

REFERENCE TITLE: heat and power tax credit

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2328

Introduced by
Representative Mason

AN ACT

AMENDING TITLE 41, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1511; AMENDING SECTION 43-222, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1083.01; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1177; RELATING TO INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 41, chapter 10, article 1, Arizona Revised Statutes,
3 is amended by adding section 41-1511, to read:

4 41-1511. Combined heat and power production incentives:
5 definitions

6 A. THE DEPARTMENT OF COMMERCE SHALL ESTABLISH A PROCEDURE FOR
7 IDENTIFYING COMBINED HEAT AND POWER EQUIPMENT OR SYSTEMS THAT QUALIFY FOR THE
8 PURPOSES OF THE ENERGY PRODUCTION TAX CREDITS UNDER SECTIONS 43-1083.01 AND
9 43-1177.

10 B. TO QUALIFY FOR THE TAX CREDITS, AN INDIVIDUAL, A BUSINESS, OR AN
11 ENTITY THAT IS EXEMPT FROM TAX PURSUANT TO TITLE 43, CHAPTER 12, MUST APPLY
12 TO THE DEPARTMENT, ON A FORM PRESCRIBED BY THE DEPARTMENT, FOR CERTIFICATION
13 OF THE EQUIPMENT OR SYSTEM. THE DEPARTMENT SHALL RECEIVE APPLICATIONS
14 BEGINNING FROM AND AFTER NOVEMBER 1, 2008 THROUGH DECEMBER 31, 2012. THE
15 APPLICATION MUST INCLUDE:

16 1. THE NAME, ADDRESS, TELEPHONE NUMBER AND TAXPAYER IDENTIFICATION
17 NUMBER OF THE APPLICANT.

18 2. THE NAME, ADDRESS AND TELEPHONE NUMBER OF A CONTACT PERSON FOR THE
19 APPLICANT.

20 3. THE DATE THAT THE COMBINED HEAT AND POWER EQUIPMENT OR SYSTEM IS
21 EXPECTED TO BEGIN OPERATION.

22 4. THE SITE WHERE THE EQUIPMENT OR SYSTEM IS LOCATED.

23 5. THE TYPE OF EQUIPMENT OR SYSTEM AS DESCRIBED IN THIS SECTION.

24 6. ANY ADDITIONAL INFORMATION THAT THE DEPARTMENT MAY REQUIRE.

25 C. BEGINNING JANUARY 1, 2009, AN INDIVIDUAL, A BUSINESS, OR AN ENTITY
26 THAT IS EXEMPT FROM TAX PURSUANT TO TITLE 43, CHAPTER 12, THAT PRODUCES OR
27 USES ELECTRICAL OR MECHANICAL ENERGY IN THIS STATE FROM EQUIPMENT OR A SYSTEM
28 THAT HAS BEEN CERTIFIED UNDER SUBSECTION D OF THIS SECTION MAY FILE A CLAIM
29 FOR A CREDIT UNDER SECTION 43-1083.01 OR 43-1177 BASED ON THE ENERGY PRODUCED
30 BY THE EQUIPMENT OR SYSTEM DURING THE CALENDAR YEAR. THE CLAIM SHALL BE ON A
31 FORM PRESCRIBED BY THE DEPARTMENT AND SHALL INCLUDE:

32 1. A CERTIFICATION OF THE DATE THE EQUIPMENT OR SYSTEM WAS PURCHASED
33 AND THE DATE THE EQUIPMENT OR SYSTEM WAS FIRST USED BY THE TAXPAYER TO
34 PRODUCE POWER IN THIS STATE.

35 2. FOR COMBINED HEAT AND POWER EQUIPMENT OR SYSTEMS THAT ARE INSTALLED
36 AND OPERATED FOR THE SOLE BENEFIT OF THE APPLICANT OR FOR THE PURPOSE OF
37 SELLING EXCESS ELECTRICITY TO A UTILITY, ALL OF THE FOLLOWING:

38 (a) TOTAL KILOWATT HOURS OF ELECTRICITY PRODUCED OR TOTAL HORSEPOWER
39 HOURS OF POWER DURING THE TAXABLE YEAR PRODUCED BY THE TAXPAYER FROM
40 QUALIFIED ENERGY SOURCES.

41 (b) EQUIPMENT OR SYSTEM CERTIFICATION OR THERMAL ENERGY OUTPUT DATA.

42 (c) AN AFFIDAVIT CONFIRMING THAT THE COMBINED HEAT AND POWER EQUIPMENT
43 OR SYSTEM COMPLIES WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL ENVIRONMENTAL
44 LAWS, RULES AND REGULATIONS.

45 (d) ANY ADDITIONAL INFORMATION OR DOCUMENTATION THE DEPARTMENT MAY
46 REQUIRE.

1 3. FOR COMBINED HEAT AND POWER EQUIPMENT OR SYSTEMS THAT ARE BUILT FOR
2 THE PURPOSE OF SELLING EXCESS ELECTRICITY PRODUCED TO A UTILITY COMPANY, ALL
3 OF THE FOLLOWING:

4 (a) EVIDENCE OF A CONTRACT ENTERED INTO BETWEEN THE APPLICANT AND A
5 UTILITY COMPANY.

6 (b) EVIDENCE THAT THE EQUIPMENT OR SYSTEM MEETS AN INSTITUTE OF
7 ELECTRICAL AND ELECTRONIC ENGINEERS INTERCONNECTION STANDARD AS MODIFIED BY
8 THE UTILITY COMPANY'S INTERCONNECT STANDARDS, RULES, REGULATIONS AND
9 APPLICABLE TARIFF PROVISIONS.

10 4. FOR AN ENTITY THAT IS EXEMPT FROM TAX PURSUANT TO TITLE 43, CHAPTER
11 12, DESIGNATION OF THE RECIPIENT OF THE CREDIT. ONLY THE TAXPAYER THAT
12 FINANCED, INSTALLED OR DEVELOPED THE QUALIFIED ENERGY RESOURCES FOR THE TAX
13 EXEMPT ENTITY MAY BE DESIGNATED AS THE RECIPIENT OF THE CREDIT.

14 D. THE DEPARTMENT SHALL REVIEW EACH CLAIM FOR CREDIT UNDER SUBSECTION
15 C OF THIS SECTION AND EITHER CERTIFY THE EQUIPMENT OR SYSTEM AS QUALIFYING
16 FOR PURPOSES OF THE ENERGY PRODUCTION TAX CREDITS WITH THE AMOUNT OF CREDIT
17 THAT IS AUTHORIZED, OR PROVIDE REASONS FOR ITS DENIAL, WITHIN SIXTY DAYS
18 AFTER RECEIVING A COMPLETE APPLICATION. THE DEPARTMENT SHALL SEND COPIES OF
19 THE CERTIFICATIONS TO THE DEPARTMENT OF REVENUE. THE CERTIFICATION SHALL
20 INCLUDE:

- 21 1. A UNIQUE IDENTIFYING NUMBER FOR EACH CERTIFIED INSTALLATION.
- 22 2. THE AMOUNT OF THE CREDIT AUTHORIZED.
- 23 3. THE CALENDAR YEAR FOR WHICH THE CREDIT IS AUTHORIZED.
- 24 4. THE NAME AND ADDRESS OF THE TAXPAYER THAT WILL BE ALLOWED TO CLAIM
25 THE CREDIT.

26 E. SUBJECT TO SUBSECTION F OF THIS SECTION, THE AMOUNT OF THE CREDIT
27 IS EQUAL TO THE TOTAL KILOWATT HOURS OF ELECTRICITY PRODUCED BY THE TAXPAYER
28 DURING THE CALENDAR YEAR FROM QUALIFIED ENERGY SOURCES MULTIPLIED BY ONE AND
29 ONE-HALF CENTS, OR THE TOTAL HORSEPOWER HOURS OF POWER PRODUCED BY THE
30 TAXPAYER DURING THE CALENDAR YEAR FROM QUALIFIED ENERGY SOURCES MULTIPLIED BY
31 ONE AND ONE-TENTH CENTS, BUT THE CREDIT SHALL NOT EXCEED ONE HUNDRED THOUSAND
32 DOLLARS ANNUALLY FOR A SINGLE INSTALLATION.

33 F. THE DEPARTMENT SHALL NOT ALLOW TAX CREDITS UNDER SECTIONS
34 43-1083.01 AND 43-1177 THAT EXCEED A TOTAL OF ONE MILLION DOLLARS IN ANY
35 CALENDAR YEAR. THIS LIMIT SHALL BE APPLIED AS FOLLOWS:

36 1. IF QUALIFYING CLAIMS IN A CALENDAR YEAR EXCEED ONE MILLION DOLLARS,
37 THE DEPARTMENT SHALL AUTHORIZE THE CREDITS IN THE ORDER OF THE DATE THAT THE
38 CLAIMS ARE RECEIVED. IF A CLAIM IS RECEIVED THAT, IF APPROVED, WOULD EXCEED
39 THE ONE MILLION DOLLAR LIMIT, THE DEPARTMENT SHALL GRANT ONLY THE REMAINING
40 CREDIT AMOUNT UNDER THE LIMIT. AFTER REACHING THE ONE MILLION DOLLAR LIMIT,
41 THE DEPARTMENT SHALL DENY ANY SUBSEQUENT CLAIMS IT RECEIVES FOR THAT CALENDAR
42 YEAR.

43 2. IF QUALIFYING CLAIMS IN A CALENDAR YEAR DO NOT EXCEED ONE MILLION
44 DOLLARS, THE UNUSED AMOUNT UNDER THE LIMIT SHALL BE CARRIED FORWARD TO THE
45 FOLLOWING CALENDAR YEAR, AND THE DEPARTMENT MAY AUTHORIZE CREDITS IN THE
46 ADDITIONAL AMOUNT THAT IS CARRIED FORWARD FROM THE PREVIOUS YEAR.

1 G. INFORMATION THAT IS SUBMITTED TO THE DEPARTMENT UNDER THIS SECTION
2 IS CONFIDENTIAL AND IS NOT SUBJECT TO DISCLOSURE UNDER TITLE 39 FOR EIGHTEEN
3 MONTHS AFTER THE DATE OF THE APPLICATION, EXCEPT THAT THE TAXPAYER
4 IDENTIFICATION NUMBER SHALL BE REDACTED FROM ANY RELEASED APPLICATION.

5 H. THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF REVENUE SHALL
6 COLLABORATE IN ADOPTING RULES THAT ARE NECESSARY TO ACCOMPLISH THE INTENT AND
7 PURPOSES OF THIS SECTION.

8 I. FOR THE PURPOSES OF THIS SECTION:

9 1. "COMBINED HEAT AND POWER" MEANS THE SIMULTANEOUS OR SEQUENTIAL
10 GENERATION OF ELECTRICAL OR MECHANICAL ENERGY AND USEFUL THERMAL ENERGY USING
11 THE SAME UNIT OF FUEL, WITH A TOTAL FUEL EFFICIENCY OF SEVENTY PER CENT OR
12 GREATER. THE EQUIPMENT OR SYSTEM MUST DEMONSTRATE, OR BE CERTIFIED TO BE
13 CAPABLE OF, AT LEAST SEVENTY PER CENT TOTAL FUEL EFFICIENCY CAPABILITY.

14 2. "TOTAL FUEL EFFICIENCY" MEANS THE SUM OF MECHANICAL AND THERMAL
15 ENERGY OUTPUTS DIVIDED BY THE ENERGY INPUT MULTIPLIED BY ONE HUNDRED PER
16 CENT.

17 Sec. 2. Section 43-222, Arizona Revised Statutes, is amended to read:
18 43-222. Income tax credit review schedule

19 Each year the joint legislative income tax credit review committee
20 shall review the following income tax credits:

21 1. In 2007, sections 43-1077, 43-1078, 43-1079, 43-1080, 43-1165,
22 43-1166, 43-1167 and 43-1169.

23 2. In 2008, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and
24 43-1178.

25 3. In 2009, sections 43-1076, 43-1081.01, 43-1084, 43-1162 and
26 43-1170.01.

27 4. In 2010, sections 43-1075, 43-1075.01, 43-1079.01, 43-1087,
28 43-1088, 43-1090.01, 43-1163, 43-1163.01, 43-1167.01, 43-1175 and 43-1182.

29 5. In 2011, sections 43-1074.02, 43-1083, 43-1085, 43-1164 and
30 43-1183.

31 6. In 2012, sections 43-1073, 43-1083.01, 43-1086, 43-1089,
32 43-1089.01, 43-1089.02, 43-1090, 43-1176, 43-1177 and 43-1181.

33 Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes, is
34 amended by adding section 43-1083.01, to read:

35 43-1083.01. Credit for energy production from qualified energy
36 resources; definition

37 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2008
38 THROUGH DECEMBER 31, 2012, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY
39 THIS TITLE FOR A RESIDENT TAXPAYER WHO EITHER:

40 1. PRODUCES AND USES ELECTRICAL OR MECHANICAL ENERGY IN THIS STATE
41 FROM QUALIFIED ENERGY RESOURCES PLACED IN OPERATION AFTER DECEMBER 31, 2008.

42 2. IS DESIGNATED AS THE RECIPIENT OF THE CREDIT UNDER SECTION 41-1511,
43 SUBSECTION C, PARAGRAPH 4 BY AN ENTITY THAT IS EXEMPT FROM TAX PURSUANT TO
44 TITLE 43, CHAPTER 12 IF THE TAX EXEMPT ENTITY PRODUCES AND USES ELECTRICAL OR
45 MECHANICAL ENERGY IN THIS STATE FROM QUALIFIED ENERGY RESOURCES PLACED IN
46 OPERATION AFTER DECEMBER 31, 2008. ONLY THE TAXPAYER WHO FINANCED, INSTALLED

1 OR DEVELOPED THE QUALIFIED ENERGY RESOURCES FOR THE TAX EXEMPT ENTITY MAY BE
2 DESIGNATED AS THE RECIPIENT OF THE CREDIT.

3 B. TO QUALIFY FOR A CREDIT UNDER THIS SECTION, THE CREDIT MUST BE
4 CERTIFIED BY THE DEPARTMENT OF COMMERCE UNDER SECTION 41-1511, SUBSECTION D.
5 THE AMOUNT OF THE CREDIT IS EQUAL TO THE TOTAL KILOWATT HOURS OF ELECTRICITY
6 PRODUCED BY THE TAXPAYER DURING THE CALENDAR YEAR FROM QUALIFIED ENERGY
7 SOURCES MULTIPLIED BY ONE AND ONE-HALF CENTS, OR THE TOTAL HORSEPOWER HOURS
8 OF POWER PRODUCED BY THE TAXPAYER DURING THE CALENDAR YEAR FROM QUALIFIED
9 ENERGY SOURCES MULTIPLIED BY ONE AND ONE-TENTH CENTS, BUT THE CREDIT SHALL
10 NOT EXCEED ONE HUNDRED THOUSAND DOLLARS ANNUALLY FOR A SINGLE INSTALLATION.
11 THE AMOUNT OF THE CREDIT ALLOWED IS LIMITED TO THE AMOUNT CERTIFIED BY THE
12 DEPARTMENT OF COMMERCE UNDER SECTION 41-1511, SUBSECTION D. THE TOTAL
13 CREDITS ALLOWED UNDER THIS SECTION AND SECTION 43-1177 SHALL NOT EXCEED THE
14 AMOUNTS SPECIFIED IN SECTION 41-1511, SUBSECTION F.

15 C. THE CREDIT ALLOWED UNDER THIS SECTION MUST BE CLAIMED IN THE
16 TAXABLE YEAR IN WHICH DECEMBER 31 OF THE AUTHORIZED CALENDAR YEAR FALLS. THE
17 AUTHORIZED CALENDAR YEAR IS THE YEAR AUTHORIZED IN THE CERTIFICATION ISSUED
18 BY THE DEPARTMENT OF COMMERCE UNDER SECTION 41-1511, SUBSECTION D.

19 D. IF A TAXPAYER'S ALLOWABLE CREDIT EXCEEDS THE TAXES OTHERWISE DUE
20 UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER
21 THIS TITLE, THE AMOUNT OF THE CLAIM NOT USED TO OFFSET TAXES UNDER THIS TITLE
22 MAY BE CARRIED FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS AS A
23 CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY.

24 E. CO-OWNERS OF A BUSINESS, INCLUDING PARTNERS IN A PARTNERSHIP AND
25 SHAREHOLDERS OF AN S CORPORATION AS DEFINED IN SECTION 1361 OF THE INTERNAL
26 REVENUE CODE, MAY EACH CLAIM ONLY THE PRO RATA SHARE OF THE CREDIT ALLOWED
27 UNDER THIS SECTION BASED ON THE OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS
28 ALLOWED ALL SUCH OWNERS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN
29 ALLOWED A SOLE OWNER.

30 F. THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF COMMERCE SHALL
31 COLLABORATE IN ADOPTING RULES THAT ARE NECESSARY TO ACCOMPLISH THE INTENT AND
32 PURPOSES OF THIS SECTION.

33 G. FOR THE PURPOSES OF THIS SECTION, "QUALIFIED ENERGY RESOURCES"
34 MEANS COMBINED HEAT AND POWER AS DEFINED IN SECTION 41-1511.

35 Sec. 4. Title 43, chapter 11, article 6, Arizona Revised Statutes, is
36 amended by adding section 43-1177, to read:

37 43-1177. Credit for energy production from qualified energy
38 resources; definition

39 A. FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2008
40 THROUGH DECEMBER 31, 2012, A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY
41 THIS TITLE FOR A TAXPAYER THAT EITHER:

42 1. PRODUCES AND USES ELECTRICAL OR MECHANICAL ENERGY IN THIS STATE
43 FROM QUALIFIED ENERGY RESOURCES PLACED IN OPERATION AFTER DECEMBER 31, 2008.

44 2. IS DESIGNATED AS THE RECIPIENT OF THE CREDIT UNDER SECTION 41-1511,
45 SUBSECTION C, PARAGRAPH 4 BY AN ENTITY THAT IS EXEMPT FROM TAX PURSUANT TO
46 TITLE 43, CHAPTER 12 IF THE TAX EXEMPT ENTITY PRODUCES AND USES ELECTRICAL OR

1 MECHANICAL ENERGY IN THIS STATE FROM QUALIFIED ENERGY RESOURCES PLACED IN
2 OPERATION AFTER DECEMBER 31, 2008. ONLY THE TAXPAYER THAT FINANCED,
3 INSTALLED OR DEVELOPED THE QUALIFIED ENERGY RESOURCES FOR THE TAX EXEMPT
4 ENTITY MAY BE DESIGNATED AS THE RECIPIENT OF THE CREDIT.

5 B. TO QUALIFY FOR A CREDIT UNDER THIS SECTION, THE CREDIT MUST BE
6 CERTIFIED BY THE DEPARTMENT OF COMMERCE UNDER SECTION 41-1511, SUBSECTION D.
7 THE AMOUNT OF THE CREDIT IS EQUAL TO THE TOTAL KILOWATT HOURS OF ELECTRICITY
8 PRODUCED BY THE TAXPAYER DURING THE CALENDAR YEAR FROM QUALIFIED ENERGY
9 SOURCES MULTIPLIED BY ONE AND ONE-HALF CENTS, OR THE TOTAL HORSEPOWER HOURS
10 OF POWER PRODUCED BY THE TAXPAYER DURING THE CALENDAR YEAR FROM QUALIFIED
11 ENERGY SOURCES MULTIPLIED BY ONE AND ONE-TENTH CENTS, BUT THE CREDIT SHALL
12 NOT EXCEED ONE HUNDRED THOUSAND DOLLARS ANNUALLY FOR A SINGLE INSTALLATION.
13 THE AMOUNT OF THE CREDIT ALLOWED IS LIMITED TO THE AMOUNT CERTIFIED BY THE
14 DEPARTMENT OF COMMERCE UNDER SECTION 41-1511, SUBSECTION D. THE TOTAL
15 CREDITS ALLOWED UNDER THIS SECTION AND SECTION 43-1083.01 SHALL NOT EXCEED
16 THE AMOUNTS SPECIFIED IN SECTION 41-1511, SUBSECTION F.

17 C. THE CREDIT ALLOWED UNDER THIS SECTION MUST BE CLAIMED IN THE
18 TAXABLE YEAR IN WHICH DECEMBER 31 OF THE AUTHORIZED CALENDAR YEAR FALLS. THE
19 AUTHORIZED CALENDAR YEAR IS THE YEAR AUTHORIZED IN THE CERTIFICATION ISSUED
20 BY THE DEPARTMENT OF COMMERCE UNDER SECTION 41-1511, SUBSECTION D.

21 D. IF A TAXPAYER'S ALLOWABLE CREDIT EXCEEDS THE TAXES OTHERWISE DUE
22 UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER
23 THIS TITLE, THE AMOUNT OF THE CLAIM NOT USED TO OFFSET TAXES UNDER THIS TITLE
24 MAY BE CARRIED FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS AS A
25 CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX LIABILITY.

26 E. CO-OWNERS OF A BUSINESS, INCLUDING CORPORATE PARTNERS IN A
27 PARTNERSHIP, MAY EACH CLAIM ONLY THE PRO RATA SHARE OF THE CREDIT ALLOWED
28 UNDER THIS SECTION BASED ON THE OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS
29 ALLOWED ALL SUCH OWNERS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN
30 ALLOWED A SOLE OWNER.

31 F. THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF COMMERCE SHALL
32 COLLABORATE IN ADOPTING RULES THAT ARE NECESSARY TO ACCOMPLISH THE INTENT AND
33 PURPOSES OF THIS SECTION.

34 G. FOR THE PURPOSES OF THIS SECTION, "QUALIFIED ENERGY RESOURCES"
35 MEANS COMBINED HEAT AND POWER AS DEFINED IN SECTION 41-1511.

36 Sec. 5. Purpose

37 Pursuant to section 43-223, Arizona Revised Statutes, the income tax
38 credits enacted in sections 43-1083.01 and 43-1177, Arizona Revised Statutes,
39 as added by this act, are intended to encourage the development of processes
40 for producing useable electrical, mechanical and thermal energy from the same
41 units of fuel.