



Florida Renewable Energy Investment Tax Credit

FREQUENTLY ASKED QUESTIONS

Updated: September 26, 2007

Q: What is the Renewable Energy Investment Tax Credit and when can it be applied?

Generally speaking, it is tax credit that is granted upon application by the Governor's Energy Office to Florida corporate income taxpayers that make an eligible investment in certain renewable energy facilities that employ hydrogen or biofuel technologies. This tax credit may be claimed against the Florida corporate income and franchise tax in an amount equal to a taxpayer's eligible costs and may be used in tax years beginning January 1, 2007, and ending on or before December 31, 2012, after which the credit expires. Credits will not be awarded after December 31, 2010.

Q: What if my tax credit is not fully used in a tax year?

If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in a subsequent tax year. The credit expires and must be used in a tax year that ends on or before December 31, 2012. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

Q: What are eligible costs under this program?

Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of \$3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of \$1.5 million per state fiscal year for all taxpayers, and limited to a maximum of \$12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel

cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of \$6.5 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subparagraph.

For the purpose of this program, the following are defined:

"Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

"Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

"Hydrogen fuel cells" means equipment using hydrogen or a hydrogen-rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

Q: What is the application process?

Any corporation wishing to obtain tax credits available under this section must submit to the Governor's Energy Office an application for tax credit. The application can be found online at:

http://www.myfloridaclimate.com/env/home/climate_quick_links/florida_energy_climate_commission/grants_solar_rebates_incentives/renewable_energy_tax_incentives.

The Governor's Energy Office will make a determination on the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue. The corporation must attach a copy of the Energy Office's certification to the tax return on which the credit is claimed.

Please note:

- Approval of the credits shall be accomplished on a first-come, first-served basis, based upon the date complete applications are received by the Governor's Energy Office.
- A taxpayer shall submit only one complete application based upon eligible costs incurred within a particular state fiscal year.
- Incomplete placeholder applications will not be accepted and will not secure a place in the first-come, first-served application line.
- If a taxpayer does not receive a tax credit allocation due to the exhaustion of the annual tax credit authorizations, then such taxpayer may reapply in the following year for those eligible costs and will have priority over other applicants for the allocation of credits.

Q: What are the audit provisions under this program?

In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant in order to verify the eligible costs and to ensure compliance with this program. The Governor's Energy Office will provide technical assistance when requested by the Department of Revenue.

If it is determined that a taxpayer received tax credits to which it was not entitled, either through a Department of Revenue audit, or from information received from the Governor's Energy Office, any unclaimed credits will be forfeited and any certification evidencing such credits must be returned to the Department of Revenue.

The Governor's Energy Office may revoke or modify any written decision granting eligibility for tax credits if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits. The Governor's Energy Office shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

The taxpayer shall file with the Department of Revenue an amended return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax and interest within 60 days after the taxpayer receives notification from the Governor's Energy Office that previously approved tax credits have been revoked or modified. If the revocation or modification order is contested, the taxpayer shall file an amended return or other report as provided in this paragraph within 60 days after a final order is issued following proceedings.

A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Governor's Energy Office that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

Q: How much of the tax credit funds have already been obligated and how much remain for this year?

The amount of tax credit funds remaining in each fiscal year is posted to the Energy Office's website at:

http://www.myfloridaclimate.com/env/home/climate_quick_links/florida_energy_climate_commission/grants_solar_rebates_incentives.

Q: Does the tax credit only apply to the Florida corporate income and franchise taxes?

Yes. The credit under s. 220.192, F.S., can only be used to reduce a taxpayer's liability for the Florida Corporate Income and Franchise Tax. It cannot be used to reduce a different type of tax liability (e.g., communication services tax, documentary stamp tax, insurance premium tax).

Q: Can the tax credit certificate be transferred to another corporation?

As a general rule, tax credits cannot be transferred from one corporation to another corporation. There is no provision in s. 220.192, F.S., for the transfer of the credit, and for that reason, it cannot be sold or transferred. There are two exceptions where this credit could be used by another entity. If the corporation that earns the credit merges into another corporation and ceases to exist, the surviving corporation succeeds to the tax credits of the other corporation. In addition, s. 220.192, F.S., provides that if the corporation is a member of an affiliated group of corporations and files a Florida consolidated income tax return, the corporate credit may be used to reduce the Florida tax liability of the entire consolidated group reported on that single return, not just the tax attributable to the corporation that earned the credit.

Q: There is a carryover/forward period for unused credits. Is there a carry-back provision?

No, credits cannot be carried back to an earlier tax year. Credits can only be used in the tax year for which they are granted, or in some cases, carried forward. Section 220.192, F.S. provides for a carry-forward period. For example, in early 2007, a taxpayer files an application and receives a credit with respect to the 2006 tax year, the return for which is due on April 1, 2007. The taxpayer may reduce its 2006 income tax liability by the

credit granted to it in 2007. It cannot be carried back to the 2005 tax year and taxpayer cannot file a 2005 amended return because the credit was granted for the 2006 tax year. If the credits cannot be used in 2006, they can be carried forward to subsequent tax years, but no later than 2012.

Q: If the credits are unused at the end of any carry-forward period, they are lost. Does that mean that any such credits are therefore not deductible as is sometimes the case under federal IRS section 196?

Yes. Section 220.192, F.S., provides that the credit cannot be used for tax years ending after December 31, 2012. Once the time period for claiming the credit has expired, it cannot be used to reduce income (a deduction) or reduce the amount of tax paid (a credit). So, if a tax year ends on January 1, 2013 (or later), the credit cannot be used to reduce the Florida corporate income tax liability reported on that TYE January 1, 2013 return. Section 196 of the Internal Revenue Code specifically provides that a taxpayer can deduct certain expired business credits granted by Congress. There is no such provision in the Florida Statutes, and unused s. 220.192 credits cannot be deducted.

Q: There appears to be taxpayer limits (e.g. \$1.5M per year) on the three activities specified in section 220.192, F.S. Is that a total for all taxpayer's in the state, or just a per-taxpayer per-year limit?

In this example, the limit is \$1.5 million per year for all the taxpayers in the state, not each taxpayer. Section 220.192, F.S., provides that the limit is "\$1.5 per state fiscal year for all taxpayers." The same holds true for the other limits specified in section 220.192, F.S.

Q: Can you have tiered entities, i.e., subsidiaries eligible for the credit, or have multiple separate entities claiming this credit?

As a general rule, only the corporation that earned the credit may claim the credit. The application must be made by the corporation that is incurring the cost and the credit will be granted to that corporation. Although the general rule is that only that specific corporation can use the credit against its tax liability, there are two exceptions. If the corporation that earns the credit merges into another corporation and ceases to exist, then the surviving corporation succeeds to the tax credits of the other corporation. In addition, s. 220.192, F.S., provides that if the corporation is a member of an affiliated group of corporations and files a Florida consolidated income tax return, the corporate credit may be used to reduce the Florida tax liability of the entire consolidated group reported on that single return, not just the tax attributable to the corporation that earned the credit.

Q: How is the credit allocated by a flow-through entity? Or is this not possible? Does the taxpayer who generated the credits have to be a corporation, or can an entity taxable as a partnership generate the credit and pass through to a corporate investor? Can it be an "S-corporation?" What about LLC's?

Generally speaking, to qualify for the credit, the entity must be a corporation, or an LLC that has made a federal election to be taxed as a corporation. There are very limited circumstances where an S corporation or its owners could use the credit under s. 220.192, F.S., and therefore, the State does not expect to receive applications from S corporations. The two exceptions would be where an S corporation could use a Florida corporate income and franchise tax credit would be if it had federal taxable income under s. 1374 or 1375 of the Internal Revenue Code, or if the S corporation lost its S election and was taxed as a C corporation. It should be noted that a regular "C" corporation cannot own an S corporation. On the other hand, a partnership, or LLC taxed as a partnership, does not appear to qualify as either a "corporation" or "taxpayer." Therefore, a partnership would not have a credit to distribute.

Q: I see that there appears to be a priority-ordering of credits, i.e., if a corp. has other Florida credits, this credit falls next to last in the ordering of claiming credits? Is this the correct interpretation?

Yes, it is. Section 220.02(8), F.S., provides the order in which Florida corporate income and franchise tax credits are claimed.

Q: If you are in line for the next allotment of credit because you applied after the allocation is filled, is it a carry-back item? i.e., if your investment was in 2006, but 2006 gets fully allocated, and you are granted the credit for in 2007 (for the 2006 investment) can you claim the credit on the 2006 returns?

No, you can take the credit only in the year for which it was granted (in this example, 2007), or if the credit cannot be fully used in that year due to an insufficient tax liability, it may be carried forward to the next tax year. Credits cannot be carried back to an earlier tax year.

Q: When are regulations expected to be released? Has the state issued any rulings on this tax credit?

The Department of Revenue has not issued any rulings on this particular tax credit, but has published a Tax Information Publication which may be found on the Department of Revenue's website.

Q: Can the credits be taken on materials at the time of expense - or - do these materials need to be in service first to be eligible? In other words, can an applicant receive a credit even though the project has not been completed?

Section 220.192, F.S., speaks in terms of "investment" and "capital costs" and "research and development costs." There is nothing in the statute that specifically says whether or not an applicant may receive a credit before the project has been completed. Thus, a credit can be granted for a project that is underway but has not yet been completed.

Q: Should applicants notarize their application form to the Energy Office?

The application contains a declaration from the taxpayer certifying that all information contained in the application, including all records claimed as the basis for the tax credit, are true and correct. The Energy Office requires the taxpayer to sign this declaration, which has the same legal effect of an affidavit.

Q: What level of detail should the applicant submit to support the credit amount?

Section 220.192, F.S., provides in part: ". . . an application for tax credit that includes a complete description of all eligible costs for which the corporation is seeking a credit and a description of the total amount of credits sought." These would indicate an itemized list of costs incurred for which the credit is being sought. As a practical matter, there should be a summary sheet with a brief description of the cost, date, and amount, with details attached sufficient to show that the cost qualifies for the credit.

Q: Is there a limit to the number of applications a company can submit for the tax credit? In other words, can a company break down a project and submit applications in phases?

Section 220.192(4), F.S., provides that "A taxpayer shall submit only one complete application based upon eligible costs incurred within a particular state fiscal year." Since the Energy Office allows credit for work done in a particular year, even though project is not done, then it is possible to have an application for work done in year 1, and another application for work on the same project done in year 2.

Q: Can equipment that receives the tax credit be resold?

Yes.

Q: Please explain what will be accepted as operation and maintenance costs. For example, would the purchases of feedstock, the chemicals required in the processing of biofuels, the electricity necessary to the process - are these operational costs? Labor, overhead, leases and rents? Secretary salaries, driver wages, etc?

The tax credit is calculated on the total amount of capital costs, operation and maintenance costs, and research and development costs. Capital Costs usually involve equipment and physical plant costs, not consumable supplies. Included in these costs can be interest, leases, rentals, taxes and insurance on physical assets like plant and equipment. Operations and Maintenance Costs are the ongoing, repetitive costs of operating and maintaining a system. Operations includes the range of activities/services provided by a system and can include labor costs. Similarly, maintenance relates to the upkeep and preservation of the existing system. Research & Development Costs are related to basic and applied research in the sciences and engineering and the design and development of prototypes and processes, excluding quality control, routine product testing, market research, sales promotion, sales service, research in the social sciences or psychology, and other non-technological activities or technical services. Included in these costs can be laboratory fees, materials, engineering, etc.

Q: Does the tax credit apply to costs incurred in all years of operation, not just the initial year, through June 2010?

Yes.

Q: If the amount of funds allocated to the credit is not exhausted in one fiscal year, does the unused funds carry-forward and get added to funds allocated in the subsequent year?

No.

Q: Are grant recipients eligible for the tax credit?

Yes; however, any project expenses reimbursed with grant funds or used as cost share are not eligible for the tax credit.

Q: Does the Governor's Energy Office check "corporate" liability?

No.

Q: How long can the tax credit be saved or held onto?

Section 220.192, F.S., provides that the credit cannot be used for tax years ending after December 31, 2012.

Q: Is there a limit to the amount of tax credit eligible per project?

Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs in connection with an investment in eligible hydrogen technologies and biofuels infrastructure, as described earlier.

Q: What is the application submission process?

1. Submit a signed copy of the application form with supporting documentation via certified mail or hand delivery to:

Governor's Energy Office
ATTN: Renewable Energy Technologies Investment Tax Credit Program
Executive Office of the Governor
600 S. Calhoun Street, Suite 251
Tallahassee, FL 32399-1300

NOTE: Incomplete applications will not be placed in the first come, first served application line.

2. Completed applications will be processed by the Governor's Energy Office, and applicants who have submitted approved applications will be sent certifications within 45 days.
3. After the certification by Governor's Energy Office is received, attach the document to the tax return on which the credit is claimed.

Q: Where can I get more information?

Governor's Energy Office
Executive Office of the Governor
600 S. Calhoun Street, Suite 251
Tallahassee, FL 32399-1300
Phone: 850. 487.3800
Email: energy@eog.myflorida.com
<http://www.myfloridaclimate.com>

Florida Department of Revenue
Technical Assistance & Dispute Resolution
P.O. Box 7443
Tallahassee, Florida 32314-7443
(Ask for a Letter of Technical Advice)
Department of Revenue Tax Information Publication:
<http://dor.myflorida.com/dor/tips/tip06c01-05.html>