

REFERENCE TITLE: tax credits; reporting requirements

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2263

Introduced by
Representative Cano

AN ACT

AMENDING SECTIONS 41-1518, 43-1083.02 AND 43-1164.03, ARIZONA REVISED
STATUTES; RELATING TO INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1518, Arizona Revised Statutes, is amended to
3 read:

4 41-1518. Capital investment incentives; evaluation;
5 certification; reporting requirements; definitions

6 A. The Arizona commerce authority shall receive and evaluate
7 applications that are submitted by qualified investors to receive a tax
8 credit pursuant to section 43-1074.02 for qualified investments made in a
9 qualified small business and shall certify to the department of revenue
10 the names, amounts and other relevant information relating to the
11 applicants.

12 B. To be eligible for a tax credit pursuant to this section and
13 section 43-1074.02, a qualified investor shall file an application with
14 the authority within ninety days after making a qualified investment. The
15 application, on a form prescribed by the authority, shall include:

16 1. The name, address and federal income tax identification number
17 of the applicant.

18 2. The name and federal employer identification number of the
19 qualified small business that received a qualified investment made by the
20 applicant.

21 3. The date the qualified investment was made.

22 4. Any additional information that the authority requires.

23 C. As part of the application, the applicant and the qualified
24 small business that receives the investment shall each provide written
25 authorization pursuant to section 42-2003 designating the authority as
26 eligible to receive tax information from the department of revenue for the
27 purpose of determining if any misrepresentations exist on the application.
28 The authorization shall limit disclosure to income tax information for the
29 latest two years for which returns were filed with the department of
30 revenue preceding the date the application is filed and for all tax years
31 through the year in which the investment was made for which a return was
32 not filed as of the date of the application. The applicant shall also
33 provide in the written authorization income tax information for all tax
34 years in which the applicant could claim or carry forward the credit
35 pursuant to this section, but limited to the tax years in which the
36 applicant actually claims a credit or carries forward a credit on a return
37 filed with the department of revenue. An applicant who has an individual
38 ownership interest as a co-owner of a business who may be entitled to a
39 pro rata share of the credit pursuant to section 43-1074.02, subsection E
40 shall provide a written authorization with content similar to the
41 authorization, and in the same manner as, any other applicant is required
42 to provide.

43 D. The authority shall review and make a determination with respect
44 to each application within ninety days after receiving the
45 application. The authority may request additional information from the

1 applicant in order to make an informed decision regarding the eligibility
2 of the qualified investor or qualified small business.

3 E. Subject to subsection F of this section, the authority shall
4 authorize tax credits for each qualified investor who makes a qualified
5 investment in a qualified small business. The amount of the credit shall
6 be:

7 1. If the qualified investment is made in a qualified small
8 business that maintains its principal place of business in a rural county
9 of this state or is a bioscience enterprise, twelve percent of the amount
10 of the investment per year for the first and second taxable years after
11 the investment is made and eleven percent of the amount of the investment
12 for the third taxable year after the year in which the investment is made.

13 2. If the qualified investment is made in a qualified small
14 business other than a business described in paragraph 1 of this
15 subsection, ten percent of the amount of the investment for each of the
16 three taxable years after the year in which the investment is made.

17 F. The authority shall not authorize tax credits under this section
18 after June 30, 2031. Through June 30, 2017, the authority shall not
19 certify tax credits under this section exceeding \$20,000,000. From and
20 after June 30, 2017 through June 30, 2021, the authority may certify
21 additional tax credits under this section not exceeding \$2,500,000 each
22 fiscal year, plus any unused credit capacity that carries over from the
23 preceding fiscal year or years. From and after June 30, 2021 through
24 June 30, 2031, the authority may certify additional tax credits under this
25 section not exceeding \$2,500,000 each fiscal year, plus any unused credit
26 capacity that carries over from the preceding fiscal year or years. Tax
27 credits that expire after certification or that are otherwise not timely
28 used by the qualified investor for whom they were originally authorized
29 shall also be included in the applicable dollar limit. If qualifying
30 applications exceed the dollar limit, the authority shall authorize
31 credits in the order of the date and time that the applications are
32 received by the authority, as evidenced by the time and date stamped on
33 the application when received by the authority. All applications shall be
34 filed on a form and in the manner prescribed by the authority. If an
35 application is received that, if authorized, would require the authority
36 to exceed the applicable dollar limit, the authority shall only grant the
37 applicant the remaining amount of tax credits that would not exceed the
38 dollar limit. After the authority authorizes the allowable amount of tax
39 credits, the authority shall deny any subsequent applications that are
40 received. The authority shall certify to the qualified investor and to
41 the department of revenue the amount of the tax credit that is authorized
42 for the purposes of section 43-1074.02 for each taxable year described in
43 subsection E of this section.

1 G. The total of all qualified investments in any calendar year by a
2 qualified investor and its affiliates in qualified small businesses that
3 are eligible for a tax credit pursuant to this section and section
4 43-1074.02 shall not exceed \$500,000. The maximum amount of qualified
5 investments in a single qualified small business for which the authority
6 may authorize tax credits under this section shall not exceed an aggregate
7 of \$2,000,000 in investments for all taxable years. If applications for
8 tax credits are received for investments that exceed the limits prescribed
9 by this subsection for any qualified small business, the authority shall
10 authorize credits in the order of the date and time that the applications
11 are received by the authority. If an application is received that, if
12 authorized, would require the authority to authorize tax credits for any
13 investment in a qualified small business that would cause the total
14 qualified investments in the business to exceed the limits prescribed by
15 this subsection, the authority shall only grant the applicant the
16 remaining amount of tax credits that would not exceed the limits
17 prescribed by this subsection.

18 H. The qualified investor shall file a return claiming the tax
19 credit with the department of revenue for application against income tax
20 pursuant to section 43-1074.02 by the due date of the return, including
21 extensions, for the tax year in which the credit is available. If the
22 qualified investor fails to timely file a return claiming the credit for a
23 taxable year, the credit expires for that taxable year and there shall be
24 no carryforward of the expired credit. If a qualified investor includes
25 co-owners of a business who qualify for individual pro rata shares of the
26 credit pursuant to section 43-1074.02, subsection E, each individual owner
27 shall file a return claiming the tax credit with the department of revenue
28 by the due date of the return, including extensions, for the tax year in
29 which the credit is available. If an individual co-owner fails to timely
30 file a return claiming the credit for a taxable year, the credit expires
31 for that taxable year and there shall be no carryforward of the expired
32 credit. Credits that expire or that otherwise are not timely used by the
33 qualified investor or by the individual co-owner of a business for whom
34 the credits were originally authorized shall not be reissued.

35 I. On receiving an application for a tax credit from a qualified
36 investor, or a written request for certification as a qualified small
37 business from a corporation, limited liability company, partnership or
38 other business entity, the authority shall determine whether the
39 corporation, limited liability company, partnership or other business
40 entity that is named in the application or written request is a qualified
41 small business. The authority shall determine if the business is a
42 bioscience enterprise and if the business maintains its principal place of
43 business in a rural county in this state. After determining the
44 qualifications, the authority shall certify the qualified small business
45 as being eligible to receive qualified investments for purposes of this

1 section. The certification is valid for one year, but the authority may
2 revoke the certification at any time or refuse to renew the certification
3 if the business fails to maintain the required qualifications. If a
4 qualified small business fails to maintain the qualifications, the
5 business shall notify the authority within five business days after
6 failing to meet the qualifications. The authority shall revoke the
7 certification of the business and may assess a penalty against the
8 business entity equal to the amount of the tax credits authorized after
9 the business failed to meet the qualifications. The penalty shall be
10 deposited in the state general fund. If the certification is revoked or
11 expires, subsequent investments in the business do not qualify for a tax
12 credit pursuant to this section and section 43-1074.02. All tax credits
13 that are issued before any expiration or revocation of the certification
14 shall remain valid. Any application for a tax credit shall not be denied
15 on the basis of the expiration or revocation of the certification if the
16 investment was made before the date of the expiration or revocation.

17 J. The authority shall provide to the department of revenue
18 necessary information required to administer this section and section
19 43-1074.02. If the authority subsequently discovers that an applicant who
20 received a tax credit misrepresented information on the application, the
21 authority shall immediately notify the department of revenue and provide
22 the department of revenue all information that relates to that
23 applicant. If the department of revenue determines that there has been a
24 misrepresentation on the application, the department of revenue shall deny
25 the credit if the misrepresentation relates to whether the applicant was a
26 qualified investor or made a qualified investment. If the
27 misrepresentation relates to whether the investment was made to:

28 1. A qualified small business, the department of revenue shall deny
29 the credit only if the applicant knew or should have known at any time
30 before the certification that the representation was false.

31 2. A bioscience enterprise or a business that maintains its
32 principal place of business in a rural county in this state, the
33 department of revenue shall decrease the amount of the credit that would
34 have been allowed under subsection E, paragraph 1 of this section to the
35 amount allowed under subsection E, paragraph 2 of this section only if the
36 applicant knew or should have known at any time before the certification
37 that the representation was false.

38 K. ON OR BEFORE MAY 15 OF EACH YEAR, EACH QUALIFIED INVESTOR SHALL
39 REPORT TO THE AUTHORITY, ON A FORM PRESCRIBED BY THE AUTHORITY, THE NUMBER
40 OF JOBS CREATED BY A QUALIFIED SMALL BUSINESS THAT RECEIVED A QUALIFIED
41 INVESTMENT FROM THE QUALIFIED INVESTOR.

42 L. ON OR BEFORE JUNE 15 OF EACH YEAR, THE AUTHORITY SHALL REPORT TO
43 THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
44 AND THE JOINT LEGISLATIVE BUDGET COMMITTEE THE INFORMATION IT RECEIVES
45 PURSUANT TO SUBSECTION K OF THIS SECTION AND THE FOLLOWING INFORMATION:

- 1 1. THE ALLOCATION OF QUALIFIED INVESTMENTS BY INDUSTRY.
- 2 2. THE NUMBER OF QUALIFIED SMALL BUSINESSES THAT RECEIVED QUALIFIED
- 3 INVESTMENTS AND THAT REMAIN ACTIVE.

4 ~~K~~ M. For the purposes of this section:

5 1. "Affiliate" means any person or entity that controls, that is
6 controlled by or that is under common control with another person or
7 entity. For the purposes of this paragraph, "control" means the power to
8 determine the policies of an entity whether through ownership of voting
9 securities, by contract or otherwise.

10 2. "Asset" means any owned property that has value, including
11 financial assets and physical assets. Intellectual property shall not be
12 included when determining total assets.

13 3. "Bioscience enterprise" means a business whose activity is
14 related to bioscience as determined by the authority or any corporation,
15 partnership, limited liability company or other business entity that is
16 primarily engaged in a business that conducts research, development,
17 manufacturing, marketing, sales and licensing of products, services and
18 solutions relating to either of the following:

19 (a) Medical, pharmaceutical, nutraceutical, bioengineering,
20 biomechanical, bioinformatics or other life-science based applications.

21 (b) Applications of modern biological, bioengineering,
22 biomechanical or bioinformatics technologies in the fields of human, plant
23 or animal health, agriculture, defense, homeland security or the
24 environment.

25 4. "Qualified investment" means an investment in an equity security
26 that meets all of the following requirements:

27 (a) The equity security shall be common stock, preferred stock, an
28 interest in a partnership or limited liability company, a security that is
29 convertible into an equity security or any other equity security as
30 determined by the authority.

31 (b) The investment shall be at least \$25,000.

32 (c) The qualified investor and its affiliates do not hold, of
33 record or beneficially, immediately before making an investment, equity
34 securities possessing more than thirty percent of the total voting power
35 of all equity securities of the qualified small business.

36 5. "Qualified investor" means an individual, limited liability
37 company, partnership, S corporation as defined in section 1361 of the
38 internal revenue code or other business entity that makes a qualified
39 investment in a qualified small business. Qualified investor does not
40 mean a corporation that is subject to tax under title 43, chapter 11.

41 6. "Qualified small business" means a corporation, limited
42 liability company, partnership or other business entity that:

43 (a) Maintains at least a portion of its operations at an office or
44 manufacturing or research facility located in this state.

1 (b) Has at least two principal full-time equivalent employees who
2 are residents in this state. For the purposes of this subdivision,
3 "principal" means a person whose sole responsibility is not
4 administrative.

5 (c) Does not engage in any activities that involve human cloning or
6 embryonic stem cell research.

7 (d) Has total assets not exceeding \$2,000,000 through December 31,
8 2011 or \$10,000,000 beginning from and after December 31, 2011, excluding
9 any investment made under this section.

10 (e) Has not exceeded the limit on qualified investments prescribed
11 by subsection G of this section.

12 (f) Does not have a principal business involving activities
13 excluded by the authority. The authority shall provide a list of excluded
14 businesses to any person on request.

15 7. "Rural county" means a county that has a population of seven
16 hundred fifty thousand or fewer persons.

17 Sec. 2. Section 43-1083.02, Arizona Revised Statutes, is amended to
18 read:

19 43-1083.02. Renewable energy production tax credit; reporting
20 requirements; definitions

21 A. A credit is allowed against the taxes imposed by this title for
22 the production of electricity using renewable energy resources.

23 B. The taxpayer is eligible for the credit:

24 1. If the taxpayer holds title to a qualified energy generator that
25 first produces electricity from and after December 31, 2010 and before
26 January 1, 2021.

27 2. For ten consecutive calendar years beginning with the calendar
28 year in which the qualified energy generator begins producing electricity
29 that is transmitted through a transmission facility to a grid connection
30 with a public or private electric transmission or distribution utility
31 system. That same date applies with respect to that generator until the
32 expiration of the ten-year period regardless of whether the generator is
33 sold to another taxpayer or goes out of production before the expiration
34 of the ten-year period.

35 C. The credit authorized by this section is based on the
36 electricity that is generated by a qualified energy generator during a
37 calendar year. For a taxpayer that files on a fiscal year basis, the
38 credit shall be claimed on the return for the taxable year in which the
39 calendar year ends.

40 D. Subject to subsection G of this section, the amount of the
41 credit is:

42 1. ~~One cent~~ \$.01 per kilowatt-hour of the first two hundred
43 thousand megawatt-hours of electricity produced by a qualified energy
44 generator in the calendar year using a wind or biomass derived qualified
45 energy resource.

1 2. The following amounts for electricity produced by a qualified
2 energy generator using a solar light derived or solar heat derived
3 qualified energy resource:

4 (a) ~~Four cents~~ \$.04 per kilowatt-hour in the first calendar year in
5 which the qualified energy generator produces electricity.

6 (b) ~~Four cents~~ \$.04 per kilowatt-hour in the second calendar year
7 in which the qualified energy generator produces electricity.

8 (c) ~~Three and one-half cents~~ \$.035 per kilowatt-hour in the third
9 calendar year in which the qualified energy generator produces
10 electricity.

11 (d) ~~Three and one-half cents~~ \$.035 per kilowatt-hour in the fourth
12 calendar year in which the qualified energy generator produces
13 electricity.

14 (e) ~~Three cents~~ \$.03 per kilowatt-hour in the fifth calendar year
15 in which the qualified energy generator produces electricity.

16 (f) ~~Three cents~~ \$.03 per kilowatt-hour in the sixth calendar year
17 in which the qualified energy generator produces electricity.

18 (g) ~~Two cents~~ \$.02 per kilowatt-hour in the seventh calendar year
19 in which the qualified energy generator produces electricity.

20 (h) ~~Two cents~~ \$.02 per kilowatt-hour in the eighth calendar year in
21 which the qualified energy generator produces electricity.

22 (i) ~~One and one-half cents~~ \$.015 per kilowatt-hour in the ninth
23 calendar year in which the qualified energy generator produces
24 electricity.

25 (j) ~~One cent~~ \$.01 per kilowatt-hour in the tenth calendar year in
26 which the qualified energy generator produces electricity.

27 E. To qualify for the purposes of this section, an energy generator
28 may be located within one mile of an existing qualified energy generator
29 only if the owner of the energy generator or the owner's corporate
30 affiliates are not the owner of or the corporate affiliate of the owner of
31 the existing qualified energy generator.

32 F. To be eligible for the credit under this section, the taxpayer
33 must apply to the department, on a form prescribed by the department, for
34 certification of the credit. The department shall only accept
35 applications beginning January 2 through January 31 of the year following
36 the calendar year for which the credit is being requested. The
37 application shall include:

38 1. The name, address and social security number or federal employer
39 identification number of the applicant.

40 2. The location of the taxpayer's facility that produces
41 electricity using renewable energy resources for which the credit is
42 claimed.

43 3. The amount of the credit that is claimed.

44 4. The date the qualified energy generator began producing
45 commercially marketable amounts of electricity.

1 5. Any additional information that the department requires.

2 G. The department shall review each application under subsection F

3 of this section and certify to the taxpayer the amount of the credit that

4 is authorized. The amount of the credit for any calendar year shall not

5 exceed ~~two million dollars~~ \$2,000,000 per facility that produces

6 electricity using renewable energy resources. Credits are allowed under

7 this section and section 43-1164.03 on a ~~first come, first served~~

8 **FIRST-COME, FIRST-SERVED** basis. The department shall not authorize tax

9 credits under this section and section 43-1164.03 that exceed in the

10 aggregate a total of ~~twenty million dollars~~ \$20,000,000 for any calendar

11 year. The first time that a taxpayer submits a qualified application for

12 a qualified energy generator under subsection F of this section, the

13 department shall add the taxpayer's name to a credit authorization list

14 that is maintained in the order in which qualified applications are first

15 received by the department on behalf of the qualified energy generator. A

16 taxpayer's position on the credit authorization list shall be determined

17 in the first year the taxpayer submits an application under subsection F

18 of this section for the qualified energy generator. The taxpayer's

19 position on the credit authorization list for a particular qualified

20 energy generator shall remain unchanged for the ten years that are

21 specified in subsection B, paragraph 2 of this section or until a year in

22 which the taxpayer fails to submit a timely application under subsection F

23 of this section or otherwise fails to comply with this section. If a

24 taxpayer is removed from the credit authorization list for a qualified

25 energy generator, the taxpayer may establish a new position on the credit

26 authorization list in a subsequent year by filing a timely application for

27 a qualified energy generator that qualifies for the credit. If an

28 application is received that, if authorized, would require the department

29 to exceed the ~~twenty million dollar~~ \$20,000,000 limit, the department

30 shall grant the applicant only the remaining credit amount that would not

31 exceed the ~~twenty million dollar~~ \$20,000,000 limit. After the department

32 authorizes ~~twenty million dollars~~ \$20,000,000 in tax credits, the

33 department shall deny any subsequent applications that are received for

34 that calendar year. The department shall not authorize any additional tax

35 credits that exceed the ~~twenty million dollar~~ \$20,000,000 limit even if

36 the amounts that have been certified to any taxpayer were not claimed or a

37 taxpayer otherwise fails to meet the requirements to claim the additional

38 credit.

39 H. Co-owners of a qualified energy generator, including partners in

40 a partnership, members of a limited liability company and shareholders of

41 an S corporation as defined in section 1361 of the internal revenue code,

42 may each claim the pro rata share of the credit allowed under this section

43 based on ownership interest. The total of the credits allowed all such

44 owners of the qualified energy generator may not exceed the amount that

45 would have been allowed for a sole owner of the generator.

1 I. If the allowable tax credit for a taxpayer exceeds the taxes
2 otherwise due under this title on the claimant's income, or if there are
3 no taxes due under this title, the amount of the claim not used to offset
4 taxes under this title may be carried forward for not more than five
5 consecutive taxable years as a credit against subsequent years' income tax
6 liability.

7 J. The department shall adopt rules and publish and prescribe forms
8 and procedures as necessary to effectuate the purposes of this section.

9 K. ON OR BEFORE MAY 15 OF EACH YEAR, EACH CLAIMANT SHALL REPORT TO
10 THE DEPARTMENT, ON A FORM PRESCRIBED BY THE DEPARTMENT, ALL OF THE
11 FOLLOWING:

12 1. THE TOTAL MEGAWATT HOURS OF ELECTRICITY GENERATED FROM THE
13 QUALIFIED ENERGY GENERATOR SPECIFIED BY THE QUALIFIED ENERGY RESOURCE
14 USED.

15 2. THE TOTAL MEGAWATT HOURS OF ELECTRICITY GENERATED FROM
16 NONQUALIFIED ENERGY RESOURCES.

17 3. THE NUMBER OF PERSONS EMPLOYED AT THE TIME THE TAX CREDIT IS
18 CLAIMED BY BUSINESSES IN THIS STATE THAT MANUFACTURE, INSTALL OR SERVICE
19 QUALIFIED ENERGY GENERATORS IN THIS STATE.

20 L. ON OR BEFORE JUNE 15 OF EACH YEAR, THE DEPARTMENT SHALL REPORT
21 THE INFORMATION IT RECEIVES PURSUANT TO SUBSECTION K OF THIS SECTION TO
22 THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
23 AND THE JOINT LEGISLATIVE BUDGET COMMITTEE.

24 ~~K.~~ M. For the purposes of this section:

25 1. "Biomass" means organic material that is available on a
26 renewable or recurring basis, including:

27 (a) Forest-related materials, including mill residues, logging
28 residues, forest thinnings, slash, brush, low-commercial value materials
29 or undesirable species, salt cedar and other phreatophyte or woody
30 vegetation removed from river basins or watersheds and woody material
31 harvested for the purpose of forest fire fuel reduction or forest health
32 and watershed improvement.

33 (b) Agricultural-related materials, including orchard trees,
34 vineyard, grain or crop residues, including straws and stover, aquatic
35 plants and agricultural processed coproducts and waste products, including
36 fats, oils, greases, whey and lactose.

37 (c) Animal waste, including manure and slaughterhouse and other
38 processing waste.

39 (d) Solid woody waste materials, including landscape or
40 right-of-way tree trimmings, rangeland maintenance residues, waste
41 pallets, crates and manufacturing, construction and demolition wood
42 wastes, excluding pressure-treated, ~~chemically-treated~~ CHEMICALLY TREATED
43 or painted wood wastes and wood contaminated with plastic.

44 (e) Crops and trees planted for the purpose of being used to
45 produce energy.

1 (f) Landfill gas, wastewater treatment gas and biosolids, including
2 organic waste byproducts generated during the wastewater treatment
3 process.

4 2. "Qualified energy generator" means a facility that has at least
5 five megawatts generating capacity, that is located on land in this state
6 owned or leased by the taxpayer, that produces electricity using a
7 qualified energy resource and that sells that electricity to an unrelated
8 entity, unless the electricity is sold to a public service corporation.

9 3. "Qualified energy resource" means a resource that generates
10 electricity through the use of only the following energy sources:

11 (a) Solar light.

12 (b) Solar heat.

13 (c) Wind.

14 (d) Biomass.

15 Sec. 3. Section 43-1164.03, Arizona Revised Statutes, is amended to
16 read:

17 43-1164.03. Renewable energy production tax credit; reporting
18 requirements; definitions

19 A. A credit is allowed against the taxes imposed by this title for
20 the production of electricity using renewable energy resources.

21 B. The taxpayer is eligible for the credit:

22 1. If the taxpayer holds title to a qualified energy generator that
23 first produces electricity from and after December 31, 2010 and before
24 January 1, 2021.

25 2. For ten consecutive calendar years beginning with the calendar
26 year in which the qualified energy generator begins producing electricity
27 that is transmitted through a transmission facility to a grid connection
28 with a public or private electric transmission or distribution utility
29 system. That same date applies with respect to that generator until the
30 expiration of the ten-year period regardless of whether the generator is
31 sold to another taxpayer or goes out of production before the expiration
32 of the ten-year period.

33 C. The credit authorized by this section is based on the
34 electricity that is generated by a qualified energy generator during a
35 calendar year. For a taxpayer that files on a fiscal year basis, the
36 credit shall be claimed on the return for the taxable year in which the
37 calendar year ends.

38 D. Subject to subsection G of this section, the amount of the
39 credit is:

40 1. ~~One cent~~ **\$.01** per kilowatt-hour of the first two hundred
41 thousand megawatt-hours of electricity produced by a qualified energy
42 generator in the calendar year using a wind or biomass derived qualified
43 energy resource.

1 2. The following amounts for electricity produced by a qualified
2 energy generator using a solar light derived or solar heat derived
3 qualified energy resource:

4 (a) ~~Four cents~~ \$.04 per kilowatt-hour in the first calendar year in
5 which the qualified energy generator produces electricity.

6 (b) ~~Four cents~~ \$.04 per kilowatt-hour in the second calendar year
7 in which the qualified energy generator produces electricity.

8 (c) ~~Three and one-half cents~~ \$.035 per kilowatt-hour in the third
9 calendar year in which the qualified energy generator produces
10 electricity.

11 (d) ~~Three and one-half cents~~ \$.035 per kilowatt-hour in the fourth
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13 electricity.

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23 calendar year in which the qualified energy generator produces
24 electricity.

25 (j) ~~One cent~~ \$.01 per kilowatt-hour in the tenth calendar year in
26 which the qualified energy generator produces electricity.

27 E. To qualify for the purposes of this section, an energy generator
28 may be located within one mile of an existing qualified energy generator
29 only if the owner of the energy generator or the owner's corporate
30 affiliates are not the owner of or the corporate affiliate of the owner of
31 the existing qualified energy generator.

32 F. To be eligible for the credit under this section, the taxpayer
33 must apply to the department, on a form prescribed by the department, for
34 certification of the credit. The department shall only accept
35 applications beginning January 2 through January 31 of the year following
36 the calendar year for which the credit is being requested. The
37 application shall include:

38 1. The name, address and social security number or federal employer
39 identification number of the applicant.

40 2. The location of the taxpayer's facility that produces
41 electricity using renewable energy resources for which the credit is
42 claimed.

43 3. The amount of the credit that is claimed.

44 4. The date the qualified energy generator began producing
45 commercially marketable amounts of electricity.

1 5. Any additional information that the department requires.

2 G. The department shall review each application under subsection F

3 of this section and certify to the taxpayer the amount of the credit that

4 is authorized. The amount of the credit for any calendar year shall not

5 exceed ~~two million dollars~~ \$2,000,000 per facility that produces

6 electricity using renewable energy resources. Credits are allowed under

7 this section and section 43-1083.02 on a ~~first come, first served~~

8 **FIRST-COME, FIRST-SERVED** basis. The department shall not authorize tax

9 credits under this section and section 43-1083.02 that exceed in the

10 aggregate a total of ~~twenty million dollars~~ \$20,000,000 for any calendar

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16 taxpayer's position on the credit authorization list shall be determined

17 in the first year the taxpayer submits an application under subsection F

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19 position on the credit authorization list for a particular qualified

20 energy generator shall remain unchanged for the ten years that are

21 specified in subsection B, paragraph 2 of this section or until a year in

22 which the taxpayer fails to submit a timely application under subsection F

23 of this section or otherwise fails to comply with this section. If a

24 taxpayer is removed from the credit authorization list for a qualified

25 energy generator, the taxpayer may establish a new position on the credit

26 authorization list in a subsequent year by filing a timely application for

27 a qualified energy generator that qualifies for the credit. If an

28 application is received that, if authorized, would require the department

29 to exceed the ~~twenty million dollar~~ \$20,000,000 limit, the department

30 shall grant the applicant only the remaining credit amount that would not

31 exceed the ~~twenty million dollar~~ \$20,000,000 limit. After the department

32 authorizes ~~twenty million dollars~~ \$20,000,000 in tax credits, the

33 department shall deny any subsequent applications that are received for

34 that calendar year. The department shall not authorize any additional tax

35 credits that exceed the ~~twenty million dollar~~ \$20,000,000 limit even if

36 the amounts that have been certified to any taxpayer were not claimed or a

37 taxpayer otherwise fails to meet the requirements to claim the additional

38 credit.

39 H. Co-owners of a qualified energy generator, including corporate

40 partners in a partnership and members of a limited liability company, may

41 each claim the pro rata share of the credit allowed under this section

42 based on ownership interest. The total of the credits allowed all such

43 owners of the qualified energy generator may not exceed the amount that

44 would have been allowed for a sole owner of the generator.

1 I. If the allowable tax credit for a taxpayer exceeds the taxes
2 otherwise due under this title on the claimant's income, or if there are
3 no taxes due under this title, the amount of the claim not used to offset
4 taxes under this title may be carried forward for not more than five
5 consecutive taxable years as a credit against subsequent years' income tax
6 liability.

7 J. The department shall adopt rules and publish and prescribe forms
8 and procedures as necessary to effectuate the purposes of this section.

9 K. ON OR BEFORE MAY 15 OF EACH YEAR, EACH CLAIMANT SHALL REPORT TO
10 THE DEPARTMENT, ON A FORM PRESCRIBED BY THE DEPARTMENT, ALL OF THE
11 FOLLOWING:

12 1. THE TOTAL MEGAWATT HOURS OF ELECTRICITY GENERATED FROM THE
13 QUALIFIED ENERGY GENERATOR SPECIFIED BY THE QUALIFIED ENERGY RESOURCE
14 USED.

15 2. THE TOTAL MEGAWATT HOURS OF ELECTRICITY GENERATED FROM
16 NONQUALIFIED ENERGY RESOURCES.

17 3. THE NUMBER OF PERSONS EMPLOYED AT THE TIME THE TAX CREDIT IS
18 CLAIMED BY BUSINESSES IN THIS STATE THAT MANUFACTURE, INSTALL OR SERVICE
19 QUALIFIED ENERGY GENERATORS IN THIS STATE.

20 L. ON OR BEFORE JUNE 15 OF EACH YEAR, THE DEPARTMENT SHALL REPORT
21 THE INFORMATION IT RECEIVES PURSUANT TO SUBSECTION K OF THIS SECTION TO
22 THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
23 AND THE JOINT LEGISLATIVE BUDGET COMMITTEE.

24 ~~K.~~ M. For the purposes of this section:

25 1. "Biomass" means organic material that is available on a
26 renewable or recurring basis, including:

27 (a) Forest-related materials, including mill residues, logging
28 residues, forest thinnings, slash, brush, low-commercial value materials
29 or undesirable species, salt cedar and other phreatophyte or woody
30 vegetation removed from river basins or watersheds and woody material
31 harvested for the purpose of forest fire fuel reduction or forest health
32 and watershed improvement.

33 (b) Agricultural-related materials, including orchard trees,
34 vineyard, grain or crop residues, including straws and stover, aquatic
35 plants and agricultural processed coproducts and waste products, including
36 fats, oils, greases, whey and lactose.

37 (c) Animal waste, including manure and slaughterhouse and other
38 processing waste.

39 (d) Solid woody waste materials, including landscape or right-of-
40 way tree trimmings, rangeland maintenance residues, waste pallets, crates
41 and manufacturing, construction and demolition wood wastes, excluding
42 pressure-treated, ~~chemically-treated~~ CHEMICALLY TREATED or painted wood
43 wastes and wood contaminated with plastic.

44 (e) Crops and trees planted for the purpose of being used to
45 produce energy.

1 (f) Landfill gas, wastewater treatment gas and biosolids, including
2 organic waste byproducts generated during the wastewater treatment
3 process.

4 2. "Qualified energy generator" means a facility that has at least
5 five megawatts generating capacity, that is located on land in this state
6 owned or leased by the taxpayer, that produces electricity using a
7 qualified energy resource and that sells that electricity to an unrelated
8 entity, unless the electricity is sold to a public service corporation.

9 3. "Qualified energy resource" means a resource that generates
10 electricity through the use of only the following energy sources:

11 (a) Solar light.

12 (b) Solar heat.

13 (c) Wind.

14 (d) Biomass.