

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: H3/23/09

# A Bill

HOUSE BILL 2008

5 By: Representative Webb  
6  
7

## For An Act To Be Entitled

9 AN ACT TO ENCOURAGE AND PROMOTE THE RECOVERY AND  
10 REUSE OF LANDFILL GAS AS AN ALTERNATIVE ENERGY  
11 SOURCE BY ALLOWING AN INCOME TAX CREDIT; AND FOR  
12 OTHER PURPOSES.  
13

### Subtitle

14 *THE LANDFILL GAS RECOVERY INCOME TAX*  
15 *CREDIT ACT OF 2009.*  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 *SECTION 1. Arkansas Code Title 26, Chapter 51, is amended to add an*  
22 *additional subchapter to read as follows:*

23 *SUBCHAPTER 22 – LANDFILL GAS RECOVERY INCOME TAX CREDIT ACT OF 2009*  
24 *26-51-2201. Title.*

25 *This subchapter shall be known and may be cited as the "Landfill Gas*  
26 *Recovery Income Tax Credit of 2009".*  
27

28 *26-51-2202. Intent.*

29 *The intent of this subchapter is to:*

30 *(1) Increase the use of landfill gas to be used as an alternative*  
31 *energy source in the state;*

32 *(2) Reduce the contribution to global warming from the uncontrolled*  
33 *release of landfill gas; and*

34 *(3) Encourage the recapture and reuse of landfill gas through the*  
35 *allowance of a state income tax credit.*  
36



1           26-51-2203. Definitions.

2           As used in this section:

3                   (1) "Cost" means:

4                           (A) For a purchase involving a transfer of title or a  
5 finance lease, the amount of the purchase price; and

6                           (B) For a lease that is not a finance lease but that is a  
7 purchase, the amount of the lease payments due to be paid during the term of  
8 the lease after deducting any portion of the lease payments attributable to  
9 interest, insurance, and taxes;

10                   (2) "Equipment" means any device used directly to collect,  
11 clean, compress, transport, and use landfill gas as an alternative energy  
12 source other than such devices that are otherwise required by state or  
13 federal law or regulation;

14                   (3) "Finance lease" means a lease agreement that is treated by a  
15 lessee as a purchase for income tax purposes under the Income Tax Act of  
16 1929, 26-51-101 et seq.;

17                   (4) "Landfill gas" means the gases generated by the  
18 decomposition of waste in a landfill;

19                   (5) "Maintenance" means expenditures after damage or after  
20 deterioration of equipment that is used to keep the equipment operating for  
21 its original purpose;

22                   (6) "Purchase" means a:

23                           (A) Transaction under which title to an item is  
24 transferred for consideration; or

25                           (B) Lease contract for a period of at least three (3)  
26 years, whether or not the title to the item is transferred at the end of the  
27 period; and

28                   (7) "Repair" means expenditures used to restore existing  
29 equipment to its original or similar condition and use.

30  
31           26-51-2204. Landfill gas recovery tax credit.

32           (a) There is allowed an income tax credit against the income tax  
33 imposed by the Income Tax Act of 1929, § 26-51-101 et seq., equal to thirty  
34 percent (30%) of the cost of equipment used to collect, clean, compress,  
35 transport, and use landfill gas as an alternative energy source for  
36 commercial purposes, including without limitation:

1           (1) Designing the landfill methane gas collection system or  
2 equipment;

3           (2) Installing equipment;

4           (3) Collecting the landfill gas;

5           (4) Cleaning the equipment;

6           (5) Compressing the landfill gas;

7           (6) Transporting the landfill gas; and

8           (7) Using the landfill gas.

9           (b) To claim the income tax credit under this subchapter, a taxpayer  
10 shall obtain a certification from an Arkansas-registered professional  
11 engineer that:

12           (1) The taxpayer is engaged in the business of collecting,  
13 cleaning, compressing, transporting, or using landfill gas as an alternative  
14 energy source for commercial purposes, whether or not for profit;

15           (2) The equipment purchased and claimed for the income tax  
16 credit under this subchapter is used to collect, clean, compress, transport,  
17 and use landfill gas as an alternative energy source;

18           (3) The equipment purchased and claimed for income tax credit is  
19 not otherwise mandated for the operation of the landfill under applicable  
20 state or federal law or regulations; and

21           (4) The landfill where the equipment is installed is properly  
22 permitted under the laws and regulations of the state.

23           (c) An income tax credit under this subchapter shall not include the  
24 cost of:

25           (1) A feasibility study for collecting, cleaning, compressing,  
26 transporting, and using landfill gas as an alternative energy source;

27           (2) Equipment that is used to service the waste reduction,  
28 reuse, or recycling equipment;

29           (3) Replacement parts that keep existing equipment in its  
30 ordinary efficient operating condition;

31           (4) Replacement of existing equipment unless the replacement  
32 provides greater capacity for collecting, cleaning, compressing,  
33 transporting, and using landfill gas;

34           (5) Service contracts;

35           (6) Sales or use tax; and

36           (7) Maintenance and repair.

1  
2 26-51-2205. Taxpayer refund of credit.

3 (a) A taxpayer shall refund the amount of the income tax credit under  
4 this subchapter if:

5 (1) Within three (3) years of the taxable year for which the  
6 income tax credit under this subchapter is allowed the taxpayer ceases to use  
7 the equipment or to operate the equipment; or

8 (2) The equipment claimed for the income tax credit under this  
9 subchapter is:

10 (A) Removed from the state;

11 (B) Intentionally disposed of or destroyed; or

12 (C) Transferred to another person.

13 (b) A taxpayer who is required to refund the income tax credit under  
14 this subchapter shall refund the amount of the income tax credit that was  
15 deducted from income tax liability which exceeds the following amounts:

16 (1) Within the first year, zero dollars (\$0);

17 (2) Within the second year, thirty-three percent (33%) of the  
18 amount of income tax credit allowed; and

19 (3) Within the third year, sixty-seven percent (67%) of the  
20 income tax credit allowed.

21 (c) A refund required under this section only applies to an income tax  
22 credit under this subchapter given for a particular piece of equipment for  
23 collecting, cleaning, compressing, transporting, and using landfill gas as an  
24 alternative energy source.

25 (d) A taxpayer who is required to refund all or part of an income tax  
26 credit under this section is not eligible to carry forward any amount of the  
27 income tax credit under this subchapter which had not been used as of the  
28 date the refund is required.

29  
30 26-51-2206. Limit on income tax credit – Apportionment.

31 (a) A taxpayer engaged in the business of collecting, cleaning,  
32 compressing, transporting, and using landfill gas as an alternative energy  
33 source is eligible for only one (1) income tax credit under this subchapter.

34 (b) The sale or transfer of equipment used to collect, clean,  
35 compress, transport, and use landfill gas as an alternative energy source  
36 does not recreate the eligibility for an income tax credit under this

1 subchapter.

2 (c) The amount of the income tax credit under this subchapter that may  
3 be used by a taxpayer for a taxable year may not exceed the amount of state,  
4 individual, or corporate income tax otherwise due.

5 (d) A taxpayer who receives an income tax credit under this subchapter  
6 is not allowed to claim any other state or local tax credit or deduction  
7 based on the equipment used for the income tax credit under this subchapter,  
8 except for the deduction for normal depreciation.

9 (e) An unused income tax credit under this subchapter may be carried  
10 forward for a maximum of three (3) consecutive years following the taxable  
11 year in which the income tax credit under this subchapter originated.

12 (f) For a proprietorship or partnership, the amount of the income tax  
13 credit under this subchapter for any taxable year shall be apportioned to  
14 each proprietor or partner in proportion to the amount of income from the  
15 proprietorship or partnership which the proprietor or partner is required to  
16 include as gross income.

17 (g) For a Subchapter S corporation, the amount of an income tax credit  
18 under this subchapter, for any taxable year shall be apportioned among the  
19 persons who are shareholders of the Subchapter S corporation on the last day  
20 of the taxable year based on each person's percentage of ownership.

21 (h) For an estate or trust:

22 (1) The amount of an income tax credit under this subchapter for  
23 any taxable year shall be apportioned between the estate or trust and the  
24 beneficiaries on the basis of the income of the estate or trust allocable to  
25 each beneficiary; and

26 (2) A beneficiary to whom any amount of the income tax credit  
27 under this subchapter has been apportioned under this subsection is allowed,  
28 subject to limitations contained in this section, an income tax credit under  
29 this subchapter for the amount apportioned.

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31 SECTION 2. Effective Date. Section 1 of this act is effective for tax  
32 years beginning on or after January 1, 2009.

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36 /s/ Webb