

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

A Bill

HOUSE BILL 2008

4
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 METHANE GAS AS AN ALTERNATIVE
11 ENERGY SOURCE BY ALLOWING AN INCOME TAX CREDIT;
12 AND FOR OTHER PURPOSES.

Subtitle

14 THE METHANE GAS RECOVERY INCOME TAX
15 CREDIT ACT OF 2009.
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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 METHANE 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 "Methane 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 methane gas to be used as an
31 alternative energy source in the state;

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

34 (3) Encourage the recapture and reuse of landfill methane gas
35 through the allowance of a state income tax credit.
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1 26-51-2203. Definitions.

2 As used in this section:

3 (1) "Cost" means:

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

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

10 (2)(A) "Equipment" means any device used directly to collect,
 11 clean, compress, transport, and use landfill methane gas an alternative
 12 energy source;

13 (B) "Equipment" includes machinery, piping, or equipment
 14 that keeps existing machinery or equipment in running order by providing
 15 repair, maintenance, adjustment, inspection, or supplies;

16 (3) "Finance lease" means a lease agreement that is treated by a
 17 lessee as a purchase for income tax purposes under the Income Tax Act of
 18 1929, 26-51-101 et seq.;

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

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

24 (6) "Purchase" means a:

25 (A) transaction under which title to an item is
 26 transferred for consideration; or

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

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

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 33 26-51-2204. Methane Gas Recovery Tax Credit.

34 (a) There is allowed an income tax credit against the income tax
 35 imposed by the Income Tax Act of 1929, § 26-51-101 et seq., equal to thirty
 36 percent (30%) of the cost of equipment used to collect, clean, compress,

1 transport, and use landfill methane gas as a alternative energy source for
2 commercial purposes, including without limitation:

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

5 (2) Installing equipment;

6 (3) Collecting the landfill methane gas;

7 (4) Cleaning the equipment;

8 (5) Compressing the landfill methane gas;

9 (6) Transporting the landfill methane gas; and

10 (7) Using the landfill methane gas.

11 (b) To claim the income tax credit under this subchapter, a taxpayer
12 shall obtain a certification from the Director of the Arkansas Department of
13 Environmental Quality to the Revenue Division of the Department of Finance
14 and Administration that:

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

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

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

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

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

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

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

33 (5) Service contracts;

34 (6) Sales or use tax; and

35 (7) Maintenance and repair.

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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; or

(3) The director finds that the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders that clearly indicate:

(A) A disregard for environmental regulation; or

(B) A pattern of prohibited conduct that could reasonably be expected to result in an adverse environmental impact.

(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 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 methane gas as an alternative energy source.

(d) A taxpayer who is required to refund 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,

1 compressing, transporting, and using landfill methane gas as an alternative
 2 energy source is only eligible for one (1) income tax credit under this
 3 subchapter.

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

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

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

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

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

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

27 (h) For an estate or trust:

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

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

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1 26-51-2207. Rules.

2 (a) The Arkansas Department of Environmental Quality shall promulgate
3 rules to administer the certification requirements under this subchapter.

4 (1) The rules may include requirements for taxpayers seeking an
5 income tax credit under this subchapter including without limitation:

6 (A) Technical specifications for the equipment;

7 (B) Demonstration of the equipment; and

8 (C) Appropriate documentation and informational
9 requirements necessary for the Arkansas Department of Environmental Quality
10 to evaluate the equipment.

11 (2) When promulgating rules under this subchapter, the Arkansas
12 Department of Environmental Quality shall draft rules that encourage, but not
13 require, the use of an Arkansas contractor.

14 (b) The Department of Finance and Administration shall promulgate
15 rules to administer the income tax credit under this subchapter.

16 (c) To determine eligibility for the income tax credit under this
17 subchapter or to ensure that the machinery or equipment is being utilized in
18 the required manner, the Arkansas Department of Environmental Quality and the
19 Department of Finance and Administration may inspect facilities and records
20 of a taxpayer requesting or receiving an income tax credit under this
21 subchapter.

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23 SECTION 2. Effective Date.

24 (a) This act is effective for tax years beginning on or after January
25 1, 2009.

26 (b) The Arkansas Department of Environmental Quality may not certify
27 an application for an income tax credit under this act before July 1, 2009.

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