

RENEWABLE ENERGY TAX CREDIT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill modifies certain tax credits related to renewable energy.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

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

Utah Code Sections Affected:

AMENDS:

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

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

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

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

Certification -- Rulemaking authority.

(1) As used in this section:

(a) "Active solar system":

(i) means a system of equipment capable of collecting and converting incident solar

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 or if the
113 commercial energy system does not use solar equipment capable of producing 2,000 or more

114 kilowatts of electricity, and:

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

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

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

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

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

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

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

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

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

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

142 Subsection (2)(c) if:

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

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

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

149 (I) 0.35 cents; and

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

152 (B) (I) The tax credit calculated under Subsection (2)(c)(ii)(A) may be claimed for
153 production occurring during a period of 48 months beginning with the month in which the
154 commercial energy system is placed in commercial service.

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

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

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

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

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

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

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

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

175 (B) the business entity sells all or part of the energy produced by the commercial
176 energy system as a commercial enterprise; and

177 (ii) the business entity does not claim a tax credit under Subsection (2)(b).

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

179 (i) 0.35 cents; and

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

182 (c) The tax credit under this Subsection (3) may be claimed for production occurring
183 during a period of 48 months beginning with the month in which the commercial energy
184 system is placed in commercial service.

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

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

188 (f) A business entity that leases a commercial energy system installed on a commercial
189 unit may claim a tax credit under this Subsection (3) if the business entity that is the lessee can
190 confirm that the lessor irrevocably elects not to claim the tax credit.

191 ~~[(3)]~~ (4) (a) Except as provided in Subsection ~~[(3)]~~ (4)(b), the tax credits provided for
192 under Subsection (2) or (3) are in addition to any tax credits provided under the laws or rules
193 and regulations of the United States.

194 (b) A purchaser of one or more solar units that claims a tax credit under Section
195 59-7-614.3 for the purchase of the one or more solar units may not claim a tax credit under this
196 section for that purchase.

197 (c) (i) The office may set standards for residential and commercial energy systems

198 claiming a tax credit under Subsections (2)(a) and (b) that cover the safety, reliability,
199 efficiency, leasing, and technical feasibility of the systems to ensure that the systems eligible
200 for the tax credit use the state's renewable and nonrenewable energy resources in an appropriate
201 and economic manner.

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

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

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

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

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

217 Section 2. **Effective date.**

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