

DEPARTMENT OF TAXATION

2011 Fiscal Impact Statement

1. **Patron** Kaye Kory

3. **Committee** House Finance

4. **Title** Income tax; renewable energy property and energy audit tax credits

2. **Bill Number** HB 1542

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would create two new income tax credits. The first would be an individual and corporate income tax credit for the purchase of qualifying renewable energy property that is placed in service during the taxable year. This credit would be effective for taxable years beginning on and after January 1, 2012.

For individuals, the credit would be equal to: \$1.25 per watt for the first 2,000 watts, \$0.75 per watt for 2,001 through 8,000 watts, and \$0.25 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed \$10,500 or the total cost of the system, whichever is less; 10 percent of the installed cost of a geothermal system, not to exceed \$3,000 per system or the total cost of the system, whichever is less; or \$2,000 per system for a solar thermal system or the total cost of the system, whichever is less.

For corporations, the credit would be equal to: \$1.25 per watt for the first 2,000 watts, \$0.75 per watt for 2,001 through 8,000 watts, and \$0.25 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed \$2.5 million or the total cost of the system, whichever is less; 10 percent of the installed cost of a geothermal system, not to exceed \$10,000 per system or the total cost of the system, whichever is less; or 25 percent of the installed cost of a solar thermal system, not to exceed \$10,000 per system or the total cost of the system, whichever is less.

This bill would also provide an individual and corporate income tax credit for a qualified residential or commercial property energy audit. The credit would be equal to 50 percent of the cost of such audit, not to exceed \$250 for individuals or \$500 for corporations. Taxpayers would be allowed only such one credit during any five-year period. In addition, individuals would not be allowed the tax credit and the \$250 rebate offered by the Department of Mines, Minerals and Energy ("DMME") for the same audit. This credit would also be effective for taxable years beginning on and after January 1, 2012.

For both of these tax credits, any unused credits would be allowed to be carried over for the next three taxable years.

6. Budget amendment necessary: No.

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

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. As stand-alone legislation, TAX considers implementation of this bill as “routine,” and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not “routine.” Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

This bill would result in an unknown revenue loss. The revenue loss is likely to be significant for the energy audit credit provisions of the bill and will increase when combined with the solar and geothermal credits.

9. Specific agency or political subdivisions affected:

Department of Mines, Minerals and Energy
Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal Energy Investment Tax Credit

Under federal law, businesses may claim a tax credit equal to 30 percent of the costs of qualified fuel cell property; equipment which uses solar energy to generate electricity, heat or cool a structure, or provide solar process heat; equipment which uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight; and qualified small wind energy property.

Businesses may claim a credit equal to 10 percent of the costs of any other energy property. Other types of energy property include equipment used to produce, distribute, or use energy derived from a geothermal deposit; qualified microturbine property; combined heat and power system property; and 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.

To qualify for the credit, the construction, reconstruction, or erection of the property must be completed by the taxpayer or the original use of the property must commence with the taxpayer. Additionally, the property must be depreciable or amortizable and the property must meet the performance and quality standards set forth in the Treasury Regulations.

No credit is allowed with respect to property for the taxable year in which a grant is made under § 1603 of the American Recovery and Reinvestment Tax Act of 2009 or any subsequent taxable year. A recapture provision applies if a credit is determined for any taxable year before which a grant is made.

For purposes of the credit, “qualified fuel cell property” is defined as a fuel cell power plant which has a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process and has an electricity-only generation efficiency greater than 30 percent.

“Qualified microturbine property” means a stationary microturbine power plant which has a nameplate capacity of less than 2,000 kilowatts and an electricity-only generation efficiency of not less than 26 percent at International Standard Organization conditions.

“Combined heat and power system property” is defined as property which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy; which produces at least 20 percent of its useful energy in the form of thermal energy which is not used to produce electrical or mechanical power and at least 20 percent of its total useful energy in the form of electrical or mechanical power; and the energy efficiency percentage of which exceeds 60 percent.

“Qualified small wind energy property” is defined as property which uses a wind turbine which has a nameplate capacity of not more than 200 kilowatts to generate energy.

Federal Residential Energy Efficient Property Tax Credit

Under federal law, individual taxpayers may claim a nonrefundable credit equal to the sum of 30 percent of qualified solar electric property, solar water heating property, fuel cell property, small wind energy property, and geothermal heat pump property expenditures made during the taxable year. The credit cannot exceed the sum of the taxpayer’s regular tax liability less any nonrefundable personal credits, foreign tax credits, Puerto Rico and possession tax credits for the taxable year. Any unused credit may be carried over to the following taxable year and added to the residential energy efficient property credit for that year.

For purposes of the residential energy efficient property tax credit, a “qualified solar water heating property expenditure” is defined as an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by the property for such purpose is derived from the sun. To qualify for the credit, solar water heating property must be certified for performance by the Solar Rating Certification Corporation or a comparable entity endorsed by the government of the state in which such property is installed.

“Qualified solar electric property expenditure” is defined as an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit located in the United States and used as a residence by the taxpayer.

“Qualified fuel cell property expenditure” is defined as an expenditure for qualified fuel cell property, as defined in IRC § 48(c)(1), installed on or in connection with a dwelling unit located in the United States and used as a principal residence by the taxpayer. The credit for fuel cell property cannot exceed \$500 per half kilowatt of capacity of the qualified fuel cell property to which the expenditure relates.

“Qualified small wind energy property expenditure” is defined as an expenditure for property which uses a wind turbine to generate electricity for use in connection with a dwelling unit located in the United States and used as a residence by the taxpayer.

“Qualified geothermal heat pump property expenditure” is defined as an expenditure for any equipment which (i) uses the ground or ground water as a thermal energy source to heat a dwelling unit located in the United States and used as a residence by the taxpayer or a thermal energy sink to cool such unit, and (ii) meets the requirements of the Energy Star program.

Current Virginia Law

Virginia does not currently have any tax incentives for renewable energy property or energy audits. However, Virginia does have several rebate programs that allow individuals and businesses to receive rebates for certain qualifying costs associated with energy efficient equipment, including the installation of geothermal systems and the costs of conducting energy audits.

The Virginia Energy Efficiency Rebate Program is a federally funded program that is administered through the Department of Mines, Minerals, and Energy (DMME). Through this program, homeowners are eligible for rebates equal to 20% of the costs of qualifying energy conserving products and services, up to \$2,000. Commercial consumers are eligible for rebates equal to 20% of qualifying costs, up to \$4,000. Home and business owners can also qualify for an additional \$250 for the cost of energy audits.

Qualifying costs included the costs of upgrading heating and air conditioning equipment, adding insulation, replacing leaky windows, and other improvements to existing homes and businesses that reduced energy consumption and utility costs.

This program was funded through the American Recovery and Reinvestment Act of 2009. The first round of funding for efficiency rebates was approximately \$10 million and this amount was reserved within three weeks of the start of the program. Applicants were able to reserve a rebate for a qualifying system by applying to DMME and would then have 180 days to complete the work and redeem their reservation for a rebate check. Once reservations depleted available funds, applications were placed on a waiting list.

Another round of funding was available in March 2010 in the amount of \$6.5 million, which allowed wait-listed applicants to receive rebate reservations as unclaimed rebate funds

became available. Applicants are still being added to the waiting list for this program, but future funding is uncertain.

The Virginia Solar and Wind Power Rebate Program is another federally-funded program administered by DMME. This program allows a rebate for solar electric (photovoltaic) systems equal to \$2 per watt and a rebate for solar thermal systems equal to \$1 per watt.

The rebate for residential solar electric systems cannot exceed \$20,000 (20,000 watts) or the cost of the system. The rebate for commercial solar electric systems cannot exceed \$225,000 (200 kilowatts) or the cost of the system. There is no cap on the amount of solar thermal system rebates.

Based on information from DMME, the average residential solar electric system is approximately 5 kW and the average cost is approximately \$40,000. The rebate for such a system is approximately \$10,000.

The average size of a residential thermal system is approximately 4kW and the average cost of such system is approximately \$8,000. The rebate for such a system is approximately \$4,000, or 50% of the cost of the system.

This Solar and Wind Power Rebate Program allows applicants to reserve rebates by applying to DMME. Applications that were received after the available funds were reserved were placed on a waiting list. However, because the amount of rebate requests far exceeded available funding, the program is currently closed to new applicants. Future funding for this program is uncertain.

Proposed Legislation

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For individuals, the credit would be equal to: \$1.25 per watt for the first 2,000 watts, \$0.75 per watt for 2,001 through 8,000 watts, and \$0.25 per watt for 8,001 through 20,000 watts for a solar photovoltaic system, not to exceed \$10,500 or the total cost of the system, whichever is less; 10 percent of the installed cost of a geothermal system, not to exceed \$3,000 per system or the total cost of the system, whichever is less; or \$2,000 per system for a solar thermal system or the total cost of the system, whichever is less.

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of the cost of such audit, not to exceed \$250 for individuals or \$500 for corporations. Taxpayers would be allowed only such one credit during any five-year period. In addition, individuals would not be allowed the tax credit and the \$250 rebate offered by the Department of Mines, Minerals and Energy ("DMME") for the same audit. This credit would also be effective for taxable years beginning on and after January 1, 2012.

Any unused tax credits could be carried over for the next three taxable years. The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company would be allocated to the partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entity.

"Geothermal system" would mean energy generating units, sometimes referred to as earth-coupled, ground-source or water-source heat pumps, that use the constant temperature of the earth as the exchange medium, instead of the outside air temperature, by exchanging heat with the earth through a ground heat exchanger in order to heat, cool, and if equipped, supply the building with hot water.

"Qualified residential energy audit" would mean an energy audit performed on the taxpayer's primary residence that assesses how much energy a building or operation consumes and evaluates what measures can be taken to make the residence more energy efficient. The audit must be performed by an analyst certified by the Building Performance Institute (BPI) or Residential Energy Services Network (RESNET) and documented with a dated copy of the auditor's report identifying the taxpayer's property and auditor's certification number.

"Qualified commercial property energy audit" would mean an energy audit performed on the taxpayer's commercial property that assesses how much energy a building or operation consumes and evaluates what measures can be taken to make the commercial property more energy efficient. The audit must be performed by an analyst certified by the Building Performance Institute (BPI) or other analyst approved by the Department and documented with a dated copy of the auditor's report identifying the taxpayer's property and auditor's certification number.

"Renewable energy property" would mean a solar photovoltaic system, a solar thermal system, or a geothermal system.

"Solar photovoltaic system" would mean an energy system or solar panel that collects or absorbs sunlight for conversion into electricity and that has been certified as meeting all applicable safety standards of Underwriters Laboratories. Systems that are interconnected with the utility grid shall comply with performance and safety standards established by the State Corporation Commission.

"Solar thermal system" would mean a solar energy system that collects or absorbs solar energy to generate hot water or air for space heating or water heating. Solar water heating systems shall meet the operational guidelines for an OG-300 certified solar water heating system as established by the Solar Rating and Certification Corporation. Solar space heating panels that heat air shall meet the operational guidelines for an OG-100 certified solar panel.

In order to claim the credit, both individuals and corporations must be approved by DMME. This bill would require DMME to establish guidelines, exempt from the Administrative Process Act, and forms for the application process. DMME would be further required to review an application within 14 days of receipt, and determine if the application satisfies the requirements outlined in its guidelines. The taxpayer would be required to submit with his income tax return all documentation required by TAX in order to be allowed the credit.

Similar Legislation

House Bill 1547 would provide an individual and corporate income tax credit for a taxpayer who makes a donation to a qualified nonprofit organization to construct, purchase, or lease Energy Star qualified products that are used in the headquarters of the non-profit organization.

cc : Secretary of Finance

Date: 1/20/2011 KLC
HB1542F161