

WIND ENERGY PRODUCTION TAX CREDIT

476B.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "*Board*" means the utilities board within the utilities division of the department of commerce.
2. "*Department*" means the department of revenue.
3. "*Qualified electricity*" means electricity produced from wind at a qualified facility.
4. "*Qualified facility*" means an electrical production facility that meets all of the following:
 - a. Produces electricity from wind.
 - b. Is located in Iowa.
 - c. Was originally placed in service on or after July 1, 2004, but before July 1, 2007.

2004 Acts, ch 1175, §409, 418

Section takes effect May 17, 2004, and applies retroactively to taxable years beginning on or after January 1, 2004; 2004 Acts, ch 1175, § 418

476B.2 General rule.

The owner of a qualified facility shall, for each kilowatt-hour of qualified electricity that the owner sells during the ten-year period beginning on the date the qualified facility was originally placed in service, be allowed a wind energy production tax credit to the extent provided in this chapter against the tax imposed in chapter 422, divisions II, III, and V, and chapter 432.

2004 Acts, ch 1175, §410, 418

Section takes effect May 17, 2004, and applies retroactively to taxable years beginning on or after January 1, 2004; 2004 Acts, ch 1175, § 418

476B.3 Credit amount.

1. Except as limited by subsection 2, the wind energy production tax credit allowed under this chapter equals the product of one cent multiplied by the number of kilowatt-hours of qualified electricity sold by the owner during the taxable year.
2.
 - a. The maximum amount of tax credit which a group of qualified facilities operating as one unit may receive for a taxable year equals the rate of credit times thirty-two percent of the total number of kilowatts of nameplate generating capacity.
 - b. However, if for the previous taxable year the amount of the tax credit for the group of qualified facilities operating as one unit is less than the maximum amount available as provided in paragraph "a", the maximum amount for the next taxable year shall be increased by the amount of the previous year's unused maximum credit.

2004 Acts, ch 1175, §411, 418

Section takes effect May 17, 2004, and applies retroactively to taxable years beginning on or after January 1, 2004; 2004 Acts, ch 1175, § 418

476B.4 Limitations.

1. *a.* The wind energy production tax credit shall not be allowed for any kilowatt-hour of electricity produced on wind energy conversion property for which the owner has claimed or otherwise received for that property the benefit of special valuation under section 427B.26 or section 441.21, subsection 8, or the exemption from retail sales tax under section 422.45, subsection 48, Code Supplement 2003,* or section 423.3, subsection 54, as applicable.

b. The disallowance of the tax credit pursuant to paragraph "*a*" does not apply to an owner of a qualified facility that owns, directly or indirectly, in the aggregate, a total annual turbine nameplate capacity of all such property of less than one megawatt. A qualified facility under this paragraph shall not be owned by more than one person.

2. The wind energy production tax credit shall not be allowed for any kilowatt-hour of electricity that is sold to a related person. For purpose of this subsection, persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b) of the Internal Revenue Code. In the case of a corporation that is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

2004 Acts, ch 1175, §412, 418

*Section 422.45, Code Supplement 2003, repealed effective July 1, 2004; 2003 Acts, 1st Ex, ch 2, § 151, 205

Section takes effect May 17, 2004, and applies retroactively to taxable years beginning on or after January 1, 2004; 2004 Acts, ch 1175, § 418

476B.5 Application for tax credit certificates.

1. *a.* To be eligible to receive the wind energy production tax credit, the owner must first receive approval of the board of supervisors of the county in which the qualified facility is located. The application for approval may be submitted prior to commencement of the construction of the qualified facility but shall be submitted no later than the close of the owner's first taxable year for which the credit is to be applied for. The application must contain the owner's name and address, the address of the qualified facility, and the dates of the owner's first and last taxable years for which the credit will be applied for. Within forty-five days of the receipt of the application for approval, the board of supervisors shall either approve or disapprove the application. After the forty-five-day limit, the application is deemed to be approved.

b. Upon approval of the application, the owner may apply for the tax credit as provided in subsection 2. In addition, approval of the application is acceptance by the applicant for the assessment of the qualified facility for property tax purposes for a period of twelve years and approval by the board of supervisors for the payment of the property taxes levied on the qualified property to the state. For purposes of property taxation, the qualified facility shall be centrally assessed and shall be exempt from any replacement tax under section 437A.6 for the period during which the facility is subject to property taxation. The property taxes to be paid to the state are those property taxes which make up the consolidated tax levied on the qualified facility and which are due and payable in the twelve-year period beginning with the first fiscal year beginning on or after the end of the owner's first taxable year for which the credit is applied for. Upon approval of the application, the board of supervisors shall notify the county treasurer to state on the tax statement which lists the taxes on the qualified facility that the amount of the property taxes shall be paid to the department. Payment of the

designated property taxes to the department shall be in the same manner as required for the payment of regular property taxes and failure to pay designated property taxes to the department shall be treated the same as failure to pay property taxes to the county treasurer.

c. Once the owner of the qualified facility receives approval under paragraph "a", subsequent approval under paragraph "a" is not required for the same qualified facility for subsequent taxable years.

2. To receive the wind energy production tax credit, an owner of the qualified facility must submit an application for a tax credit certificate to the board not later than thirty days after the close of the taxable year for which the credit is applied for. The owner's application must contain, but need not be limited to, all of the following information: the owner's name, tax identification number, and address, the number of kilowatt-hours of qualified electricity sold by the owner during the preceding taxable year, the address of the qualified facility at which the qualified electricity was produced, and the denomination that each tax credit certificate is to carry. For the first taxable year for which the credit is applied for, there shall be attached to the application a notarized copy of the board of supervisors' approval as required in subsection 1.

3. The board shall, in conjunction with the department, prescribe appropriate forms, including board of supervisors' approval forms, and instructions to enable owners to claim the tax credit allowed under this chapter. If the board prescribes these forms and instructions, an owner's application for a tax credit certificate shall not be valid unless made on and in accordance with these forms and instructions.

2004 Acts, ch 1175, §413, 418

Section takes effect May 17, 2004, and applies retroactively to taxable years beginning on or after January 1, 2004; 2004 Acts, ch 1175, § 418

476B.6 Issuance of tax credit certificates.

1. If the owner meets the criteria for eligibility for the wind energy production tax credit, the board shall determine the validity of the application and if valid, shall approve the application for credit. Once approval of the credit for a qualified facility is granted, subsequent approval is not required for the same qualified facility. However, application is required to be filed as provided in section 476B.5, subsection 2, for purposes of the issuance of credit certificates. The board shall issue one or more tax credit certificates to the owner not later than thirty days after the application is submitted to the board. Each tax credit certificate must contain the owner's name, address, and tax identification number, amount of tax credits, the first taxable year the certificates may be used, which shall not be for a taxable year beginning prior to July 1, 2005, and the expiration date of the tax credit certificate, which shall be seven years from its date of issuance and any other information required by the department. Once issued by the board, the tax credit certificate shall be binding on the board and the department and shall not be modified, terminated, or rescinded. The board shall notify the department and identify the qualified facility for which the owner received tax credit certificates that property taxes levied on the qualified facility are to be paid to the department.

2. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, the tax credit certificate may, at the election of the owner, be issued directly to equity holders or beneficiaries of the owner in proportion to their pro rata share of the income of such entity. If the owner elects to have the tax credit certificate issued directly to its equity holders or beneficiaries, the owner must, in the application made under section 476B.5, identify its equity holders or beneficiaries, and the amount of such entity's income that is allocable to each equity holder or beneficiary.

2004 Acts, ch 1175, §414, 418

Section takes effect May 17, 2004, and applies retroactively to taxable years beginning on or after January 1,

2004; 2004 Acts, ch 1175, § 418

476B.7 Transfer of tax credit certificates.

Wind energy production tax credit certificates issued under this chapter may be transferred to any person or entity. Within thirty days of transfer, the transferee must submit the transferred tax credit certificate to the board along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the board shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required under section 476B.6 and must have the same effective taxable year and the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the board shall not be transferable. A tax credit shall not be claimed by a transferee under this chapter until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

The tax credit shall only be transferred once. The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

2004 Acts, ch 1175, §415, 418

Section takes effect May 17, 2004, and applies retroactively to taxable years beginning on or after January 1, 2004; 2004 Acts, ch 1175, § 418

476B.8 Use of tax credit certificates.

To claim a wind energy production tax credit under this chapter, a taxpayer must attach one or more tax credit certificates to the taxpayer's tax return. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2005. The tax credit certificate or certificates attached to the taxpayer's tax return shall be issued in the taxpayer's name, expire on or after the last day of the taxable year for which the taxpayer is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the taxpayer's tax return. Any tax credit in excess of the taxpayer's tax liability for the taxable year may be credited to the taxpayer's tax liability for the following seven taxable years or until depleted, whichever is the earlier.

2004 Acts, ch 1175, §416, 418

Section takes effect May 17, 2004, and applies retroactively to taxable years beginning on or after January 1, 2004; 2004 Acts, ch 1175, § 418

476B.9 Registration of tax credit certificates.

The board shall, in conjunction with the department, develop a system for the registration of the wind energy production tax credit certificates issued or transferred under this chapter and a system that permits verification that any tax credit claimed on a tax return is valid and that transfers of the tax credit certificates are made in accordance with the requirements of this chapter. The tax credit certificates issued under this chapter shall not be classified as a security pursuant to chapter 502.

2004 Acts, ch 1175, §417, 418

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