REFERENCE TITLE: renewable energy production tax credit

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2341

Introduced by
Representative Mason

AN ACT

REPEALING SECTION 43-222, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 43-222; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1083.01; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1177; RELATING TO RENEWABLE ENERGY PRODUCTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Section 43-222, Arizona Revised Statutes, is repealed.

Sec. 2. Title 43, chapter 2, article 2, Arizona Revised Statutes, is amended by adding a new section 43-222, to read:

43-222. Income tax credit review schedule

THE JOINT LEGISLATIVE INCOME TAX CREDIT REVIEW COMMITTEE SHALL REVIEW THE FOLLOWING INCOME TAX CREDITS:

1. FOR YEARS ENDING IN 0 AND 5, SECTIONS 43-1075, 43-1075.01, 43-1079.01, 43-1087, 43-1088, 43-1090.01, 43-1163, 43-1163.01, 43-1167.01, 43-1175 AND 43-1182.

2. FOR YEARS ENDING IN 1 AND 6, SECTIONS 43-1074.02, 43-1083, 43-1085, 43-1164 AND 43-1183.

3. FOR YEARS ENDING IN 2 AND 7, SECTIONS 43-1073, 43-1079, 43-1080, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1090, 43-1167, 43-1169, 43-1176 AND 43-1181.

4. FOR YEARS ENDING IN 3 AND 8, SECTIONS 43-1074.01, 43-1081, 43-1168, 43-1170 AND 43-1178.

5. FOR YEARS ENDING IN 4 AND 9, SECTIONS 43-1076, 43-1081.01, 43-1083.01, 43-1084, 43-1162, 43-1170.01 AND 43-1177.

Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1083.01, to read:

43-1083.01. Renewable energy production tax credit; definitions

A. A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE PRODUCTION OF ELECTRICITY USING RENEWABLE ENERGY RESOURCES.

B. THE TAXPAYER IS ELIGIBLE FOR THE CREDIT:

1. IF THE TAXPAYER HOLDS TITLE TO A QUALIFIED ENERGY GENERATOR THAT FIRST PRODUCES ELECTRICITY ON OR BEFORE JANUARY 1, 2018.

2. FOR TEN CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR BEGINS PRODUCING COMMERCIALLY MARKETABLE AMOUNTS OF ELECTRICITY. ONCE A CREDIT HAS BEEN GRANTED WITH RESPECT TO A QUALIFIED ENERGY GENERATOR, THE ORIGINAL DATE OF APPLICATION APPLIES WITH RESPECT TO THAT GENERATOR UNTIL THE EXPIRATION OF THE TEN-YEAR PERIOD REGARDLESS OF WHETHER THE GENERATOR IS SOLD TO ANOTHER TAXPAYER OR GOES OUT OF PRODUCTION BEFORE THE EXPIRATION OF THE TEN-YEAR PERIOD.

C. THE AMOUNT OF THE CREDIT IS:

1. ONE CENT PER KILOWATT-HOUR OF THE FIRST FOUR HUNDRED THOUSAND MEGAWATT-HOURS OF ELECTRICITY PRODUCED BY A QUALIFIED ENERGY GENERATOR IN THE TAXABLE YEAR USING WIND OR BIOMASS DERIVED QUALIFIED ENERGY RESOURCE.

2. THE FOLLOWING AMOUNTS FOR ELECTRICITY PRODUCED BY A QUALIFIED ENERGY GENERATOR USING A SOLAR LIGHT DERIVED OR SOLAR HEAT DERIVED QUALIFIED ENERGY RESOURCE:

(a) ONE AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE FIRST TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(b) TWO CENTS PER KILOWATT-HOUR IN THE SECOND TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(c) TWO AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE THIRD TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(d) THREE CENTS PER KILOWATT-HOUR IN THE FOURTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(e) THREE AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE FIFTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(f) FOUR CENTS PER KILOWATT-HOUR IN THE SIXTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(g) THREE AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE SEVENTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(h) THREE CENTS PER KILOWATT-HOUR IN THE EIGHTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(i) TWO AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE NINTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(j) TWO CENTS PER KILOWATT-HOUR IN THE TENTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

D. CO-OWNERS OF A QUALIFIED ENERGY GENERATOR, INCLUDING CORPORATE PARTNERS IN A PARTNERSHIP, MEMBERS OF A LIMITED LIABILITY COMPANY AND SHAREHOLDERS OF AN S CORPORATION AS DEFINED IN SECTION 1361 OF THE INTERNAL REVENUE CODE, MAY ALLOCATE THE CREDIT ALLOWED UNDER THIS SECTION AMONG THE CO-OWNERS WITHOUT REGARD TO THEIR PROPORTIONAL OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL SUCH OWNERS OF THE QUALIFIED ENERGY GENERATOR MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED FOR A SOLE OWNER OF THE GENERATOR.

E. IF THE ALLOWABLE TAX CREDIT FOR A TAXPAYER EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE:

1. THE TAXPAYER MAY CARRY THE EXCESS AMOUNT OF THE CLAIM FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS' INCOME TAX LIABILITY.

2. IF THE CREDIT IS ALLOWED WITH RESPECT TO A QUALIFIED ENERGY GENERATOR THAT FIRST PRODUCED COMMERCIALLY MARKETABLE AMOUNTS OF ELECTRICITY USING A QUALIFIED ENERGY RESOURCE ON OR AFTER OCTOBER 1, 2009, THE EXCESS AMOUNT OF THE CLAIM SHALL BE PAID TO THE TAXPAYER IN THE SAME MANNER AS A REFUND UNDER SECTION 42-1118. REFUNDS MADE PURSUANT TO THIS PARAGRAPH ARE SUBJECT TO SETOFF UNDER SECTION 42-1122.

F. FOR THE PURPOSES OF THIS SECTION:

1. "BIOMASS" MEANS ORGANIC MATERIAL THAT IS AVAILABLE ON A RENEWABLE OR RECURRING BASIS, INCLUDING:

(a) FOREST-RELATED MATERIALS, INCLUDING MILL RESIDUES, LOGGING RESIDUES, FOREST THINNINGS, SLASH, BRUSH, LOW-COMMERCIAL VALUE MATERIALS OR UNDESIRABLE SPECIES, SALT CEDAR AND OTHER PHREATOPHYTE OR WOODY VEGETATION REMOVED FROM RIVER BASINS OR WATERSHEDS AND WOODY MATERIAL HARVESTED FOR THE

PURPOSE OF FOREST FIRE FUEL REDUCTION OR FOREST HEALTH AND WATERSHED IMPROVEMENT.

(b) AGRICULTURAL-RELATED MATERIALS, INCLUDING ORCHARD TREES, VINEYARD, GRAIN OR CROP RESIDUES, INCLUDING STRAWS AND STOVER, AQUATIC PLANTS AND AGRICULTURAL PROCESSED COPRODUCTS AND WASTE PRODUCTS, INCLUDING FATS, OILS, GREASES, WHEY AND LACTOSE.

(c) ANIMAL WASTE, INCLUDING MANURE AND SLAUGHTERHOUSE AND OTHER PROCESSING WASTE.

(d) SOLID WOODY WASTE MATERIALS, INCLUDING LANDSCAPE OR RIGHT-OF-WAY TREE TRIMMINGS, RANGELAND MAINTENANCE RESIDUES, WASTE PALLETS, CRATES AND MANUFACTURING, CONSTRUCTION AND DEMOLITION WOOD WASTES, EXCLUDING PRESSURE-TREATED, CHEMICALLY TREATED OR PAINTED WOOD WASTES AND WOOD CONTAMINATED WITH PLASTIC.

(e) CROPS AND TREES PLANTED FOR THE PURPOSE OF BEING USED TO PRODUCE ENERGY.

(f) LANDFILL GAS, WASTEWATER TREATMENT GAS AND BIOSOLIDS, INCLUDING ORGANIC WASTE BYPRODUCTS GENERATED DURING THE WASTEWATER TREATMENT PROCESS.

(g) SEGREGATED MUNICIPAL SOLID WASTE, EXCLUDING TIRES AND MEDICAL AND HAZARDOUS WASTE.

2. "QUALIFIED ENERGY GENERATOR" MEANS A FACILITY WITH AT LEAST ONE MEGAWATT GENERATING CAPACITY LOCATED IN THIS STATE THAT PRODUCES ELECTRICITY USING A QUALIFIED ENERGY RESOURCE AND THAT SELLS THAT ELECTRICITY TO AN UNRELATED PERSON.

3. "QUALIFIED ENERGY RESOURCE" MEANS A RESOURCE THAT GENERATES ELECTRICITY BY MEANS OF A LOW-EMISSIONS OR A ZERO-EMISSIONS GENERATION TECHNOLOGY THAT HAS SUBSTANTIAL LONG-TERM PRODUCTION POTENTIAL AND THAT USES ONLY THE FOLLOWING ENERGY SOURCES:

(a) SOLAR LIGHT.

(b) SOLAR HEAT.

(c) WIND.

(d) BIOMASS.

Sec. 4. Title 43, chapter 11, article 6, Arizona Revised Statutes, is amended by adding section 43-1177, to read:

43-1177. Renewable energy production tax credit; definitions

A. A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE PRODUCTION OF ELECTRICITY USING RENEWABLE ENERGY RESOURCES.

B. THE TAXPAYER IS ELIGIBLE FOR THE CREDIT:

1. IF THE TAXPAYER HOLDS TITLE TO A QUALIFIED ENERGY GENERATOR THAT FIRST PRODUCES ELECTRICITY ON OR BEFORE JANUARY 1, 2018.

2. FOR TEN CONSECUTIVE TAXABLE YEARS BEGINNING WITH THE TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR BEGINS PRODUCING COMMERCIALLY MARKETABLE AMOUNTS OF ELECTRICITY. ONCE A CREDIT HAS BEEN GRANTED WITH RESPECT TO A QUALIFIED ENERGY GENERATOR, THE ORIGINAL DATE OF APPLICATION APPLIES WITH RESPECT TO THAT GENERATOR UNTIL THE EXPIRATION OF THE TEN-YEAR

PERIOD REGARDLESS OF WHETHER THE GENERATOR IS SOLD TO ANOTHER TAXPAYER OR GOES OUT OF PRODUCTION BEFORE THE EXPIRATION OF THE TEN-YEAR PERIOD.

C. THE AMOUNT OF THE CREDIT IS:

1. ONE CENT PER KILOWATT-HOUR OF THE FIRST FOUR HUNDRED THOUSAND MEGAWATT-HOURS OF ELECTRICITY PRODUCED BY A QUALIFIED ENERGY GENERATOR IN THE TAXABLE YEAR USING WIND OR BIOMASS DERIVED QUALIFIED ENERGY RESOURCE.

2. THE FOLLOWING AMOUNTS FOR ELECTRICITY PRODUCED BY A QUALIFIED ENERGY GENERATOR USING A SOLAR LIGHT DERIVED OR SOLAR HEAT DERIVED QUALIFIED ENERGY RESOURCE:

(a) ONE AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE FIRST TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(b) TWO CENTS PER KILOWATT-HOUR IN THE SECOND TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(c) TWO AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE THIRD TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(d) THREE CENTS PER KILOWATT-HOUR IN THE FOURTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(e) THREE AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE FIFTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(f) FOUR CENTS PER KILOWATT-HOUR IN THE SIXTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(g) THREE AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE SEVENTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(h) THREE CENTS PER KILOWATT-HOUR IN THE EIGHTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(i) TWO AND ONE-HALF CENTS PER KILOWATT-HOUR IN THE NINTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

(j) TWO CENTS PER KILOWATT-HOUR IN THE TENTH TAXABLE YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

D. CO-OWNERS OF A QUALIFIED ELECTRIC ENERGY, INCLUDING CORPORATE PARTNERS IN A PARTNERSHIP AND MEMBERS OF A LIMITED LIABILITY COMPANY, MAY ALLOCATE THE CREDIT ALLOWED UNDER THIS SECTION AMONG THE CO-OWNERS WITHOUT REGARD TO THEIR PROPORTIONAL OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL SUCH OWNERS OF THE QUALIFIED ENERGY GENERATOR MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED FOR A SOLE OWNER OF THE GENERATOR.

E. IF THE ALLOWABLE TAX CREDIT FOR A TAXPAYER EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE:

1. THE TAXPAYER MAY CARRY THE EXCESS AMOUNT OF THE CLAIM FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS' INCOME TAX LIABILITY.

2. IF THE CREDIT IS ALLOWED WITH RESPECT TO A QUALIFIED ENERGY GENERATOR THAT FIRST PRODUCED COMMERCIALLY MARKETABLE AMOUNTS OF ELECTRICITY USING A QUALIFIED ENERGY RESOURCE ON OR AFTER OCTOBER 1, 2009, THE EXCESS AMOUNT OF THE CLAIM SHALL BE PAID TO THE TAXPAYER IN THE SAME MANNER AS A REFUND UNDER SECTION 42-1118. REFUNDS MADE PURSUANT TO THIS PARAGRAPH ARE SUBJECT TO SETOFF UNDER SECTION 42-1122.

F. FOR THE PURPOSES OF THIS SECTION:

1. "BIOMASS" MEANS ORGANIC MATERIAL THAT IS AVAILABLE ON A RENEWABLE OR RECURRING BASIS, INCLUDING:

(a) FOREST-RELATED MATERIALS, INCLUDING MILL RESIDUES, LOGGING RESIDUES, FOREST THINNINGS, SLASH, BRUSH, LOW-COMMERCIAL VALUE MATERIALS OR UNDESIRABLE SPECIES, SALT CEDAR AND OTHER PHREATOPHYTE OR WOODY VEGETATION REMOVED FROM RIVER BASINS OR WATERSHEDS AND WOODY MATERIAL HARVESTED FOR THE PURPOSE OF FOREST FIRE FUEL REDUCTION OR FOREST HEALTH AND WATERSHED IMPROVEMENT.

(b) AGRICULTURAL-RELATED MATERIALS, INCLUDING ORCHARD TREES, VINEYARD, GRAIN OR CROP RESIDUES, INCLUDING STRAWS AND STOVER, AQUATIC PLANTS AND AGRICULTURAL PROCESSED COPRODUCTS AND WASTE PRODUCTS, INCLUDING FATS, OILS, GREASES, WHEY AND LACTOSE.

(c) ANIMAL WASTE, INCLUDING MANURE AND SLAUGHTERHOUSE AND OTHER PROCESSING WASTE.

(d) SOLID WOODY WASTE MATERIALS, INCLUDING LANDSCAPE OR RIGHT-OF-WAY TREE TRIMMINGS, RANGELAND MAINTENANCE RESIDUES, WASTE PALLETS, CRATES AND MANUFACTURING, CONSTRUCTION AND DEMOLITION WOOD WASTES, EXCLUDING PRESSURE-TREATED, CHEMICALLY TREATED OR PAINTED WOOD WASTES AND WOOD CONTAMINATED WITH PLASTIC.

(e) CROPS AND TREES PLANTED FOR THE PURPOSE OF BEING USED TO PRODUCE ENERGY.

(f) LANDFILL GAS, WASTEWATER TREATMENT GAS AND BIOSOLIDS, INCLUDING ORGANIC WASTE BYPRODUCTS GENERATED DURING THE WASTEWATER TREATMENT PROCESS.

(g) SEGREGATED MUNICIPAL SOLID WASTE, EXCLUDING TIRES AND MEDICAL AND HAZARDOUS WASTE.

2. "QUALIFIED ENERGY GENERATOR" MEANS A FACILITY WITH AT LEAST ONE MEGAWATT GENERATING CAPACITY LOCATED IN THIS STATE THAT PRODUCES ELECTRICITY USING A QUALIFIED ENERGY RESOURCE AND THAT SELLS THAT ELECTRICITY TO AN UNRELATED PERSON.

3. "QUALIFIED ENERGY RESOURCE" MEANS A RESOURCE THAT GENERATES ELECTRICITY BY MEANS OF A LOW-EMISSIONS OR A ZERO-EMISSIONS GENERATION TECHNOLOGY THAT HAS SUBSTANTIAL LONG-TERM PRODUCTION POTENTIAL AND THAT USES ONLY THE FOLLOWING ENERGY SOURCES:

(a) SOLAR LIGHT.

(b) SOLAR HEAT.

(c) WIND.

(d) BIOMASS.

Sec. 5. Purpose

Pursuant to section 43-223, Arizona Revised Statutes, the income tax credits enacted in sections 43-1083.01 and 43-1177, Arizona Revised Statutes, as added by this act, are intended to encourage investment in renewable energy production using low-emission and zero-emission electricity generation technologies.

Sec. 6. Effective date

This act is effective from and after December 31, 2009.