~

1019 ~~[(v) A business entity that is a claimant, estate, or trust that leases a commercial energy~~

1020 system is eligible to use the]

1021 (iii) A claimant, estate, or trust described in Subsection (3)(c)(i) may claim a tax credit
 1022 under this Subsection [(2)(a)] (3) for a period [no greater than] that does not exceed seven
 1023 taxable years [from the initiation of the lease] after the date the lease begins, as stated in the
 1024 lease agreement.

1025 ~~[(b) (i) A business entity that is a claimant, estate, or trust that owns a commercial~~
 1026 ~~energy system situated in Utah using wind, geothermal electricity, or biomass equipment~~
 1027 ~~capable of producing a total of 660 or more kilowatts of electricity is entitled to a refundable~~
 1028 ~~tax credit as provided in this section if:]~~

1029 (4) (a) Subject to the other provisions of this Subsection (4), a claimant, estate, or trust
 1030 may claim a refundable tax credit under this Subsection (4) with respect to a commercial
 1031 energy system if:

1032 (i) the commercial energy system uses wind, geothermal electricity, or biomass
 1033 equipment capable of producing a total of 660 or more kilowatts of electricity;

1034 (ii) (A) the commercial energy system supplies all or part of the energy required by
 1035 commercial units owned or used by the [business entity that is a] claimant, estate, or trust; or

1036 (B) the [business entity that is a] claimant, estate, or trust sells all or part of the energy
 1037 produced by the commercial energy system as a commercial enterprise[-]:

1038 (iii) the commercial energy system is completed and placed in service on or after
 1039 January 1, 2007; and

1040 (iv) the claimant, estate, or trust obtains a written certification from the office in
 1041 accordance with Subsection (6).

1042 ~~[(ii) A business entity that is a claimant, estate, or trust is entitled to]~~

1043 (b) (i) Subject to Subsections (4)(b)(ii) and (iii), a tax credit under this Subsection
 1044 [(2)(b)] (4) is equal to the product of:

1045 (A) 0.35 cents; and

1046 (B) the kilowatt hours of electricity produced and [either] used or sold during the
 1047 taxable year.

1048 ~~[(iii) The credit allowed by this Subsection (2)(b):]~~

1049 ~~[(A)]~~ (ii) A tax credit under this Subsection (4) may be claimed for production
 1050 occurring during a period of 48 months beginning with the month in which the commercial

1051 energy system is placed in commercial service~~;~~and.

1052 ~~[(B)]~~ (iii) A tax credit under this Subsection (4) may not be carried forward or back.

1053 ~~[(iv) A business entity that is a claimant, estate, or trust that leases]~~

1054 (c) A claimant, estate, or trust that is a lessee of a commercial energy system installed

1055 on a commercial unit ~~[is eligible for the]~~ may claim a tax credit under this ~~[section]~~ Subsection

1056 (4) if the ~~[lessee can confirm]~~ claimant, estate, or trust confirms that the lessor irrevocably

1057 elects not to claim the tax credit.

1058 ~~[(3) The tax credits provided for under this section are]~~

1059 (5) (a) Subject to the other provisions of this Subsection (5), a claimant, estate, or trust

1060 may claim a refundable tax credit as provided in this Subsection (5) if:

1061 (i) the claimant, estate, or trust owns a commercial energy system that uses solar

1062 equipment capable of producing a total of 660 or more kilowatts of electricity;

1063 (ii) (A) the commercial energy system supplies all or part of the energy required by

1064 commercial units owned or used by the claimant, estate, or trust; or

1065 (B) the claimant, estate, or trust sells all or part of the energy produced by the

1066 commercial energy system as a commercial enterprise;

1067 (iii) the claimant, estate, or trust does not claim a tax credit under Subsection (3);

1068 (iv) the commercial energy system is completed and placed in service on or after

1069 January 1, 2015; and

1070 (v) the claimant, estate, or trust obtains a written certification from the office in

1071 accordance with Subsection (6).

1072 (b) (i) Subject to Subsections (5)(b)(ii) and (iii), a tax credit under this Subsection (5)

1073 is equal to the product of:

1074 (A) 0.35 cents; and

1075 (B) the kilowatt hours of electricity produced and used or sold during the taxable year.

1076 (ii) A tax credit under this Subsection (5) may be claimed for production occurring

1077 during a period of 48 months beginning with the month in which the commercial energy

1078 system is placed in commercial service.

1079 (iii) A tax credit under this Subsection (5) may not be carried forward or carried back.

1080 (c) A claimant, estate, or trust that is a lessee of a commercial energy system installed

1081 on a commercial unit may claim a tax credit under this Subsection (5) if the claimant, estate, or

1082 trust confirms that the lessor irrevocably elects not to claim the tax credit.

1083 (6) (a) Before a claimant, estate, or trust may claim a tax credit under this section, the
1084 claimant, estate, or trust shall obtain a written certification from the office.

1085 (b) The office shall issue a claimant, estate, or trust a written certification if the office
1086 determines that:

1087 (i) the claimant, estate, or trust meets the requirements of this section to receive a tax
1088 credit; and

1089 (ii) the office determines that the commercial energy system with respect to which the
1090 claimant, estate, or trust seeks to claim a tax credit:

1091 (A) has been completely installed;

1092 (B) is a viable system for saving or producing energy from renewable resources; and

1093 (C) is safe, reliable, efficient, and technically feasible to ensure that the commercial
1094 energy system uses the state's renewable and nonrenewable resources in an appropriate and
1095 economic manner.

1096 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1097 office may make rules:

1098 (i) for determining whether a commercial energy system meets the requirements of
1099 Subsection (6)(b)(ii); and

1100 (ii) for purposes of a tax credit under Subsection (3), establishing the reasonable costs
1101 of a commercial energy system, as an amount per unit of energy production.

1102 (d) A claimant, estate, or trust that obtains a written certification from the office shall
1103 retain the certification for the same time period a person is required to keep books and records
1104 under Section [59-1-1406](#).

1105 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1106 commission may make rules to address the certification of a tax credit under this section.

1107 (8) A tax credit under this section is in addition to any tax credits provided under the
1108 laws or rules and regulations of the United States.

1109 ~~[(4) (a) The office may set standards for commercial energy systems claiming a tax~~
1110 ~~credit under Subsection (2)(a) that cover the safety, reliability, efficiency, leasing, and technical~~
1111 ~~feasibility of the systems to ensure that the systems eligible for the tax credit use the state's~~
1112 ~~renewable and nonrenewable energy resources in an appropriate and economic manner.]~~

1113 ~~[(b) A tax credit may not be taken under this section until the office has certified that~~
 1114 ~~the commercial energy system has been completely installed and is a viable system for saving~~
 1115 ~~or production of energy from renewable resources.]~~

1116 ~~[(5) The office and the commission may make rules in accordance with Title 63G,~~
 1117 ~~Chapter 3, Utah Administrative Rulemaking Act, that are necessary to implement this section.]~~

1118 (9) A purchaser of one or more solar units that claims a tax credit under Section
 1119 59-10-1024 for the purchase of the one or more solar units may not claim a tax credit under this
 1120 section for that purchase.

1121 ~~[(6)]~~ (10) (a) On or before October 1, ~~[2012]~~ 2017, and every five years ~~[thereafter]~~
 1122 after 2017, the Revenue and Taxation Interim Committee shall review each tax credit provided
 1123 by this section and report its recommendations to the Legislative Management Committee
 1124 concerning whether the credit should be continued, modified, or repealed.

1125 (b) The Revenue and Taxation Interim Committee's report under Subsection ~~[(6)]~~
 1126 (10)(a) shall include information concerning the cost of the credit, the purpose and
 1127 effectiveness of the credit, and the state's benefit from the credit.

1128 Section 5. **Effective date -- Retrospective operation.**

1129 (1) This bill takes effect on May 12, 2015.

1130 (2) The actions affecting the following sections have retrospective operation for a
 1131 taxable year beginning on or after January 1, 2015:

1132 (a) Section 59-7-614;

1133 (b) Section 59-10-1014; and

1134 (c) Section 59-10-1106.

Legislative Review Note
 as of 11-20-14 2:17 PM

Office of Legislative Research and General Counsel