House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
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Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 312

SENATE BILL 1254

AN ACT

AMENDING TITLE 41, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1507; AMENDING SECTION 43-222, ARIZONA REVISED STATUTES; AMENDING SECTION 43-1074.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 290, SECTION 2; AMENDING SECTION 43-1074.01, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2008, CHAPTER 290, SECTION 4; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1083.02; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1164.02; AMENDING SECTION 43-1168, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 290, SECTION 5; AMENDING SECTION 43-1168, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2008, CHAPTER 290, SECTION 7; RELATING TO TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 41, chapter 10, article 1, Arizona Revised Statutes, is amended by adding section 41-1507, to read:

41-1507. Tax credit for increased research activity; qualification for refund or transfer

A. THE DEPARTMENT OF COMMERCE SHALL RECEIVE APPLICATIONS AND EVALUATE AND CERTIFY TAXPAYERS WHO OTHERWISE QUALIFY FOR INCOME TAX CREDITS FOR INCREASED RESEARCH ACTIVITIES TO FURTHER QUALIFY FOR INCOME TAX REFUNDS.

B. AN APPLICATION FOR A REFUND OF THE TAXPAYER'S CREDIT MUST INCLUDE:

1. THE TAXPAYER'S NAME, ADDRESS AND TAXPAYER IDENTIFICATION NUMBER AND A TELEPHONE NUMBER AND E-MAIL ADDRESS OF A PERSON RESPONSIBLE FOR THE APPLICATION.

2. A GENERAL DESCRIPTION OF THE TAXPAYER'S BUSINESS AND THE RESEARCH ACTIVITIES CONDUCTED BY THE TAXPAYER.

3. THE NUMBER OF FULL-TIME EMPLOYEES ON THE TAXPAYER'S PAYROLL ON DECEMBER 31 OF THE TAXABLE YEAR. ONLY TAXPAYERS EMPLOYING FEWER THAN ONE HUNDRED FIFTY FULL-TIME EMPLOYEES QUALIFY FOR A REFUND OF THE TAXPAYER'S INCOME TAX CREDIT.

4. THE AMOUNT OF THE TAXPAYER'S INCOME TAX CREDIT FOR THE TAXABLE YEAR.

5. ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT.

C. EACH APPLICATION SHALL INCLUDE A PROCESSING FEE EQUAL TO ONE PER CENT OF THE TAXPAYER'S TAX CREDIT BEING REFUNDED.

D. THE DEPARTMENT SHALL PROCESS AND EVALUATE EACH APPLICATION AND WITHIN THIRTY DAYS AFTER RECEIVING THE APPLICATION EITHER:

1. ISSUE TO THE APPLICANT A CERTIFICATE OF QUALIFICATION FOR THE REFUND.

2. NOTIFY THE APPLICANT OF DENIAL OF THE APPLICATION WITH SPECIFIC REASONS FOR THE DENIAL. A DENIAL OF THE APPLICATION DOES NOT PRECLUDE A SUBSEQUENT APPLICATION IF THE APPLICANT IS ABLE TO CORRECT ANY ERROR OR DEFICIENCY.

E. THE DEPARTMENT SHALL NOT APPROVE REFUNDS EXCEEDING A TOTAL OF FIVE MILLION DOLLARS IN ANY CALENDAR YEAR. REFUNDS ARE ALLOWED ON A FIRST COME, FIRST SERVED BASIS, ACCORDING TO THE DATE OF APPLICATION. AN APPROVED AMOUNT APPLIES AGAINST THE DOLLAR LIMIT FOR THE YEAR IN WHICH THE APPLICATION WAS SUBMITTED. IF, AT THE END OF ANY YEAR, AN UNUSED BALANCE OCCURS UNDER THE DOLLAR LIMIT PRESCRIBED BY THIS SUBSECTION, THE BALANCE SHALL BE REALLOCATED FOR THE PURPOSES OF THIS SECTION IN THE FOLLOWING YEAR.

F. THE DEPARTMENT OF COMMERCE, WITH THE COOPERATION OF THE DEPARTMENT OF REVENUE, SHALL ADOPT RULES AND PUBLISH AND PRESCRIBE FORMS AND PROCEDURES AS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS SECTION.

Sec. 2. Section 43-222, Arizona Revised Statutes, is amended 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, 43-1083.02, 43-1085, 43-1164, 43-1164.02 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, 43-1164.01, ~~and~~ 43-1170.01 AND 43-1184.

Sec. 3. Section 43-1074.01, Arizona Revised Statutes, as amended by Laws 2008, chapter 290, section 2, is amended to read:

43-1074.01. Credit for increased research activities

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

1. The amount of the credit is based on the excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code and is computed as follows:

(a) If the excess is two million five hundred thousand dollars or less, the credit is equal to twenty-four per cent of that amount.

(b) If the excess is over two million five hundred thousand dollars, the credit is equal to six hundred thousand dollars plus fifteen per cent of any amount exceeding two million five hundred thousand dollars, except that:

(i) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

(ii) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 2000.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. EXCEPT AS PROVIDED BY SUBSECTION C OF THIS SECTION, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses. A TAXPAYER WHO CARRIES FORWARD ANY AMOUNT OF CREDIT UNDER THIS SUBSECTION MAY NOT THEREAFTER CLAIM A REFUND OF ANY AMOUNT OF THE CREDIT UNDER SUBSECTION C OF THIS SECTION.

C. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2009, IF A TAXPAYER WHO CLAIMS A CREDIT UNDER THIS SECTION EMPLOYS FEWER THAN ONE HUNDRED FIFTY PERSONS IN THE TAXPAYER'S TRADE OR BUSINESS AND IF THE ALLOWABLE CREDIT UNDER THIS SECTION EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, IN LIEU OF CARRYING THE EXCESS AMOUNT OF CREDIT FORWARD TO SUBSEQUENT TAXABLE YEARS UNDER SUBSECTION B OF THIS SECTION, THE TAXPAYER MAY ELECT TO RECEIVE A REFUND AS FOLLOWS:

1. THE TAXPAYER MUST APPLY TO THE DEPARTMENT OF COMMERCE FOR QUALIFICATION FOR THE REFUND PURSUANT TO SECTION 41-1507 AND SUBMIT A COPY OF THE DEPARTMENT OF COMMERCE'S CERTIFICATE OF QUALIFICATION TO THE DEPARTMENT OF REVENUE WITH THE TAXPAYER'S INCOME TAX RETURN.

2. THE AMOUNT OF THE REFUND IS LIMITED TO SEVENTY-FIVE PER CENT OF THE AMOUNT BY WHICH THE ALLOWABLE CREDIT UNDER THIS SECTION EXCEEDS THE TAXPAYER'S TAX LIABILITY UNDER THIS TITLE FOR THE TAXABLE YEAR. THE REMAINDER OF THE EXCESS AMOUNT OF THE CREDIT IS WAIVED.

3. THE REFUND SHALL BE PAID IN THE MANNER PRESCRIBED BY SECTION 42-1118.

4. THE REFUND IS SUBJECT TO SETOFF UNDER SECTION 42-1122.

5. IF THE DEPARTMENT DETERMINES THAT A CREDIT REFUNDED PURSUANT TO THIS SUBSECTION IS INCORRECT OR INVALID, THE EXCESS CREDIT ISSUED MAY BE TREATED AS A TAX DEFICIENCY PURSUANT TO SECTION 42-1108.

Sec. 4. Section 43-1074.01, Arizona Revised Statutes, as added by Laws 2008, chapter 290, section 4, is amended to read:

43-1074.01. <u>Credit for increased research activities</u>

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

1. The amount of the credit is based on the excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code and is computed as follows:

(a) If the excess is two million five hundred thousand dollars or less, the credit is equal to twenty per cent of that amount.

(b) If the excess is over two million five hundred thousand dollars, the credit is equal to five hundred thousand dollars plus eleven per cent of any amount exceeding two million five hundred thousand dollars, except that:

(i) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

(ii) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 2000.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. EXCEPT AS PROVIDED BY SUBSECTION C OF THIS SECTION, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses. A TAXPAYER WHO CARRIES FORWARD ANY AMOUNT OF CREDIT UNDER THIS SUBSECTION MAY NOT THEREAFTER CLAIM A REFUND OF ANY AMOUNT OF THE CREDIT UNDER SUBSECTION C OF THIS SECTION.

C. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2009, IF A TAXPAYER WHO CLAIMS A CREDIT UNDER THIS SECTION EMPLOYS FEWER THAN ONE HUNDRED FIFTY PERSONS IN THE TAXPAYER'S TRADE OR BUSINESS AND IF THE

ALLOWABLE CREDIT UNDER THIS SECTION EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, IN LIEU OF CARRYING THE EXCESS AMOUNT OF CREDIT FORWARD TO SUBSEQUENT TAXABLE YEARS UNDER SUBSECTION B OF THIS SECTION, THE TAXPAYER MAY ELECT TO RECEIVE A REFUND AS FOLLOWS:

1. THE TAXPAYER MUST APPLY TO THE DEPARTMENT OF COMMERCE FOR QUALIFICATION FOR THE REFUND PURSUANT TO SECTION 41-1507 AND SUBMIT A COPY OF THE DEPARTMENT OF COMMERCE'S CERTIFICATE OF QUALIFICATION TO THE DEPARTMENT OF REVENUE WITH THE TAXPAYER'S INCOME TAX RETURN.

2. THE AMOUNT OF THE REFUND IS LIMITED TO SEVENTY-FIVE PER CENT OF THE AMOUNT BY WHICH THE ALLOWABLE CREDIT UNDER THIS SECTION EXCEEDS THE TAXPAYER'S TAX LIABILITY UNDER THIS TITLE FOR THE TAXABLE YEAR. THE REMAINDER OF THE EXCESS AMOUNT OF THE CREDIT IS WAIVED.

3. THE REFUND SHALL BE PAID IN THE MANNER PRESCRIBED BY SECTION 42-1118.

4. THE REFUND IS SUBJECT TO SETOFF UNDER SECTION 42-1122.

5. IF THE DEPARTMENT DETERMINES THAT A CREDIT REFUNDED PURSUANT TO THIS SUBSECTION IS INCORRECT OR INVALID, THE EXCESS CREDIT ISSUED MAY BE TREATED AS A TAX DEFICIENCY PURSUANT TO SECTION 42-1108.

Sec. 5. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1083.02, to read:

43-1083.02. <u>Renewable energy production tax credit; definitions</u>

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 FROM AND AFTER DECEMBER 31, 2010 AND BEFORE JANUARY 1, 2021.

2. FOR TEN 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. THAT SAME DATE 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 CREDIT AUTHORIZED BY THIS SECTION IS BASED ON THE ELECTRICITY THAT IS 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 RETURN FOR THE TAXABLE YEAR IN WHICH THE CALENDAR YEAR ENDS.

D. SUBJECT TO SUBSECTION G OF THIS SECTION, THE AMOUNT OF THE CREDIT IS:

1. ONE CENT PER KILOWATT-HOUR OF THE FIRST TWO HUNDRED THOUSAND MEGAWATT-HOURS OF ELECTRICITY PRODUCED BY A QUALIFIED ENERGY GENERATOR IN THE CALENDAR YEAR USING A 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) FOUR CENTS PER KILOWATT-HOUR IN THE FIRST CALENDAR YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

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

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

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

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

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

(g) TWO CENTS PER KILOWATT-HOUR IN THE SEVENTH CALENDAR YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

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

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

(j) ONE CENT PER KILOWATT-HOUR IN THE TENTH CALENDAR YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

E. TO QUALIFY FOR THE PURPOSES OF THIS SECTION, AN 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.

F. TO BE ELIGIBLE FOR THE CREDIT UNDER THIS SECTION, THE TAXPAYER MUST APPLY TO THE DEPARTMENT, ON A FORM PRESCRIBED BY THE DEPARTMENT, FOR CERTIFICATION OF THE CREDIT. THE DEPARTMENT SHALL ONLY ACCEPT APPLICATIONS BEGINNING JANUARY 2 THROUGH JANUARY 31 OF THE YEAR FOLLOWING THE CALENDAR YEAR FOR WHICH THE CREDIT IS BEING REQUESTED. THE APPLICATION SHALL INCLUDE:

1. THE NAME, ADDRESS AND 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 THAT IS CLAIMED.

4. THE DATE THE QUALIFIED ENERGY GENERATOR BEGAN PRODUCING COMMERCIALLY MARKETABLE AMOUNTS OF ELECTRICITY.

5. ANY ADDITIONAL INFORMATION THAT THE DEPARTMENT REQUIRES.

G. THE DEPARTMENT SHALL REVIEW EACH APPLICATION UNDER SUBSECTION F OF THIS SECTION AND CERTIFY TO THE TAXPAYER THE AMOUNT OF THE CREDIT THAT IS AUTHORIZED. THE AMOUNT OF THE CREDIT FOR ANY CALENDAR YEAR SHALL NOT EXCEED TWO MILLION DOLLARS PER FACILITY THAT PRODUCES ELECTRICITY USING RENEWABLE

ENERGY RESOURCES. CREDITS ARE ALLOWED UNDER THIS SECTION AND SECTION 43-1164.02 ON A FIRST COME, FIRST SERVED BASIS. THE DEPARTMENT SHALL NOT AUTHORIZE TAX CREDITS UNDER THIS SECTION AND SECTION 43-1164.02 THAT EXCEED IN THE AGGREGATE A TOTAL OF TWENTY MILLION DOLLARS FOR ANY CALENDAR YEAR. THE FIRST TIME THAT A TAXPAYER SUBMITS A QUALIFIED APPLICATION FOR A QUALIFIED ENERGY GENERATOR UNDER SUBSECTION F OF THIS SECTION, THE DEPARTMENT SHALL ADD THE TAXPAYER'S NAME TO A CREDIT AUTHORIZATION LIST THAT IS MAINTAINED IN THE ORDER IN WHICH QUALIFIED APPLICATIONS ARE FIRST RECEIVED BY THE DEPARTMENT ON BEHALF OF THE QUALIFIED ENERGY GENERATOR. A TAXPAYER'S POSITION ON THE CREDIT AUTHORIZATION LIST SHALL BE DETERMINED IN THE FIRST YEAR THE TAXPAYER SUBMITS AN APPLICATION UNDER SUBSECTION F OF THIS SECTION FOR THE QUALIFIED ENERGY GENERATOR. THE TAXPAYER'S POSITION ON THE CREDIT AUTHORIZATION LIST FOR A PARTICULAR QUALIFIED ENERGY GENERATOR SHALL REMAIN UNCHANGED FOR THE TEN YEARS THAT ARE SPECIFIED IN SUBSECTION B, PARAGRAPH 2 OF THIS SECTION OR UNTIL A YEAR IN WHICH THE TAXPAYER FAILS TO SUBMIT A TIMELY APPLICATION UNDER SUBSECTION F OF THIS SECTION OR OTHERWISE FAILS TO COMPLY WITH THIS SECTION. 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 APPLICATION FOR A QUALIFIED ENERGY GENERATOR THAT QUALIFIES FOR THE CREDIT. IF AN APPLICATION IS RECEIVED THAT, IF AUTHORIZED, WOULD REQUIRE THE DEPARTMENT TO EXCEED THE TWENTY MILLION DOLLAR LIMIT, THE DEPARTMENT SHALL GRANT THE APPLICANT ONLY THE REMAINING CREDIT AMOUNT THAT WOULD NOT EXCEED THE TWENTY MILLION DOLLAR LIMIT. AFTER THE DEPARTMENT AUTHORIZES TWENTY MILLION DOLLARS IN TAX CREDITS, THE DEPARTMENT SHALL DENY ANY SUBSEQUENT APPLICATIONS THAT ARE RECEIVED FOR THAT CALENDAR YEAR. THE DEPARTMENT SHALL NOT AUTHORIZE ANY ADDITIONAL TAX CREDITS THAT EXCEED THE TWENTY MILLION DOLLAR LIMIT EVEN IF THE AMOUNTS THAT HAVE BEEN CERTIFIED TO ANY TAXPAYER WERE NOT CLAIMED OR A TAXPAYER OTHERWISE FAILS TO MEET THE REQUIREMENTS TO CLAIM THE ADDITIONAL CREDIT.

H. CO-OWNERS OF A QUALIFIED ENERGY GENERATOR, INCLUDING 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 EACH CLAIM THE PRO RATA SHARE OF THE CREDIT ALLOWED UNDER THIS SECTION BASED ON 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.

I. 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, THE AMOUNT OF THE CLAIM NOT USED TO OFFSET TAXES UNDER THIS TITLE MAY BE CARRIED FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS AS A CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY.

J. THE DEPARTMENT SHALL ADOPT RULES AND PUBLISH AND PRESCRIBE FORMS AND PROCEDURES AS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS SECTION.

K. 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.

2. "QUALIFIED ENERGY GENERATOR" MEANS A FACILITY THAT HAS AT LEAST FIVE MEGAWATTS GENERATING CAPACITY, THAT IS LOCATED ON LAND IN THIS STATE OWNED OR LEASED BY THE TAXPAYER, THAT PRODUCES ELECTRICITY USING A QUALIFIED ENERGY RESOURCE AND THAT SELLS THAT ELECTRICITY TO AN UNRELATED ENTITY, UNLESS THE ELECTRICITY IS SOLD TO A PUBLIC SERVICE CORPORATION.

3. "QUALIFIED ENERGY RESOURCE" MEANS A RESOURCE THAT GENERATES ELECTRICITY THROUGH THE USE OF ONLY THE FOLLOWING ENERGY SOURCES:

(a) SOLAR LIGHT.

(b) SOLAR HEAT.

(c) WIND.

(d) BIOMASS.

Sec. 6. Title 43, chapter 11, article 6, Arizona Revised Statutes, is amended by adding section 43-1164.02, to read:

43-1164.02. <u>Renewable energy production tax credit; definitions</u>

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 FROM AND AFTER DECEMBER 31, 2010 AND BEFORE JANUARY 1, 2021.

2. FOR TEN 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. THAT SAME DATE 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 CREDIT AUTHORIZED BY THIS SECTION IS BASED ON THE ELECTRICITY THAT IS 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 RETURN FOR THE TAXABLE YEAR IN WHICH THE CALENDAR YEAR ENDS.

D. SUBJECT TO SUBSECTION G OF THIS SECTION, THE AMOUNT OF THE CREDIT IS:

1. ONE CENT PER KILOWATT-HOUR OF THE FIRST TWO HUNDRED THOUSAND MEGAWATT-HOURS OF ELECTRICITY PRODUCED BY A QUALIFIED ENERGY GENERATOR IN THE CALENDAR YEAR USING A 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) FOUR CENTS PER KILOWATT-HOUR IN THE FIRST CALENDAR YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

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

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

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

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

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

(g) TWO CENTS PER KILOWATT-HOUR IN THE SEVENTH CALENDAR YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

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

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

(j) ONE CENT PER KILOWATT-HOUR IN THE TENTH CALENDAR YEAR IN WHICH THE QUALIFIED ENERGY GENERATOR PRODUCES ELECTRICITY.

E. TO QUALIFY FOR THE PURPOSES OF THIS SECTION, AN 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.

F. TO BE ELIGIBLE FOR THE CREDIT UNDER THIS SECTION, THE TAXPAYER MUST APPLY TO THE DEPARTMENT, ON A FORM PRESCRIBED BY THE DEPARTMENT, FOR CERTIFICATION OF THE CREDIT. THE DEPARTMENT SHALL ONLY ACCEPT APPLICATIONS BEGINNING JANUARY 2 THROUGH JANUARY 31 OF THE YEAR FOLLOWING THE CALENDAR YEAR FOR WHICH THE CREDIT IS BEING REQUESTED. THE APPLICATION SHALL INCLUDE:

1. THE NAME, ADDRESS AND 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 THAT IS CLAIMED.

4. THE DATE THE QUALIFIED ENERGY GENERATOR BEGAN PRODUCING COMMERCIALLY MARKETABLE AMOUNTS OF ELECTRICITY.

5. ANY ADDITIONAL INFORMATION THAT THE DEPARTMENT REQUIRES.

G. THE DEPARTMENT SHALL REVIEW EACH APPLICATION UNDER SUBSECTION F OF THIS SECTION AND CERTIFY TO THE TAXPAYER THE AMOUNT OF THE CREDIT THAT IS AUTHORIZED. THE AMOUNT OF THE CREDIT FOR ANY CALENDAR YEAR SHALL NOT EXCEED TWO MILLION DOLLARS PER FACILITY THAT PRODUCES ELECTRICITY USING RENEWABLE ENERGY RESOURCES. CREDITS ARE ALLOWED UNDER THIS SECTION AND SECTION 43-1083.02 ON A FIRST COME, FIRST SERVED BASIS. THE DEPARTMENT SHALL NOT AUTHORIZE TAX CREDITS UNDER THIS SECTION AND SECTION 43-1083.02 THAT EXCEED IN THE AGGREGATE A TOTAL OF TWENTY MILLION DOLLARS FOR ANY CALENDAR YEAR. THE FIRST TIME THAT A TAXPAYER SUBMITS A QUALIFIED APPLICATION FOR A QUALIFIED ENERGY GENERATOR UNDER SUBSECTION F OF THIS SECTION, THE DEPARTMENT SHALL ADD THE TAXPAYER'S NAME TO A CREDIT AUTHORIZATION LIST THAT IS MAINTAINED IN THE ORDER IN WHICH QUALIFIED APPLICATIONS ARE FIRST RECEIVED BY THE DEPARTMENT ON BEHALF OF THE QUALIFIED ENERGY GENERATOR. A TAXPAYER'S POSITION ON THE CREDIT AUTHORIZATION LIST SHALL BE DETERMINED IN THE FIRST YEAR THE TAXPAYER SUBMITS AN APPLICATION UNDER SUBSECTION F OF THIS SECTION FOR THE QUALIFIED ENERGY GENERATOR. THE TAXPAYER'S POSITION ON THE CREDIT AUTHORIZATION LIST FOR A PARTICULAR QUALIFIED ENERGY GENERATOR SHALL REMAIN UNCHANGED FOR THE TEN YEARS THAT ARE SPECIFIED IN SUBSECTION B, PARAGRAPH 2 OF THIS SECTION OR UNTIL A YEAR IN WHICH THE TAXPAYER FAILS TO SUBMIT A TIMELY APPLICATION UNDER SUBSECTION F OF THIS SECTION OR OTHERWISE FAILS TO COMPLY WITH THIS SECTION. 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 APPLICATION FOR A QUALIFIED ENERGY GENERATOR THAT QUALIFIES FOR THE CREDIT. IF AN APPLICATION IS RECEIVED THAT, IF AUTHORIZED, WOULD REQUIRE THE DEPARTMENT TO EXCEED THE TWENTY MILLION DOLLAR LIMIT, THE DEPARTMENT SHALL GRANT THE APPLICANT ONLY THE REMAINING CREDIT AMOUNT THAT WOULD NOT EXCEED THE TWENTY MILLION DOLLAR LIMIT. AFTER THE DEPARTMENT AUTHORIZES TWENTY MILLION DOLLARS IN TAX CREDITS, THE DEPARTMENT SHALL DENY ANY SUBSEQUENT APPLICATIONS THAT ARE RECEIVED FOR THAT CALENDAR YEAR. THE DEPARTMENT SHALL NOT AUTHORIZE ANY ADDITIONAL TAX CREDITS THAT EXCEED THE TWENTY MILLION DOLLAR LIMIT EVEN IF THE AMOUNTS THAT HAVE BEEN CERTIFIED TO

ANY TAXPAYER WERE NOT CLAIMED OR A TAXPAYER OTHERWISE FAILS TO MEET THE REQUIREMENTS TO CLAIM THE ADDITIONAL CREDIT.

H. CO-OWNERS OF A QUALIFIED ENERGY GENERATOR, INCLUDING CORPORATE PARTNERS IN A PARTNERSHIP AND MEMBERS OF A LIMITED LIABILITY COMPANY, MAY EACH CLAIM THE PRO RATA SHARE OF THE CREDIT ALLOWED UNDER THIS SECTION BASED ON 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.

I. 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, THE AMOUNT OF THE CLAIM NOT USED TO OFFSET TAXES UNDER THIS TITLE MAY BE CARRIED FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS AS A CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY.

J. THE DEPARTMENT SHALL ADOPT RULES AND PUBLISH AND PRESCRIBE FORMS AND PROCEDURES AS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS SECTION.

K. 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.

2. "QUALIFIED ENERGY GENERATOR" MEANS A FACILITY THAT HAS AT LEAST FIVE MEGAWATTS GENERATING CAPACITY, THAT IS LOCATED ON LAND IN THIS STATE OWNED OR LEASED BY THE TAXPAYER, THAT PRODUCES ELECTRICITY USING A QUALIFIED ENERGY RESOURCE AND THAT SELLS THAT ELECTRICITY TO AN UNRELATED ENTITY, UNLESS THE ELECTRICITY IS SOLD TO A PUBLIC SERVICE CORPORATION.

3. "QUALIFIED ENERGY RESOURCE" MEANS A RESOURCE THAT GENERATES ELECTRICITY THROUGH THE USE OF ONLY THE FOLLOWING ENERGY SOURCES:

(a) SOLAR LIGHT.

(b) SOLAR HEAT.

(c) WIND.

(d) BIOMASS.

Sec. 7. Section 43-1168, Arizona Revised Statutes, as amended by Laws 2008, chapter 290, section 5, is amended to read:

43-1168. Credit for increased research activities

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

1. The amount of the credit is computed as follows:

(a) Add:

(i) The excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code.

(ii) The basic research payments determined under section 41(e)(1)(A) of the internal revenue code.

(b) If the sum computed under subdivision (a) is two million five hundred thousand dollars or less, the credit is equal to twenty-four per cent of that amount.

(c) If the sum computed under subdivision (a) is over two million five hundred thousand dollars, the credit is equal to six hundred thousand dollars plus fifteen per cent of any amount exceeding two million five hundred thousand dollars, except that:

(i) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

(ii) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including corporate partners in a partnership, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 1993.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. EXCEPT AS PROVIDED BY SUBSECTION D OF THIS SECTION, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this

1 title, the amount of the credit not used to offset taxes may be carried
2 forward to the next fifteen consecutive taxable years. The amount of credit
3 carryforward from taxable years beginning from and after December 31, 2000
4 through December 31, 2002 that may be used under this subsection in any
5 taxable year may not exceed the taxpayer's tax liability under this title or
6 five hundred thousand dollars, whichever is less, minus the credit under this
7 section for the current taxable year's qualified research expenses. The
8 amount of credit carryforward from taxable years beginning from and after
9 December 31, 2002 that may be used under this subsection in any taxable year
10 may not exceed the taxpayer's tax liability under this title minus the credit
11 under this section for the current taxable year's qualified research
12 expenses. A TAXPAYER THAT CARRIES FORWARD ANY AMOUNT OF CREDIT UNDER THIS
13 SUBSECTION MAY NOT THEREAFTER CLAIM A REFUND OF ANY AMOUNT OF THE CREDIT
14 UNDER SUBSECTION D OF THIS SECTION.
15 C. If a taxpayer has qualified research expenses that are carried
16 forward from taxable years beginning before January 1, 2001, the amount of
17 the expenses carried forward shall be converted to a credit carryforward by
18 multiplying the amount of the qualified expenses carried forward by twenty
19 per cent. A credit carryforward determined under this subsection may be
20 carried forward to not more than fifteen years from the year in which the
21 expenses were incurred. The amount of credit carryforward from taxable years
22 beginning before January 1, 2001 that may be used under this subsection in
23 any taxable year may not exceed the taxpayer's tax liability under this title
24 or five hundred thousand dollars, whichever is less, minus the credit under
25 this section for the current taxable year's qualified research expenses. The
26 total amount of credit carryforward from taxable years beginning before
27 January 1, 2003 that may be used in any taxable year under subsection B and
28 this subsection may not exceed the taxpayer's tax liability under this title
29 or five hundred thousand dollars, whichever is less, minus the credit under
30 this section for the current taxable year's qualified research expenses.
31 D. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2009, IF A
32 TAXPAYER WHO CLAIMS A CREDIT UNDER THIS SECTION EMPLOYS FEWER THAN ONE
33 HUNDRED FIFTY PERSONS IN THE TAXPAYER'S TRADE OR BUSINESS AND IF THE
34 ALLOWABLE CREDIT UNDER THIS SECTION EXCEEDS THE TAXES OTHERWISE DUE UNDER
35 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS
36 TITLE, IN LIEU OF CARRYING THE EXCESS AMOUNT OF CREDIT FORWARD TO SUBSEQUENT
37 TAXABLE YEARS UNDER SUBSECTION B OF THIS SECTION, THE TAXPAYER MAY ELECT TO
38 RECEIVE A REFUND AS FOLLOWS:
39 1. THE TAXPAYER MUST APPLY TO THE DEPARTMENT OF COMMERCE FOR
40 QUALIFICATION FOR THE REFUND PURSUANT TO SECTION 41-1507 AND SUBMIT A COPY OF
41 THE DEPARTMENT OF COMMERCE'S CERTIFICATE OF QUALIFICATION TO THE DEPARTMENT
42 OF REVENUE WITH THE TAXPAYER'S INCOME TAX RETURN.
43 2. THE AMOUNT OF THE REFUND IS LIMITED TO SEVENTY-FIVE PER CENT OF THE
44 AMOUNT BY WHICH THE ALLOWABLE CREDIT UNDER THIS SECTION EXCEEDS THE

TAXPAYER'S TAX LIABILITY UNDER THIS TITLE FOR THE TAXABLE YEAR. THE REMAINDER OF THE EXCESS AMOUNT OF THE CREDIT IS WAIVED.

3. THE REFUND SHALL BE PAID IN THE MANNER PRESCRIBED BY SECTION 42-1118.

4. THE REFUND IS SUBJECT TO SETOFF UNDER SECTION 42-1122.

5. IF THE DEPARTMENT DETERMINES THAT A CREDIT REFUNDED PURSUANT TO THIS SUBSECTION IS INCORRECT OR INVALID, THE EXCESS CREDIT ISSUED MAY BE TREATED AS A TAX DEFICIENCY PURSUANT TO SECTION 42-1108.

Sec. 8. Section 43-1168, Arizona Revised Statutes, as added by Laws 2008, chapter 290, section 7, is amended to read:

43-1168. Credit for increased research activity

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

1. The amount of the credit is computed as follows:

(a) Add:

(i) The excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code.

(ii) The basic research payments determined under section 41(e)(1)(A) of the internal revenue code.

(b) If the sum computed under subdivision (a) is two million five hundred thousand dollars or less, the credit is equal to twenty per cent of that amount.

(c) If the sum computed under subdivision (a) is over two million five hundred thousand dollars, the credit is equal to five hundred thousand dollars plus eleven per cent of any amount exceeding two million five hundred thousand dollars, except that:

(i) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

(ii) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including corporate partners in a partnership, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 1993.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. EXCEPT AS PROVIDED BY SUBSECTION D OF THIS SECTION, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses. A TAXPAYER THAT CARRIES FORWARD ANY AMOUNT OF CREDIT UNDER THIS SUBSECTION MAY NOT THEREAFTER CLAIM A REFUND OF ANY AMOUNT OF THE CREDIT UNDER SUBSECTION D OF THIS SECTION.

C. If a taxpayer has qualified research expenses that are carried forward from taxable years beginning before January 1, 2001, the amount of the expenses carried forward shall be converted to a credit carryforward by multiplying the amount of the qualified expenses carried forward by twenty per cent. A credit carryforward determined under this subsection may be carried forward to not more than fifteen years from the year in which the expenses were incurred. The amount of credit carryforward from taxable years beginning before January 1, 2001 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The total amount of credit carryforward from taxable years beginning before January 1, 2003 that may be used in any taxable year under subsection B and this subsection may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses.

D. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2009, IF A TAXPAYER WHO CLAIMS A CREDIT UNDER THIS SECTION EMPLOYS FEWER THAN ONE HUNDRED FIFTY PERSONS IN THE TAXPAYER'S TRADE OR BUSINESS AND IF THE ALLOWABLE CREDIT UNDER THIS SECTION EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, IN LIEU OF CARRYING THE EXCESS AMOUNT OF CREDIT FORWARD TO SUBSEQUENT TAXABLE YEARS UNDER SUBSECTION B OF THIS SECTION, THE TAXPAYER MAY ELECT TO RECEIVE A REFUND AS FOLLOWS:

1. THE TAXPAYER MUST APPLY TO THE DEPARTMENT OF COMMERCE FOR QUALIFICATION FOR THE REFUND PURSUANT TO SECTION 41-1507 AND SUBMIT A COPY OF THE DEPARTMENT OF COMMERCE'S CERTIFICATE OF QUALIFICATION TO THE DEPARTMENT OF REVENUE WITH THE TAXPAYER'S INCOME TAX RETURN.

2. THE AMOUNT OF THE REFUND IS LIMITED TO SEVENTY-FIVE PER CENT OF THE AMOUNT BY WHICH THE ALLOWABLE CREDIT UNDER THIS SECTION EXCEEDS THE TAXPAYER'S TAX LIABILITY UNDER THIS TITLE FOR THE TAXABLE YEAR. THE REMAINDER OF THE EXCESS AMOUNT OF THE CREDIT IS WAIVED.

3. THE REFUND SHALL BE PAID IN THE MANNER PRESCRIBED BY SECTION 42-1118.

4. THE REFUND IS SUBJECT TO SETOFF UNDER SECTION 42-1122.

5. IF THE DEPARTMENT DETERMINES THAT A CREDIT REFUNDED PURSUANT TO THIS SUBSECTION IS INCORRECT OR INVALID, THE EXCESS CREDIT ISSUED MAY BE TREATED AS A TAX DEFICIENCY PURSUANT TO SECTION 42-1108.

Sec. 9. Purpose

Pursuant to section 43-223, Arizona Revised Statutes, the income tax credits enacted in sections 43-1083.02 and 43-1164.02, Arizona Revised Statutes, as added by this act, are intended to promote investment in renewable energy production using low-emission and zero-emission electricity generation technologies.

Sec. 10. Retroactivity

A. Section 43-1074.01, Arizona Revised Statutes, as amended by Laws 2008, chapter 290, section 2 and amended by this act, applies retroactively to taxable years beginning from and after December 31, 2009.

B. Section 43-1168, Arizona Revised Statutes, as amended by Laws 2008, chapter 290, section 5 and amended by this act, applies retroactively to taxable years beginning from and after December 31, 2009.

Sec. 11. Effective date

A. Sections 43-1083.02 and 43-1164.02, Arizona Revised Statutes, as added by this act, are effective and apply to taxable years beginning from and after December 31, 2010.

B. Section 43-1074.01, Arizona Revised Statutes, as added by Laws 2008, chapter 290, section 4 and amended by this act, is effective for taxable years beginning from and after December 31, 2017.

C. Section 43-1168, Arizona Revised Statutes, as added by Laws 2008, chapter 290, section 7 and amended by this act, is effective for taxable years beginning from and after December 31, 2017.

APPROVED BY THE GOVERNOR MAY 11, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.

Passed the House April 29, 2010,

by the following vote: 45 Ayes,

11 Nays, 4 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 1, 2010,

by the following vote: 28 Ayes,

1 Nays, 0 Not Voting

1 VACANT with Emergency

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1254

On reconsideration

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 29, 2010

by the following vote: 19, - Ayes,

8 Nays, 3 Not Voting

Robert L. Burns
President of the Senate

Chamein Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

3 day of May, 2010

at 8:50 o'clock A. M.

Nicole Bandle
Secretary to the Governor

Approved this 11th day of

May

at 4:35 o'clock P. M.

Jan K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 12th day of May, 2010

at 9:35 o'clock a M.

Ken Bennett
Secretary of State

S.B. 1254