



## ARIZONA DEPARTMENT OF REVENUE – PROGRAM GUIDELINES RENEWABLE ENERGY PRODUCTION TAX CREDIT

A.R.S. § 43-1083.02 ▪ A.R.S. § 43-1164.03

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### Section 1. Overview

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The Renewable Energy Production income tax credit was established with the intention to promote investment in renewable energy production using low-emission and zero-emission electricity generation technologies. The credits are for the production of electricity using qualified energy resources. The credit is only for qualified energy generators with at least five megawatts generating capacity.<sup>1</sup>

An individual and corporate income tax credits were created for taxpayers that own a qualified energy generator that first produces electricity from and after December 31, 2010, and before January 1, 2021, using a qualified energy resource. To be eligible to take the tax credit, a taxpayer must obtain a Certificate of Renewable Energy Production Tax Credit (Certificate) from the Arizona Department of Revenue (ADOR). A Certificate may be obtained from ADOR by submitting an Application for Approval of Renewable Energy Production Tax Credit (Application) between January 2 and January 31 of the year following the calendar year for which the credit is being requested for one qualified energy generator.

The first year in which an Application will be accepted by ADOR is 2012 (application year); the Application submitted in 2012 will be for electricity produced during calendar year 2011 (production year). The final application year will be 2030; applications received in this year would only be for qualified energy generators that first produced electricity in 2020 and are applying for the 10<sup>th</sup> and final possible year of credit.

A facility is not eligible for both the Renewable Energy Production Tax Credit and the Commercial and Industrial Solar Tax Credit. The Renewable Energy Production Tax Credit is for production of electricity using qualified energy resources that is sold to an unrelated entity or public service corporation. The Commercial/Industrial Solar Energy Tax Credit Program (A.R.S. §41-1510.01) was established to stimulate the production and use of solar energy in commercial and industrial applications by subsidizing the initial cost of solar energy devices installed in the taxpayer's commercial or industrial facility. The renewable energy production tax credit is for installations created for the purpose of selling the energy; the commercial and industrial solar credit is for purchasing and installing solar energy devices in the taxpayer's facility for the primary purpose of using the energy in the taxpayer's facility for commercial or industrial applications.

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<sup>1</sup> A qualified energy generator with at least five megawatts generating capacity is not for a residential application. No preapproval is required for an individual income tax credit for a residential Solar Energy Device tax credit that is claimed on Arizona Form 310.

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## **Section 2. Requirements for a Qualified Energy Generator**

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A taxpayer is authorized to take an income tax credit once the qualified energy generator is producing electricity, if it meets the following requirements per A.R.S. §§ 43-1083.02 and 43-1164.03:

- The taxpayer must hold title to the qualified energy generator.
- The qualified energy generator must have at least five megawatts generating capacity.
- The qualified energy generator cannot have produced electricity prior to January 1, 2011.
- The electricity produced must be transmitted through a transmission facility to a grid connection with a public or private electric transmission or distribution utility system.
- The qualified energy generator may not be located within one mile of an existing qualified energy generator if the taxpayer or the taxpayer's corporate affiliates own the existing qualified energy generator.
- The taxpayer submits an Application between January 2 and January 31 of the year following the production year for which the credit is being requested and receives a Certificate from ADOR.

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## **Section 3. Explanation of the Income Tax Credit**

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A taxpayer is eligible to seek authorization of the income tax credit if the taxpayer holds title to a qualified energy generator that first produces electricity from and after December 31, 2010 and before January 1, 2021. The income tax credit is available for 10 consecutive calendar years, beginning with the calendar year in which the qualified energy generator begins producing electricity that is transmitted through a transmission facility to a grid connection with a public or private electric transmission or distribution utility system.

*EXAMPLE: A qualified energy generator that first produces electricity in 2011 is qualified to apply for a credit for production years 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020. A qualified energy generator that first produces electricity in 2019 is qualified to apply for a credit for production years 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027 and 2028.*

That same 10-year period (beginning with the calendar year in which electricity was first produced) applies to that qualified energy generator until the expiration of the 10-year period, regardless of whether the generator is sold to another taxpayer or goes out of production before the expiration of the 10-year period.

*EXAMPLE: Taxpayer A owns a qualified energy generator that first produces electricity in 2015. Taxpayer A sells the qualified energy generator in 2018 to Taxpayer B. Taxpayer A applied for credit for year one of production (2015), year two of production (2016), year three of production (2017) and for the part of year four (2018) that Taxpayer A owned the generator. Taxpayer B can file an initial application for credit for the electricity produced in the remainder of year four (2018) through the final year of production for which the qualified energy generator is eligible for credit, or 2024.*

For a qualified energy generator using a wind or biomass derived qualified energy resource (A.R.S. §§ 43-1083.02(D)(1) and 43-1164.03(D)(1)) the amount of the income tax credit is:

- 1¢ per kilowatt-hour of the first 200,000 megawatt-hours of electricity produced. (200,000 megawatt-hours of electricity equals 200 million kilowatt-hours which, when multiplied by 1¢ per kilowatt-hour, equals \$2 million in credit.)
- The tax credit cannot exceed \$2 million dollars per year per facility that produces electricity.

For a qualified energy generator using a solar light derived or solar heat derived qualified energy resource (A.R.S. §§ 43-1083.02(D)(2) and 43-1164.03(D)(2)), the amount of the income tax credit is:

- 4¢ per kilowatt-hour in the first and second calendar years in which the qualified energy generator produces electricity.
- 3.5¢ per kilowatt-hour in the third and fourth calendar years in which the qualified energy generator produces electricity.
- 3¢ per kilowatt-hour in the fifth and sixth calendar years in which the qualified energy generator produces electricity.
- 2¢ per kilowatt-hour in the seventh and eighth calendar years in which the qualified energy generator produces electricity.
- 1.5¢ per kilowatt-hour in the ninth calendar year in which the qualified energy generator produces electricity.
- 1¢ per kilowatt-hour in the tenth calendar year in which the qualified energy generator produces electricity.
- The tax credit cannot exceed \$2 million dollars per year per facility that produces electricity.

The income tax credit is based on electricity generated by a qualified energy generator during a calendar year. For a taxpayer that files on a fiscal year basis, the credit shall be claimed on the income tax return for the taxable year in which the calendar year ends. (A.R.S. §§ 43-1083.02(C) and 43-1164.03(C))

Co-owners of a company (including partners in a partnership and members of a limited liability company) may each claim only the pro rata share of the credit allowed based on ownership interest. The total credit 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. (A.R.S. §§ 43-1083.02(H) and 43-1164.03(H))

If the allowable tax credit for a taxpayer exceeds the income tax otherwise due on the taxpayer's income, the amount of the credit not used to offset taxes may be carried forward for not more than five consecutive taxable years as a credit against subsequent years' income tax liability. (A.R.S. §§ 43-1083.02(I) and 43-1164.03(I))

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#### **Section 4. Qualified Energy Generator Income Tax Credit Limitations**

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1. ADOR cannot approve more than \$20 million in income tax credits for a calendar year. The \$20 million limit is for the individual income tax credit and corporate income tax credit combined. Once the \$20 million credit limitation is approved, no additional tax credits will be approved, even if the amounts certified to any taxpayer are not claimed.
2. The amount of income tax credit approved for any calendar year shall not exceed \$2 million per facility that produces electricity using renewable energy resources.
3. ADOR may only accept Applications postmarked beginning January 2 through January 31 of the year following the Production Year.
4. Qualified energy generators that first produce electricity after December 31, 2020 are not eligible to apply for this credit.
5. Only Applications for qualified energy generators that first produced electricity prior to January 1, 2021 (but after December 31, 2010) will be accepted in application years 2021 through 2030.
6. No Applications will be accepted after January 31, 2030.

*EXAMPLE: Taxpayer A owns a qualified energy generator that first produced electricity in 2018. Taxpayer A can submit credit applications for the first ten years of production. Taxpayer B owns a qualified energy generator that first produced electricity in 2022. Taxpayer B is not eligible for credit and should not submit any applications for approval. Taxpayer C owns a qualified energy generator that first produced electricity in 2020. Taxpayer C didn't learn of the renewable energy production tax credit until 2024. Taxpayer C can still submit applications for credit for electricity produced in 2024 (for the fifth year of production), 2025 (sixth year of production), 2026 (seventh year of production), 2027 (eighth year of production), 2028 (ninth year of production) and 2029 (tenth year of production).*

7. An initial application for a qualified energy generator may not be submitted with applications for other qualified energy generators. Multiple applications may be submitted in one envelope only if all applications are renewals and already have positions on the Credit Authorization List.

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#### **Section 5. Calendar Year Limitation Management**

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1. ADOR may approve \$20 million in income tax credits annually for electricity produced in calendar years 2011 through 2029. However, the credit can only be approved for qualified energy generators that first began producing electricity from and after December 31, 2010 and before January 1, 2021.
2. Income tax credits are authorized on a first come, first served basis according to the placement number established.
3. ADOR will only accept Applications by Express Mail dated January 2 through January 31 of the Application Year. No Applications will be accepted prior to January 2, 2012. No Applications will be accepted for facilities that first produce electricity after December 31, 2020. No Applications for any

facilities will be accepted after January 31, 2030. Only one qualified energy generator application per envelope is allowed unless all applications enclosed are renewal applications and already have positions on the Credit Authorization List.

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## **Section 6. Application for Approval of Renewable Energy Production Tax Credit**

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The Application should be submitted by the taxpayer that holds title to the qualified energy generator. The Application is for one qualified energy generator; if the entity or person holds title to multiple qualified energy generators that are eligible for a credit, a separate application must be submitted, each in its own envelope, for each qualified energy generator. The Certificate will state the taxpayer name, credit amount and, if applicable, the partners or shareholders to whom the credit will pass through.

The Application, according to A.R.S. §§ 43-1083.02(F) and 43-1164.03(F), shall include:

1. Name, address, social security number or federal employer identification number of the applicant.
2. The location of the taxpayer's facility that produces electricity using renewable energy resources for which the credit is claimed.
3. The amount of the credit for which they may be eligible.
4. The date the qualified energy generator began producing commercially marketable amounts of electricity.

ADOR is also requiring the following information to be supplied on the Application:

1. The business structure of the Applicant. Is this a C corporation, an S corporation, a sole proprietorship, a partnership or an LLC?
2. If the applicant business has any affiliates or subsidiaries, all other entities must be listed on the application or a copy of the federal Form 851 must be attached.
3. If this credit will be passed through to shareholders or partners, a schedule should be attached listing the names of the shareholders or partners, with social security numbers or federal employer identification numbers and percent of ownership. If the percent of ownership on the taxpayer's tax return for the tax year for which the credit is being claimed is different from what is shown on the application, the taxpayer must submit an addendum containing the updated information on shareholders or partners and percentages within 30 days of filing the income tax return. Failure to submit an addendum could result in problems with credits claimed on tax returns.
4. The Applicant's fiscal year-end.
5. A contact person, with title, phone number and fax number. If this person is not a corporate officer, a Power of Attorney should be included for the contact.
6. Name or identification number of the qualified energy generator.
7. Parcel number(s) of land on which the qualified energy generator is located and the centrally valued property tax identification number for the personal property on the land or the legal description.

8. The type of qualified energy resource used to generate electricity. If biomass, state what type of biomass is used.
9. The generating capacity of the qualified energy generator.
10. Kilowatt-hours of electricity produced in the calendar year.
11. Copies of printouts from the production meter located at the qualified energy generator that measures the output from the qualified energy generator and provides that information to a grid-tied energy management system. Copies of an invoice or a document proving sale must be available if requested.
12. An affidavit signed by an officer of the applicant company. By signing the affidavit, the company agrees that the information contained in the Application is true and correct under penalty of perjury and that the qualified energy generator for which the credit is being claimed did not produce electricity prior to 2011.

There are two types of Applications, determined by which box is checked at the beginning of Section A of the Application. Checking the first box means that this is an Initial Application. The Initial Application is intended to obtain a spot on the Credit Authorization List for the taxpayer's qualified energy generator and obtain approval of credit, if available. All Initial Applications must be mailed separately.

Checking the second box indicates that this is a Renewal Application. The qualified energy generator already has a spot on the Credit Authorization List and the Renewal Application seeks a credit in a subsequent year for that qualified energy generator. Renewal Applications do not need information in Section B IF NOTHING HAS CHANGED. Renewal Applications also do not need to have Section E completed. Renewal applications can be mailed together if they already have positions on the Credit Authorization List.

It is possible that a qualified energy generator with a spot on the Credit Authorization List loses that spot due to an incomplete application or insufficient documentation of electricity production or no electricity production in a year. In this case, a second (or third or fourth, etc.) Initial Application will have to be submitted for that qualified energy generator to establish a new place on the Credit Authorization List. Regardless of the number of Initial Applications for the same qualified energy generator, that qualified energy generator is only eligible for 10 years of credit from the first year in which the qualified energy generator produced electricity.

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#### **Section 7. Application Processing and Placement on the Credit Authorization List.**

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1. Applications must be sent by United States Postal Service Express Mail with an Origin Accepted date of January 2 through January 31. Applications can be sent during this period in 2012 through 2030. If the due date of the Application falls on a Saturday, Sunday or legal holiday, the Application shall be considered timely if postmarked on the next business day.

*EXAMPLE: January 31, 2015 falls on a Saturday. An Application postmarked on February 2, 2015 would be considered timely.*

2. Only Applications sent through the United States Postal Services Express Mail will be accepted. No applications will be accepted through any other delivery methods.
3. All Express Mail Applications should be sent to:
  - Arizona Department of Revenue
  - Renewable Energy Production Tax Credit Program
  - P.O. Box 29099
  - Phoenix, Arizona 85038
4. Each Initial Application will be assigned a placement number that reflects the date and time on the Express Mail label.
5. Every Initial Application Express Mail dated from January 2 through January 31 will be placed on the Credit Authorization List in order of date and time on the Express Mail label. If multiple Applications have the same date and time on their Express Mail label, they will be put in order through a process of a random, blind draw.
6. Every complete Renewal Application with a timely Express Mail date will serve to maintain that qualified energy generator's previously established place on the Credit Authorization List.
7. If the Application is reviewed and determined to be invalid or in some way not eligible for the credit, the Application will be removed from the Credit Authorization List. *APPLICATIONS THAT DO NOT INCLUDE ALL REQUIRED INFORMATION ARE INVALID AND WILL NOT BE ACCEPTED.*
8. If the Initial Application is reviewed and determined to be a valid Application eligible for a credit, the Application will receive a position on the Credit Authorization List that will be maintained from year to year if timely, complete Renewal Applications continue to be received. The numerical position on the Credit Authorization List may shift if Applications for other qualifying energy generators received prior to this one drop from the list.

*EXAMPLE: Taxpayer A received the first position on the Credit Authorization List established in 2012 for production year 2011. Taxpayer A's qualified energy generator continued to produce electricity in 2012. Taxpayer A submits a Renewal Application for credit for the 2012 Production Year in late January 2013. The Renewal Application received later in January in a year after the placement position on the Credit Authorization List is established does not affect the placement position initially established.*

*EXAMPLE: Taxpayer C received the thirteenth position on the Credit Authorization List established in 2012 for production year 2011. Taxpayer D received the fourteenth position on the Credit Authorization List for the same year. Taxpayer C fails to submit an application in 2013 for production year 2012. Therefore, Taxpayer C is removed from the Credit Authorization List and Taxpayer D moves into the thirteenth position.*

9. To maintain the position on the Credit Authorization List for the entire 10-year period, the taxpayer must submit a timely and complete a Renewal Application in each of the remaining nine years.

10. If a taxpayer is removed from the Credit Authorization List for a qualified energy generator, the taxpayer may establish a new position on the Credit Authorization List in a subsequent year by filing a timely Initial Application for the same qualified energy generator. That new position on the Credit Authorization List will be further down the list, in an order relative to other Initial Applications received in the same Application Year.

*EXAMPLE: Taxpayer Z was eighth on the Credit Authorization List for the first three years in which its qualified energy generator produced electricity. For the fourth year, Taxpayer Z failed to file a complete or timely application. Taxpayer Z was removed from the Credit Authorization List. For the fifth year in which the qualified energy generator produced electricity, Taxpayer Z submitted a timely and complete Initial Application (for year five of energy production) and received the 25<sup>th</sup> spot on the Credit Authorization List.*

11. The available credit will be allocated to taxpayers according to the position on the Credit Authorization List. Given the credit limitation of \$20 million per calendar year and the individual generator limitation of \$2 million per year, the first 10 taxpayers on the Credit Authorization List may be the only taxpayers that receive a Certificate. The remaining taxpayers will retain their position on the Credit Authorization List for each of the next nine years (if a timely and complete Renewal Application is filed) and may or may not be allocated income tax credit during that time period, depending upon the credit allocated to taxpayers holding a higher position on the Credit Authorization List.

12. If the first 15 taxpayers on the Credit Authorization List are allocated credit for a calendar year, there is no guarantee that all of these 15 taxpayers will be allocated credit for the next calendar year. It may be that the generators holding a higher position on the Credit Authorization List produce more electricity during a subsequent calendar year and receive a higher allocation of the credit after timely filing, leaving no available credit for the generators holding lower positions on the Credit Authorization List.

*EXAMPLE: Taxpayer Q applied for credit in 2012 for electricity produced by its qualified energy generator in 2011. Taxpayer Q got the fifteenth spot on the Credit Authorization List and received approval for \$100,000 in credit. Taxpayer Q filed a timely and complete application again in 2013 for electricity produced in 2012. Its spot on the Credit Authorization List did not change. However, the qualified energy generators owned by the taxpayers in the first through fourteenth spots increased their electricity production and claimed all \$20 million in credit. Therefore, although receiving credit in the first year, Taxpayer Q did not get approved for credit in its second year of electricity production.*

13. If a taxpayer is placed on the Credit Authorization List and, if approved for the full amount of credit based on the electricity produced would require ADOR to exceed the \$20 million dollar credit limit, ADOR will approve only the remaining credit amount that would not exceed the \$20 million credit limit.

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## **Section 8. Appeal Process**

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If ADOR denies approval or approves less credit than the amount requested on an Application, the taxpayer may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10. The taxpayer



may appeal this decision; however, the denial prohibits the taxpayer from claiming a tax credit under this program unless the appeal is successful.

If ADOR denies approval or approves less credit than the amount requested on an Application, ADOR will reserve the amount of credit requested by the taxpayer from the credit limit, in the event that an appeal from the taxpayer is upheld. If the appeal is not upheld and a smaller amount of credit or no credit is certified by ADOR, the reserved credit amount will be allocated to the next eligible taxpayer(s) on the Credit Authorization List.

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### **Section 9: Following Approval**

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ADOR will notify the taxpayer of approval of the qualified energy generator's placement on the Credit Authorization List and the amount of credit to which the company is entitled. A Certificate will be transmitted to the taxpayer if the taxpayer is allocated credit. Only a letter will be issued to the taxpayer if they have a place on the Credit Authorization List but were not allocated credit.

When the taxpayer files its income tax return, a copy of the Certificate must be attached to the tax form with Arizona Form 343. If the credit is being passed through to partners or shareholders, each partner or shareholder must attach a copy of the Certificate to their income tax return along with Arizona Form 343 to claim the credit. If the taxpayer's tax liability is less than the credit amount approved, the unused portion of the credit can be carried forward for five years. This is not a transferable or refundable credit.

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### **Section 10. Definition of Terms**

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For purposes of applying for and maintaining eligibility for the Renewable Energy Production Tax Credit, the following terms are either defined by ADOR in rule or defined in A.R.S. §§ 43-1083.02 or 43-1164.03. If a term is not defined, the most commonly accepted meaning will apply. For purposes of this program:

1. "Application" means the ADOR form "Application for Approval of Renewable Energy Production Tax Credit" and all required attachments to demonstrate eligibility for the tax credit.
2. "Application year" refers to the year in which application is made for electricity produced in the prior year. For example, electricity produced in 2015 has an application year of 2016.
3. "Biomass" means organic material that is available on a renewable or recurring basis, including:
  - a. Forest-related materials, including mill residues, logging residues, forest thinning, 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.
4. "Credit Authorization List" is the list of taxpayers that are eligible to receive an income tax credit. Placement on the list does not guarantee that the taxpayer will receive a Certificate of Renewable Energy Production Tax Credit.
5. "Certificate" means the Certificate of Renewable Energy Production Tax Credit issued to the taxpayer from the Arizona Department of Revenue (ADOR).
6. "Production year" refers to the year in which the energy is produced. A production year of 2018 would prompt an application for credit in 2019.
7. "Qualified energy generator" means a facility that has at least 5 megawatts generating capacity, that is located on land in Arizona owned or leased by the taxpayer, that produces electricity using a qualified energy resource and that sells electricity to an unrelated entity, unless the electricity is sold to a public service corporation. The qualified energy generator may be located within one mile of an existing qualified energy generator ONLY if the owner of the energy generator or the owner's corporate affiliates are not the owner of or the corporate affiliate of the owner of the existing qualified energy generator. A qualified energy generator cannot have produced electricity prior to January 1, 2011.
8. "Qualified energy resource" means a resource that generates electricity through the use of only (a) solar light, (b) solar heat, (c) wind or (d) biomass.
9. "Taxpayer" means an individual, a corporation, an S corporation, a partnership or a limited liability company.

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