REFERENCE TITLE: air quality measures; tax credit

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1603

Introduced by
Senators Flake, Allen, Burns, Gray C, Huppenthal: Verschoor

AN ACT

AMENDING SECTION 43-222, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1184; AMENDING SECTIONS 49-480 AND 49-502, ARIZONA REVISED STATUTES; RELATING TO AIR QUALITY MEASURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 43-222, Arizona Revised Statutes, is amended to read:

43-222. Income tax credit review schedule

Each year the joint legislative income tax credit review committee shall review the following income tax credits:

1. In 2006, sections 43-1073, 43-1089, 43-1089.01, 43-1089.02, 43-1090, 43-1176 and 43-1181.


4. In 2009, sections 43-1076, 43-1081.01, 43-1084, 43-1162 and 43-1170.01.

5. In 2010, sections 43-1075, 43-1079.01, 43-1087, 43-1088, 43-1090.01, 43-1163, 43-1167.01, 43-1175 and 43-1182.


Sec. 2. Title 43, chapter 11, article 6, Arizona Revised Statutes, is amended by adding section 43-1184, to read:

43-1184. Credit for dust abatement measures in nonattainment areas

A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2006 THROUGH DECEMBER 31, 2012, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR MONIES PAID TO PAVE OR OTHERWISE PLACE A PERMANENT HARD SURFACE OVER EXPOSED SOIL OR GRAVEL IN AN AREA OF THIS STATE THAT IS DESIGNATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS A NONATTAINMENT AREA FOR PARTICULATE POLLUTION.

B. TO QUALIFY FOR A CREDIT UNDER THIS SECTION:

1. THE MONIES SPENT BY THE TAXPAYER MUST HAVE BEEN SPENT TO PAVE A SURFACE THAT IS LOCATED IN THE PARTICULATE NONATTAINMENT AREA ON THE DATE THE PROJECT BEGINS WITHOUT REGARD TO WHETHER THE PAVEMENT IS ON PROPERTY OWNED OR OTHERWISE LEGALLY CONTROLLED BY THE TAXPAYER.

2. THE TAXPAYER HAS WRITTEN LEGAL AUTHORITY FROM THE OWNER OF THE PROPERTY TO PLACE THE PAVEMENT ON THE PROPERTY.

3. THE TAXPAYER HAS COMPLIED WITH AND RECEIVED ALL APPLICABLE PERMITS FROM ANY JURISDICTION WITH AUTHORITY OVER THE PAVING PROJECT FOR THAT PROPERTY.

4. THE TAXPAYER MAY BE LOCATED INSIDE OR OUTSIDE A PARTICULATE NONATTAINMENT AREA ANYWHERE IN THIS STATE.

C. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE
TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS' INCOME TAX LIABILITY.

D. CO-OWNERS OF A BUSINESS, INCLUDING CORPORATE PARTNERS IN A PARTNERSHIP, MAY EACH CLAIM ONLY THE PRO RATA SHARE OF THE CREDIT ALLOWED UNDER THIS SECTION BASED ON THE OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL SUCH OWNERS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED A SOLE OWNER.

E. THE DEPARTMENT OF REVENUE MAY ADOPT RULES NECESSARY FOR THE ADMINISTRATION OF THIS SECTION. ON REQUEST FROM THE DEPARTMENT OF REVENUE, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL COOPERATE WITH THE DEPARTMENT OF REVENUE TO IDENTIFY PARTICULARE NONATTAINMENT AREAS LOCATED IN THIS STATE.

Sec. 3. Section 49-480, Arizona Revised Statutes, is amended to read:

49-480. Permits; fees

A. The board of supervisors may adopt a program for the review, issuance, revision, administration and enforcement of permits and for public review of proposed permits for sources that are subject to section 49-426, subsection A, that are not under the jurisdiction of the state pursuant to section 49-402 and that are not otherwise exempt pursuant to section 49-426, subsection B and subsection K of this section. This program shall include provisions for administration, inspection and enforcement of general permits issued pursuant to section 49-426, subsection H and subsection J of this section.

B. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and required to be obtained pursuant to title V of the clean air act including sources that emit hazardous air pollutants shall be substantially identical to procedures for the review, issuance, revision and administration of permits issued by the department under this chapter. Such procedures shall comply with the requirements of sections 165, 173 and 408 and titles III and V of the clean air act and implementing regulations for sources subject to titles III and V of the clean air act. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and not required to be obtained pursuant to title V of the clean air act shall impose no greater procedural burden on the permit applicant than procedures for the review, issuance, revision and administration of permits issued by the department under sections 49-426 and 49-426.01 and other applicable provisions of this chapter.

C. Upon adoption of a permit program by the board of supervisors pursuant to this section, no person may begin actual construction, operate or make a modification to any source subject to the permit program without complying with the requirements of that program.

D. Permits issued pursuant to a program adopted under this section are subject to payment of a reasonable fee to be determined as follows:

1. For any source required to obtain a permit under title V of the clean air act, the board of supervisors shall establish by rule a system of
fees consistent with and equivalent to that prescribed under section 502 of
the clean air act. Such system shall prescribe procedures for increasing the
fee each year by the percentage, if any by which the consumer price index for
the most recent calendar year ending before the beginning of such year
exceeds the consumer price index for the calendar year 1989.

2. For any facility subject to the permitting requirements of this
chapter but not required to obtain a permit under title V of the clean air
act, the board of supervisors shall determine a permit fee based on all
reasonable direct and indirect costs required to administer the permit, but
not exceeding twenty-five thousand dollars.

The board of supervisors shall establish an annual inspection fee, not to
exceed the average cost of services.

E. Funds received for permits issued pursuant to this section shall be
deposited in a special public health fund and shall be used by the control
officer FIRST FOR THE IMPLEMENTATION OF DUST MITIGATION MEASURES IN A
PARTICULATE NONATTAINMENT AREA AND, AS A SECONDARY PRIORITY, to defray the
costs of implementing this article.

F. Permits issued pursuant to this section for a source required to
obtain a permit under title V of the clean air act shall, and for a source
that is not required to obtain a title V permit may, contain all of the
following:
1. Conditions reflecting all applicable requirements of this article
and rules adopted pursuant to this article.
2. Enforceable emission limitations and standards.
3. A schedule for compliance, if applicable.
4. The requirement to submit at least every six months the results of
any required monitoring.
5. Any other conditions that are necessary to assure compliance with
this article and the clean air act, including the applicable implementation
plan.

G. The control officer may refuse to issue any permit to any source
subject to the requirements of title V of the clean air act if the
administrator objects to its issuance in a timely manner as prescribed under
title V of the act.

H. In the case of a permit with a term of three or more years issued
pursuant to the requirements of title V of the clean air act to a major
source, the control officer shall require revisions to the permit to
incorporate applicable standards and regulations adopted by the administrator
pursuant to the clean air act after the issuance of the permit. The control
officer shall require any revisions as expeditiously as practicable but not
later than eighteen months after the promulgation of such standards and
regulations. No permit revision shall be required if the effective date of
the standards and regulations is after the expiration of the permit. Any
permit revision required pursuant to this subsection shall be treated as a
permit renewal.
I. Except as provided in section 49-426, subsection B and subsection A of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel in any machine, incinerator or device shall first obtain a permit from the control officer. Any permit issued by the control officer under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.
2. The frequency and types of fuel testing to be conducted by the person.
3. The frequency and type of emissions testing or monitoring to be conducted by the person.
4. Requirements for record keeping and reporting.
5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning used oil, used oil fuel, hazardous waste or hazardous waste fuel.

J. The board of supervisors may authorize by rule the control officer to issue a general permit for a defined class of facilities if that class of facilities has not been issued a general permit by the director for sources in that county pursuant to section 49-426, subsection H. The criteria for issuance of a general permit are those applicable to the director pursuant to section 49-426, subsection G.

K. The board of supervisors may identify by rule sources or classifications of sources for which a permit is not required and pollutant-emitting activities and emissions units at permitted sources that are not subject to inclusion in the permit. The criteria for exemptions granted pursuant to this subsection are those applicable to exemptions granted by the director pursuant to section 49-426, subsection B.

L. In determining whether a permitting threshold established pursuant to this section applies to an existing source, the control officer shall exclude particulate matter that is not subject to a national ambient air quality standard under the clean air act.

M. The board of supervisors may adopt a rule or ordinance that establishes less burdensome permit procedures and requirements for permits that are not required to be obtained pursuant to title V of the clean air act. Until the effective date of a rule or ordinance adopted by a board of supervisors pursuant to this section, the control officer, either on the control officer's own initiative or on the request of a permit applicant, may waive requirements that are not appropriate for non-title V sources.

Sec. 4. Section 49-502, Arizona Revised Statutes, is amended to read:

49-502. Violation; classification

A. Any person who violates any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article is guilty of a class 1 misdemeanor for each day the violation continues unless another
classification is specifically prescribed in this article. Each day of violation shall constitute a separate offense. Peace officers and the control officer and his deputies shall have the authority to issue a notice to appear under the same conditions and procedures set forth in section 13-3903 for a violation of any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article.

B. Any person who violates any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day per violation. The county attorney, at the request of the control officer, may commence an action in superior court to recover civil penalties provided by this section. Penalties recovered pursuant to this section shall be deposited in the special public health fund prescribed in section 49-480.

C. In determining the amount of a fine or civil penalty under this section, the court shall consider:
   1. The seriousness of the violation.
   2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
   3. Any history of such violation.
   4. Any good faith efforts to comply with the applicable requirements.
   5. The economic impact of the penalty on the violator.
   6. Such other factors as the court deems relevant.

D. MONIES PAID PURSUANT TO CONSENT ORDERS ENTERED INTO BY THE COUNTY, THE COUNTY ATTORNEY OR THE CONTROL OFFICER PURSUANT TO THIS ARTICLE SHALL BE DEPOSITED IN THE SPECIAL PUBLIC HEALTH FUND PRESCRIBED IN SECTION 49-480.

Sec. 5. Purpose
Pursuant to section 43-223, Arizona Revised Statutes, the legislature enacts section 43-1184, Arizona Revised Statutes, as added by this act, to encourage taxpayers in this state to reduce harmful particulate emissions to enable this state to comply with federal clean air requirements.