DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. Patron Emmett W. Hanger, Jr.

2. Bill Number SB 678

House of Origin:
_____ **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
X **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Appropriations

4. Title Income Tax Credit: Electric Energy Facility Producing Electricity Primarily From Agricultural Livestock Waste Nutrients

5. Summary/Purpose:

This bill would allow an individual and corporate income tax credit for qualified property that is placed in service. Qualified property would include energy property that is located in Virginia and is part of an electric energy facility producing electricity primarily from agricultural livestock waste nutrients. The amount of the credit would be equal to the amount of the federal Energy Credit.

The amount of credit may not exceed the tax liability of a taxpayer for the taxable year. Any unused credits would be allowed to be carried over for the next 10 succeeding taxable years.

This bill would be effective for taxable years beginning on or after January 1, 2010.

6. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

7. Budget amendment necessary: No.

8. Fiscal implications:

Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. TAX considers implementation of this bill as "routine," and does not require additional funding.

Revenue Impact

This bill would have an unknown negative impact on General Fund revenue. The costs of various open-loop biomass agricultural livestock waste processing facilities range from $25,000 to $1.8 million.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Law

Under IRC § 48 (a) (the "Energy Credit"), an income tax credit is allowed for certain "energy property" placed in service used to produce electricity. The credit amount is equal to 30% of the value of the property placed in service.

Energy property includes (i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool, (ii) equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight but only with respect to periods ending before January 1, 2017, (iii) equipment used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage, (iv) qualified fuel cell property or qualified microturbine property, (v) combined heat and power system property, (vi) qualified small wind energy property, or (vii) equipment which uses the ground or ground water as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure, but only with respect to periods ending before January 1, 2017.

Another income tax credit, provided under IRC § 45 (the "Renewable Electricity Production Credit"), is allowed for the production of electricity from "qualified energy resources" at qualified facilities. The credit is equal to 1.5 cents per kilowatt hours of electricity that is produced. Qualified energy resources comprise of wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy.

Open-loop biomass includes "agricultural livestock waste nutrients," which are defined as agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

2009 American Recovery and Reinvestment Tax Act

The 2009 American Recovery and Reinvestment Tax Act (the "Act") allows a taxpayer to make an irrevocable election to have certain facilities that qualify for the Renewable Electricity Production Credit and are placed in service in 2009 through 2013 to treat certain "qualified property" as "energy property" as defined under the Energy Credit. Qualified facilities are facilities otherwise eligible for the Renewable Electricity Production Credit (other than refined coal, Indian coal, and solar facilities) with respect to which no credit has been allowed.

The “qualified property” that would be allowed to be treated as “energy property” is (i) tangible personal property, or (ii) other tangible property (not including a building or its structural components), but only if such property is used as an integral part of the qualified investment facility. In addition, deprecation (or amortization in lieu of depreciation) must be allowed with respect to the property.

The Act, therefore, allows qualified facilities that are placed in service that otherwise would be eligible for the Renewable Electricity Production Credit to be eligible for the 30% Energy Credit. Such facilities include those that utilize agricultural livestock waste nutrients for the production of electricity.

Proposed Legislation

This bill would allow an individual and corporate income tax credit for qualified property that is placed in service. Qualified property would include energy property that is located in Virginia and is part of an electric energy facility producing electricity primarily from agricultural livestock waste nutrients. The amount of the credit would be equal to the amount of the federal Energy Credit.

The amount of credit may not exceed the tax liability of a taxpayer for the taxable year. Any unused credits would be allowed to be carried over for the next 10 succeeding taxable years. This bill would not prevent a taxpayer from claiming this credit and the federal Energy Credit for the same qualified property that is placed in service.

This bill would also provide that for a partnership, limited liability company, or electing small business corporation (S corporation) the tax credit would be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

Because facilities utilizing agricultural waste nutrients that are placed in service in 2009 through 2013 are eligible for the federal Energy Credit, they would also be eligible for this credit. Such facilities placed in service after 2013 will no longer be allowed to elect to treat their qualified property as energy property. Therefore, they will not be eligible to qualify for the federal Energy Credit or this credit.

This bill would be effective for taxable years beginning on or after January 1, 2010.

Other Legislation

Senate Bill 657 would grant an individual or corporate income tax credit for renewable energy products exported by a manufacturer in Virginia to a foreign country. The amount of the credit would be equal to 3 percent of the total sales price of the renewable energy products exported, not to exceed $500,000 in any taxable year. The credit would be allowed for the taxable year beginning two years after the renewable energy production begins, and end on the last day of the seventh taxable year after the renewable energy production begins.

cc : Secretary of Finance

Date: 2/18/2010 TG
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