



States' Biofuels Statutes

STATE OF PENNSYLVANIA

This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).

Current through the 2014 Legislative Session of the Pennsylvania State Legislature.

§ 1649.701. Establishment

There is established the Alternative Energy Production Tax Credit Program.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 701, imd. effective.

§ 1649.702. Definitions

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Alternative energy production tax credit.” The credit provided for under this chapter.

“Pass-through entity.” A partnership as defined under [section 301\(n.0\)](#)¹ of the Tax Reform Code of 1971, or a Pennsylvania S corporation as defined under section 301(n.1) of the Tax Reform Code of 1971.

“Qualified tax liability.” The liability for taxes imposed under Article III, IV or VI of the Tax Reform Code of 1971. The term does not include any tax withheld by an employer from an employee under Article III of the Tax Reform Code of 1971.

“Taxpayer.” An entity subject to tax under Article III, IV or VI of the Tax Reform Code of 1971.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 702, imd. effective.

§ 1649.703. Eligible applicants

(a) General rule.--A taxpayer who develops or constructs an alternative energy production project located in this Commonwealth with a useful life of at least four years may apply for an alternative energy production tax credit as provided under this chapter. By September 15, 2009, a taxpayer must submit an application to the department on a form prescribed by the department, setting forth the amount of the investment in an alternative energy production project that was made in the taxable year

that ended in the prior calendar year.

(b) Application.--An application shall be developed by the department and shall include:

- (1) Type and location of the alternative energy production project.
- (2) Total cost of the alternative energy production project.
- (3) Any other information deemed appropriate by the department.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 703, imd. effective.

§ 1649.704. Award of tax credits

(a) Qualification.--A taxpayer that is eligible under section 703¹ shall receive an alternative energy production tax credit for the taxable year in an amount equal to 15% of the total amount of all development, equipment and construction costs paid for alternative energy production projects, not to exceed \$1,000,000 for each taxpayer, in the taxable year to be applied against the taxpayer's qualified tax liability.

(b) Calculation.--In calculating the total amount of all development, equipment and construction costs paid for alternative energy production projects, the taxpayer shall deduct the amount of any grant or other subsidy received in relation to the alternative energy production project for which the credit is sought by the taxpayer from a Federal, State or local government entity, including an authority.

(c) Notification of applicant.--The department shall, within 90 days of receipt, review each application and notify the applicant whether or not the applicant is approved for a tax credit.

(d) Notification of Department of Revenue.--Upon determination by the department that an approved applicant has incurred costs for an alternative energy production project, the Department of Revenue shall issue to an applicant a tax certificate that sets forth the amount of alternative energy production tax credit approved for the eligible applicant.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 704, imd. effective.

§ 1649.705. Carryover, refund, assignment and carryback of credit

(a) Carryover.--If the taxpayer cannot use the entire amount of the alternative energy production tax credit for the taxable year in which the alternative energy production tax credit is first approved, the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time that the alternative energy production tax credit is carried over to a succeeding taxable year, it is to be reduced by the amount that was used as a credit during the immediately preceding taxable year. The alternative energy production tax credit provided under this chapter may be carried over and applied to succeeding taxable years for no more

than five taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) Application.--An alternative energy production tax credit approved by the department in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the alternative energy production tax credit is applied against any tax liability under subsection (a).

(c) Carryback and refund.--A taxpayer is not entitled to carry back or obtain a refund of an unused alternative energy production tax credit.

(d) Sale or assignment.--

(1) A taxpayer, upon application to and approval by the department, may sell or assign, in whole or in part, an alternative energy production project tax credit granted to the taxpayer under this chapter if no claim for allowance of the credit is filed within one year from the date the credit is approved by the department and the Department of Revenue under this act. The department, in consultation with the Department of Revenue, shall establish guidelines for the approval of applications under this subsection.

(2) Before an application is approved, the Department of Revenue must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due.

(3) Notwithstanding any other provision of law, the Department of Revenue shall assess the tax of an applicant under this subsection within 120 days of the filing of all required final returns or reports in accordance with section 806.1(a)(5) of the act of April 9, 1929 (P.L. 343, No. 176),¹ known as The Fiscal Code.

(e) Purchasers and assignees.--The purchaser or assignee of all or a portion of a tax credit under subsection (d) shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The amount of the tax credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year. The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 705, imd. effective.

§ 1649.706. Limitation on tax credits

(a) Total.--The total amount of credits approved by the department shall not exceed:

(1) \$5,000,000 in fiscal years 2008-2009 through 2011-2012.

(2) \$8,000,000 in fiscal year 2012-2013.

(3) \$10,000,000 in fiscal years 2013-2014 through 2014-2015.

(4) \$2,000,000 in fiscal year 2015-2016.

(b) Formula.--If the total amount of alternative energy production tax credits approved for all taxpayers exceeds the amount allocated for those credits, then the alternative energy production tax credit to be received by each applicant shall be the product of the allocated amount multiplied by the quotient of the alternative energy production tax credit approved for the applicant divided by the total of all alternative energy production tax credits approved for all applicants, the algebraic equivalent of which is:

taxpayer's alternative energy production tax credit = amount allocated for those credits x
(alternative energy production tax credit approved for the applicant/total of all alternative energy
production tax credits approved for all applicants).

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 706, imd. effective.

§ 1649.707. Pass-through entity

(a) General rule.--If a pass-through entity has any unused tax credit under section 705,¹ the entity may elect, in writing, according to the department's procedures, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

(b) Additional credit and limitation.--The credit provided under subsection (a) is in addition to any alternative energy production tax credit to which a shareholder, member or partner of a pass-through entity is otherwise entitled under this chapter. A pass-through entity and a shareholder, member or partner of a pass-through entity may not claim a credit under this chapter for the same alternative energy production investment.

(c) Application.--A shareholder, member or partner of a pass-through entity to whom credit is transferred under subsection (a) must immediately claim the credit in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 707, imd. effective.

§ 1649.708. Reporting

(a) General rule.--No later than September 1 of each year, the department, in consultation with the Department of Revenue, shall submit a report to the General Assembly summarizing the effectiveness of the tax credit provided under this chapter. The report shall include the name of each taxpayer utilizing the credit as of the date of the report and the amount of credits approved for or utilized by each taxpayer. The report may also include recommendation for changes in the calculation or

administration of the tax credit. The report shall be submitted to the chairman and minority chairman of the Appropriations Committee of the Senate, the chairman and minority chairman of the Finance Committee of the Senate, the chairman and minority chairman of the Appropriations Committee of the House of Representatives and the chairman and minority chairman of the Finance Committee of the House of Representatives. The report shall include the following information, which shall be separated by geographic location within this Commonwealth:

- (1) The amount of credits claimed during the fiscal year.
- (2) The number of alternative energy production projects receiving a tax credit and the dollar amount of tax credits granted under this chapter in the aggregate and by project.
- (3) The types, locations and costs of projects.
- (4) The total amount spent in this Commonwealth during the fiscal year by each alternative energy production project.
- (5) The estimated benefits of the projects in creating alternative energy.
- (6) The total amount of tax revenues generated in this Commonwealth from alternative energy production projects.
- (7) The total number of jobs created during the fiscal year by alternative energy production projects.

(b) Public information.--Notwithstanding any law providing for confidentiality of tax records, the following shall be public information:

- (1) Information in the report under subsection (a) which shall be posted on the Internet websites of the Department of Revenue and the department.
- (2) The identity of each taxpayer utilizing a tax credit under this chapter and the amount of credits approved and utilized by each taxpayer which shall be made available annually, beginning no later than one year after the credits were granted.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 708, imd. effective.

§ 1649.709. Termination

The department shall not approve an alternative energy production tax credit under this chapter for taxable years ending after December 31, 2016.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 709, imd. effective.

§ 1649.710. Regulations

The department, in cooperation with the Department of Revenue, shall promulgate regulations necessary for the implementation and administration of this chapter.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 710, imd. effective.

§ 1649.711. Applicability of chapter

This chapter shall apply as follows:

- (1) Except as provided in paragraph (2), this chapter shall apply to taxable years beginning after December 31, 2007.
- (2) The tax credit under this chapter shall apply to alternative energy production projects commencing on or after the effective date of this section.

Credits 2008, July 9, P.L. 1873, No. 1 (Spec. Sess. No. 1), § 711, imd. effective.