

**Hall of the House of Representatives**  
87th General Assembly - Regular Session, 2009  
**Amendment Form**

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**Subtitle of House Bill No. 2008**

"THE METHANE GAS RECOVERY INCOME TAX CREDIT ACT OF 2009."

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**Amendment No. 1 to House Bill No. 2008.**

Amend House Bill No. 2008 as originally introduced:

Page 1, line 10 of the Title, delete "METHANE"

AND

Delete the subtitle in its entirety and substitute:

"THE LANDFILL GAS RECOVERY INCOME TAX CREDIT ACT OF 2009."

AND

Delete all the language after the enacting clause and substitute:

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

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

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

26-51-2202. Intent.

The intent of this subchapter is to:

- (1) Increase the use of landfill gas to be used as an alternative energy source in the state;
- (2) Reduce the contribution to global warming from the uncontrolled release of landfill gas; and
- (3) Encourage the recapture and reuse of landfill gas through the allowance of a state income tax credit.

26-51-2203. Definitions.

As used in this section:

- (1) "Cost" means:
  - (A) For a purchase involving a transfer of title or a finance lease, the amount of the purchase price; and



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

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

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

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

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

(6) "Purchase" means a:

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

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

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

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

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

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

(2) Installing equipment;

(3) Collecting the landfill gas;

(4) Cleaning the equipment;

(5) Compressing the landfill gas;

(6) Transporting the landfill gas; and

(7) Using the landfill gas.

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

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

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

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

(4) The landfill where the equipment is installed is properly

permitted under the laws and regulations of the state.

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

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

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

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

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

(5) Service contracts;

(6) Sales or use tax; and

(7) Maintenance and repair.

26-51-2205. Taxpayer refund of credit.

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

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

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

(A) Removed from the state;

(B) Intentionally disposed of or destroyed; or

(C) Transferred to another person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) For an estate or trust:

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

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

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

The Amendment was read \_\_\_\_\_  
By: Representative Webb  
LMG/LMG - 03-20-2009 09:18  
LMG314

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Chief Clerk