

CHAPTER 476B

WIND ENERGY PRODUCTION TAX CREDIT

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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, 2005, but before July 1, 2012.
 - d. (1) For applications filed on or after March 1, 2008, consists of one or more wind turbines connected to a common gathering line which have a combined nameplate capacity of no less than two megawatts and no more than thirty megawatts.

(2) For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in section 249J.3, for the applicant’s own use of qualified electricity, consists of wind turbines with a combined nameplate capacity of three-fourths of a megawatt or greater.

2004 Acts, ch 1175, §409, 418; 2005 Acts, ch 179, §163; 2006 Acts, ch 1135, §1, 12; 2008 Acts, ch 1128, §4, 5, 15; 2009 Acts, ch 80, §1, 9

[SP] 2008 amendments to subsection 4 take effect May 1, 2008, and apply to tax years beginning on or after January 1, 2008; 2008 Acts, ch 1128, §15

[SP] 2009 amendment to subsection 4, paragraph d, subparagraph (1) takes effect April 23, 2009, and applies retroactively to tax years beginning on or after January 1, 2008; 2009 Acts, ch 80, §9

476B.2 General rule.

The owner of a qualified facility shall, for each kilowatt-hour of qualified electricity that the owner sells or uses for on-site consumption 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, and may claim a refund of tax imposed by chapter 423 or 437A for any tax year within the time period set forth in section 423.47 or 437A.14.

2004 Acts, ch 1175, §410, 418; 2008 Acts, ch 1128, §6, 15

[SP] 2008 amendment to this section takes effect May 1, 2008, and applies retroactively to tax years beginning on or after January 1, 2008; 2008 Acts, ch 1128, §15

476B.3 Credit amount.

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 or used for on-site consumption by the owner during the taxable year.

2004 Acts, ch 1175, §411, 418; 2005 Acts, ch 179, §164; 2008 Acts, ch 1128, §7, 15

[SP] 2008 amendment to this section takes effect May 1, 2008, and applies retroactively to tax years beginning on or after January 1, 2008; 2008 Acts, ch 1128, §15

476B.4 Limitation.

The wind energy production tax credit shall not be allowed for any kilowatt-hour of electricity that is sold to a related person. For purposes of this section, 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; 2005 Acts, ch 179, §165; 2009 Acts, ch 80, §2, 7, 9

[SP] 2009 amendment to this section takes effect April 23, 2009, and applies retroactively to tax years beginning on or after January 1, 2008; aggregate limit and proration of funds on refund claims for taxes, interest, or penalties paid on sales of wind energy conversion property, exempt from sales tax under section 423.3, subsection 54, which occurred between January 1, 2008, and April 23, 2009; October 1, 2009, refund filing deadline; 2009 Acts, ch 80, §7, 9

476B.5 Determination of eligibility.

1. An owner may apply to the board for a written determination regarding whether a facility is a qualified facility by submitting to the board a written application containing all of the following:

a. Information regarding the ownership of the facility including the percentage of equity interest held by each owner.

b. The nameplate generating capacity of the facility.

c. Information regarding the facility's initial placement in service.

d. Information regarding the type of facility.

e. Except when electricity is used for on-site consumption, a copy of an executed power purchase agreement or other agreement to purchase electricity upon completion of the project. An executed interconnection agreement or transmission service agreement shall be accepted by the board under this paragraph if the owner of the facility has agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.

f. Any other information the board may require.

2. The board shall review the application and supporting information and shall make a preliminary determination regarding whether the facility is a qualified facility. The board shall notify the applicant of the approval or denial of the application within thirty days of receipt of the application and information required. If the board fails to notify the applicant of the approval or denial within thirty days, the application shall be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within thirty days from the date of the denial pursuant to the provisions of chapter 17A. In the absence of a timely appeal, the preliminary determination shall be final. If the application is incomplete, the board may grant an extension of time for the provision of additional information.

3. A facility that is not operational within eighteen months after issuance of an approval for the facility by the board shall cease to be a qualified facility. However, a facility that is approved as qualified under this section but is not operational within eighteen months due to the unavailability of necessary equipment shall be granted an additional twelve months to become operational. A facility that is granted and thereafter loses approval may reapply to the board for a new determination.

4. The maximum amount of nameplate generating capacity of all qualified facilities the board may find eligible under this chapter shall not exceed one hundred fifty megawatts of nameplate generating capacity.

5. An owner shall not be an owner of more than two qualified facilities.

2004 Acts, ch 1175, §413, 418; 2005 Acts, ch 179, §166; 2006 Acts, ch 1135, §2, 3, 12; 2008 Acts, ch 1128, §8, 15; 2009 Acts, ch 80, §3

[SP] 2008 amendment to subsection 1, paragraph e, takes effect May 1, 2008, and applies retroactively to tax years beginning on or after January 1, 2008; 2008 Acts, ch 1128, §15

476B.6 Tax credit certificate procedure.

1. a. If a city or a county in which a qualified facility is located has enacted an ordinance under section 427B.26 and an owner has filed for and received special valuation pursuant to that ordinance, the owner is not required to obtain approval from the city council or county board of supervisors to apply for the wind energy production tax credit pursuant to subsection 2.

b. (1) If neither a city nor a county in which a qualified facility is located has enacted an ordinance under section 427B.26, or a qualified facility is not eligible for special valuation

pursuant to an ordinance adopted by a city or a county under section 427B.26, the owner must receive approval of the applicable city council or county board of supervisors of the city or county in which the qualified facility is located in order to be eligible to receive the wind energy production tax credit. 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 city council or county board of supervisors, as applicable, shall either approve or disapprove the application. After the forty-five-day time period has expired, the application is deemed to be approved.

(2) Upon approval of an application submitted pursuant to subparagraph (1), the owner may apply for the tax credit as provided in subsection 2. In addition, approval of the application submitted pursuant to subparagraph (1) 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 city council or county board of supervisors, as applicable, for the payment of the property taxes levied on the qualified property to the state. For purposes of property taxation, the qualified facility receiving approval of an application submitted pursuant to subparagraph (1) 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 city council or county board of supervisors, as applicable, shall notify the county treasurer to designate on the tax statement which lists the taxes on the qualified facility the amount of the property taxes to 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 "b", subsequent approval under paragraph "b" is not required for the same qualified facility for subsequent taxable years.

2. An owner of a qualified facility may apply to the board for the wind energy production tax credit by submitting to the board all of the following:

- a. A completed application in a form prescribed by the board.
- b. A copy of the determination granting approval of the facility as a qualified facility by the board.
- c. A copy of a signed power purchase agreement or other agreement to purchase electricity.
- d. Sufficient documentation that the electricity has been generated by the qualified facility and sold to a purchaser.
- e. For a facility in which electricity is used for on-site consumption, the requirements of paragraphs "c" and "d" shall not be applicable. For such facilities, the owner must submit a certification under penalty of perjury that the claimed amount of electricity was generated by the qualified facility and consumed by the owner.

f. Any other information the board deems necessary.

3. The board shall notify the department of the amount of kilowatt-hours generated and purchased from a qualified facility or generated and used on-site by a qualified facility. The department shall calculate the amount of the tax credit for which the applicant is eligible and shall issue the tax credit certificate for that amount or notify the applicant in writing of its refusal to do so. An applicant whose application is denied may file an appeal with the department within sixty days from the date of the denial pursuant to the provisions of chapter 17A.

4. Each tax credit certificate shall contain the owner's name, address, and tax identification number, the amount of tax credits, the first taxable year the certificate may be

used, the type of tax to which the tax credits shall be applied, and any other information required by the department. The tax credit certificate shall only list one type of tax to which the amount of the tax credit may be applied. Once issued by the department, the tax credit certificate shall not be terminated or rescinded.

5. A tax credit certificate may be filed pursuant to any of the following, to the extent applicable:

a. 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, for the taxes imposed under chapter 422, division II or III, the tax credit certificate shall be issued directly to equity holders or beneficiaries of the applicant in proportion to their pro rata share of the income of such entity. The applicant shall, in the application made under this section, identify its equity holders or beneficiaries, and the percentage of such entity's income that is allocable to each equity holder or beneficiary.

b. If the tax credit applicant under this section is eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is 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, for the taxes imposed under chapter 422, division II or III, the tax credit certificate may be issued to a partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company in the amounts designated by the eligible partnership, S corporation, or limited liability company. In absence of such designation, the credits under this section shall flow through to the partners, shareholders, or members in accordance with their pro rata share of the income of the entity. The applicant shall, in the application made under this section, identify the holders or beneficiaries that are to receive the tax credit certificates and the percentage of the tax credit that is allocable to each holder or beneficiary.

c. If an applicant under this section is eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is 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, for the taxes imposed under chapter 422, division II or III, the tax credit certificates and all future rights to the tax credit in this section may be distributed to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity. The applicant shall, in the application made under this section, designate the percentage of the tax credit allocable to the liquidating equity holder or beneficiary that is to receive the current and future tax credit certificates under this section.

d. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for the taxes imposed under chapter 422, division V, or under chapter 423, 432, or 437A, the tax credit certificate shall be issued directly to the partnership, limited liability company, S corporation, estate, trust, or other reporting entity.

6. The department shall not issue a tax credit certificate if the facility approved by the board as a qualified facility is not operational within eighteen months after the approval is issued.

7. Once a tax credit certificate is issued pursuant to this section, the tax credit may only be claimed against the type of tax reflected on the certificate.

8. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2006.

2004 Acts, ch 1175, §414, 418; 2005 Acts, ch 179, §167; 2006 Acts, ch 1135, §4, 12; 2008 Acts, ch 1128, §9 – 11, 15; 2009 Acts, ch 80, §4, 9

[SP] 2008 amendments to this section take effect May 1, 2008, and apply retroactively to tax years beginning on or after January 1, 2008, for issuance of wind energy tax credits; 2008 Acts, ch 1128, §15

[SP] 2009 amendment to subsection 1 takes effect April 23, 2009, and applies retroactively to tax years beginning on or after January 1, 2008; 2009 Acts, ch 80, §9

476B.6A Alternative tax credit qualification — pilot project.

Notwithstanding any other provision of this chapter to the contrary, the board shall establish a pilot project which will allow for a wind energy production tax credit of one and one-half cents multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by up to two qualified facilities selected for participation in the project. To be eligible for the project, a qualified facility shall meet all eligibility requirements otherwise applicable pursuant to this chapter, and in addition shall be located in a county in this state with a population of between forty-four thousand one hundred fifty and forty-four thousand five hundred based on the 2006 census, and with a combined nameplate generating capacity of at least one megawatt per applicant. For purposes of the pilot project, the two megawatt minimum requirement for qualification pursuant to section 476B.1, subsection 4, paragraph “d”, shall not be applicable. The board shall reduce the remaining credits available under this chapter by a dollar amount equal to the amount of credits awarded pursuant to the project.

2009 Acts, ch 179, §143

476B.7 Transfer of tax credit certificates.

1. 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 department 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 department 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. A replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

2. The tax credit shall be freely transferable. 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. The transferee may claim a refund under chapter 423 or 437A for any tax year within the time period set forth in section 423.47 or 437A.14 for which the original transferor could have claimed a refund. 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; 2005 Acts, ch 179, §168; 2008 Acts, ch 1128, §12, 15

[SP] 2008 amendments to this section take effect May 1, 2008, and apply retroactively to tax years beginning on or after January 1, 2008; 2008 Acts, ch 1128, §15

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, or if used against taxes imposed under chapter 423, the taxpayer shall comply with section 423.4, subsection 4, or if used against taxes imposed under chapter 437A, the taxpayer shall comply with section 437A.17B. A tax credit certificate shall not be used or attached to a return filed for a taxable year beginning prior to July 1, 2006. 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. If the tax credit is applied against the taxes imposed under chapter 423 or 437A, any credit in excess of the taxpayer's tax liability is carried over and can be filed with the refund claim for the following seven tax years or until depleted, whichever is earlier. However, the certificate shall not be used to reduce tax liability for a tax period ending after the expiration date of the certificate.

2004 Acts, ch 1175, §416, 418; 2005 Acts, ch 179, §169; 2008 Acts, ch 1128, §13, 15

[SP] 2008 amendments to this section take effect May 1, 2008, and apply retroactively to tax years beginning on or after January 1, 2008; 2008 Acts, ch 1128, §15

476B.9 Registration of tax credit certificates.

The department shall 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; 2005 Acts, ch 179, §170

476B.10 Rules.

The department and the board may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

2005 Acts, ch 179, §171