

**Arizona Commerce Authority**  
**RENEWABLE ENERGY TAX INCENTIVES PROGRAM**  
**Program Guidelines<sup>1</sup>**

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**Section 1. Overview**

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The Renewable Energy Tax Incentives Program (A.R.S. § 41-1511) was established by the Arizona legislature in 2009 to promote the renewable energy industry in the state. During the 2010 legislative session, technical corrections were proposed through Senate Bill 1201. These amendments became effective on July 29, 2010 and are retroactive to September 30, 2009. The goal of the program is to encourage business investment that will produce high quality employment opportunities and enhance Arizona's position as a center for production and use of renewable energy products. The program accomplishes this goal by providing tax incentives to companies in the solar, wind, geothermal and other non-fossil renewable energy industries, who are expanding or locating in Arizona.

Administered by the Arizona Commerce Authority (Commerce), the Renewable Energy program offers two benefits to eligible companies;

- Up to a 10% refundable income tax credit, and
- Up to a 75% reduction on real and personal property taxes.

A company seeking tax credits under the renewable energy program must obtain pre-approval (letter of qualification) from Commerce by submitting an "Initial Application for Pre-Approval" on or after January 1, 2010. If the initial application is qualified, Commerce will issue pre-approval and will transmit a copy of the pre-approval to the Arizona Department of Revenue (Revenue) and the appropriate County Assessor. The pre-approval is valid until the project becomes operational, if the company maintains eligibility. Prior to submittal of an initial application to Commerce, a company must request a letter of good standing from Revenue by submitting a "Tax Clearance Application" form to Revenue. In addition, a company must request a letter of good standing from the County Treasurer of the county in which the project will be located. Following pre-approval, to maintain eligibility, the applicant must provide documentation to Commerce that it has spent at least \$250,000 on the project within 12-months of pre-approval. Depending on the length of the project, the applicant must also demonstrate it has spent an additional \$250,000 each twelve-month period to maintain eligibility. When the proposed project is operational but prior to applying for post-approval, a company must enter into a written managed review agreement with Commerce. A certified public accountant must verify the company's eligibility for tax incentives under the program and furnish its findings to Commerce in writing. After receipt of the approved written managed review, the applicant must submit an "Application for Post-Approval" to Commerce. Commerce may issue post-approval to an applicant after verification that all eligibility requirements have been met by the applicant. Once post-approval is received, an applicant may claim the tax credits with Revenue. The company may also, when applicable, request property tax reclassification from the appropriate County Assessor.

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**Section 2. Eligibility Requirements for a Renewable Energy Company**

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A renewable energy company is eligible for tax incentives once the facility is operational and in compliance with requirements of A.R.S. § 41-1511, if it:

- Is primarily (more than 50%) engaged in the business of or headquarters for producing systems and components that are used or useful in manufacturing renewable energy equipment
- Is expanding or locating either a renewable energy manufacturing or headquarters facility in Arizona
- Creates full-time employment positions of which at least 51% are qualified employment positions
- Offers to pay at least 80% of the health insurance costs for all net new full-time employment positions
- Spends at least \$250,000 in qualifying investments during each twelve-month period
- Submits an Initial Application for Pre-Approval and receives pre-approval from Commerce
- Remits a non-refundable processing fee of \$500-2,500 (depending on the size of the project) with each application for pre-approval
- Supplies a letter of good standing from both Revenue and the appropriate County Treasurer
- Submits an Application for Post-Approval and receives post-approval from Commerce

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<sup>1</sup> These Guidelines are provided to assist applicants. In case of conflict between what is presented here and the Arizona Revised Statutes, the statutes and the Arizona Administrative Code shall prevail. See A.R.S §§ 41-1511, 42-12006, 42-12057, 42-15006, 43-1083.01 and 43-1164.01.

- Agrees to continue qualifying business activities at the facility for 5 years after post-approval and cannot be involved in any action that liquidates the AZ business assets or relocates the AZ operation out-of-state for 5 years after post-approval
- Is compliant and remains compliant with all environmental, employment and other regulatory measures
- Complies with the employer and business sanctions set forth in A.R.S. § 23-214(B) and A.R.S. §§ 35-391 & 35-393.

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### Section 3. Explanation of Tax Incentives for Renewable Energy Companies

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The Renewable Energy Tax Incentives Program offers the following Arizona tax incentives to companies that are approved by Commerce.

1. *Income Tax Credits.* Under A.R.S. §§ 43-1083.01 and 43-1164.01, for years beginning from and after December 31, 2009 through December 31, 2014, a refundable tax credit is allowed for an eligible renewable energy company. The tax credit is up to 10% of the new qualifying investment amount incurred by a qualified company for the location of or expansion of a qualified renewable energy operation in Arizona. Post-approved tax credits can be used to offset Arizona income tax liability on a dollar for dollar basis. Co-owners of a company (including partners in a partnership, and shareholders of an S corporation) may each claim only the pro rata share of the credits allowed based on ownership interest. The total credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the company. (A.R.S. §§ 43-1083.01 (E) and 43-1164.01 (E)) The amount of tax credits not used to offset Arizona income tax liability will be paid to the taxpayer in the same manner as a cash refund. If Revenue determines that a refund is incorrect or invalid, the excess refund may be treated as a tax deficiency pursuant to A.R.S. § 42-1108.

The tax credit must be claimed by an eligible company on a timely filed original Arizona tax return along with the form prescribed by Revenue for the tax year when the post-approval was received. The tax credit must be claimed in five equal installments as identified in Commerce's post-approval letter. The credits are used to offset tax liability for the five tax years in the installment period that are timely filed on original tax returns starting with the year in which post-approval was received. The tax credits must first be used to offset all or part of the taxpayer's current income tax liability. Any unused portion of the tax credit allocation will be paid to the taxpayer in the same manner as a refund. If qualification is terminated or revoked, all or part of the tax credits received under this program are subject to recapture under A.R.S. §§ 43-1075 (H) and 43-1163 (H). To download Revenue's forms, visit <http://www.azdor.gov/>

2. *Property Tax Reclassification.* Real and personal property and improvements constructed or installed from and after December 31, 2009 through December 31, 2014 that are primarily dedicated to renewable energy manufacturing or headquarters operations and that are certified by Commerce can be designated as Class 6 property (A.R.S. § 42-12006 (9)). Up to 10% of the aggregate full cash value of the property may be derived from uses that are ancillary to and intrinsically associated with the manufacturing process or headquarters operation. Any additional property that is unrelated to the renewable energy operation is not qualified for reclassification. This reclassification qualifies the property for a 5% assessment ratio for both primary and secondary tax purposes, effectively constituting up to a 75% savings in business property taxes (A.R.S. § 42-15006 (1)).

Companies must make new qualifying investment of \$25 million in renewable energy manufacturing and/or headquarter operations in Arizona to be eligible. The property tax reclassification benefit is available to an eligible company for not more than:

- 10 years, if the company pays at least 51% of the net new full-time employment positions between 125% and 199% of the annual median wage and pays at least 80% of the health insurance costs for all net new employees.
- 15 years, if the company pays at least 51% of the net new full-time employment positions at least 200% of the annual median wage and pays at least 80% of the health insurance costs for all net new employees.

To obtain the reclassification, following receipt of post-approval by Commerce the certified company must submit a written request to the County Assessor of the county in which the project is located in. The written request must be submitted each year to apply the provisions of these statutes to its property. Be sure to attach a copy of the post-approval letter to the request for reclassification. Separate divisions handle real property and personal property, so both divisions at the appropriate County Assessor must be contacted. Upon receipt of the written request for reclassification from the post-approved company, the County Assessor may reclassify all real and personal property primarily dedicated to renewable energy operations to Class 6 for primary and secondary tax assessment purposes. For companies already receiving the benefit, failure to request reclassification in a timely

manner will result in loss of the property tax benefit for the next valuation year. For new companies the benefit will be delayed until the subsequent valuation year.

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#### **Section 4. Tax Incentives Limitations**

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- A. Commerce cannot pre-approve a total amount of tax credits that exceeds \$70,000,000 per calendar year.
- B. The tax credit amount issued to an eligible company is apportioned. The allocation of credits shall be claimed in five equal installments over five consecutive tax years as outlined in the post-approval letter.
- C. Companies who timely claim tax credits can use the tax credit allocation to offset Arizona income tax liability. The amount of tax credits that are not used to offset Arizona income tax liability will be paid to the eligible company as a refund.
- D. If a company files an "Application for Post-Approval," Commerce shall not pre-approve any additional tax credits for the specific project in an initial application for which pre-approval was issued.
- E. There is no limitation on the amount of property tax savings available to an eligible company. Nor is there a limit on the total amount of property tax savings available in any calendar year under this program.
- F. Property can receive only one ten-year or fifteen-year term of reclassification, whether or not the business takes advantage of the program. Once property is reclassified under the Renewable Energy Tax Incentive Program it is no longer eligible for reclassification at that site under this or any other program.
- G. If a company has more than one location and can demonstrate eligibility for each location, Commerce may certify both locations simultaneously or consecutively for renewable energy tax incentives.
- H. If the applicant company is leasing property for its operations, the property tax reclassification benefit will be applied as follows:
  - Commerce will certify the entire parcel if the company is utilizing the entire facility and can demonstrate that the property is primarily devoted to the renewable energy operations. Up to 10% of the aggregate full cash value of the property may be derived from uses that are ancillary to and intrinsically associated with the renewable energy operations.
  - If the company is unable to demonstrate that the property is primarily devoted to the renewable energy operations, Commerce will certify only the portion of the facility being that is primarily devoted to the operations.
- I. The State of Arizona offers four years of additional depreciation on most commercial or industrial equipment. Once property is reclassified to Class 6, it is no longer eligible for additional depreciation, personal property exemption and the 2.5% minimum valuation factor for that valuation year. If the company chooses additional depreciation for a valuation year the company loses one year of its property reclassification benefit.

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#### **Section 5. Calendar Year Cap Management**

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- A. Commerce shall pre-approve tax credits according to A.R.S. § 41-1511 (J). The date of pre-approval dictates the cap year from which the allocation is made. The total amount of credits pre-approved for a single application shall be applied against the calendar year cap in which pre-approval occurred. If a calendar year's cap is exhausted by October 31<sup>st</sup>, Commerce may begin accepting applications during November and December of that year, for an allocation of tax credits from the next calendar year's cap. However, the pre-approval letter issued to the company will not be effective until January 1<sup>st</sup> of the next calendar year.
- B. Commerce cannot authorize tax credits in an amount more than 10% of the total new qualifying investment amount in a renewable energy manufacturing facility or a renewable energy headquarters facility.
- C. Tax credits are authorized on a first come, first served basis according to the priority placement number established by the date of receipt of the company's application. Income tax credits must be claimed or refunded in equal installments over a five year period following receipt of post-approval.
- D. Initial applications can be accepted by Commerce year round for the Renewable Energy Tax Incentive Program. When initial application is made, if sufficient cap is not available the company may either:
  1. Accept any remaining allocation amount and any property tax reduction, or
  2. Proceed with pre-approval for the application knowing the project will not receive tax credits at this time and accept any property tax reduction, or

3. Irrevocably decline any remaining tax credit allocation amount for that calendar year and accept any property tax reduction, or
  4. Withdraw the initial application and apply in the next year when sufficient cap may be available.
- E. A company may voluntarily relinquish all or part of the pre-approved tax credit amount by submitting the Commerce form “Voluntary Relinquishment of Tax Credits.” It is important to note, when a company relinquishes tax credits the company is voluntarily relinquishing any and all rights to the tax credits and is prohibited from claiming, using or receiving a refund in the amount of the relinquished tax credits. However, the company may continue receiving property tax reduction, even though the company relinquished all or part of its tax credit allocation. To receive any property tax reduction the company must maintain eligibility and submit an application for post-approval to Commerce. Failure to submit an application for post-approval would constitute ineligibility and would disqualify the company from receiving property tax reduction.
- F. Tax credits that were voluntarily relinquished or returned due to ineligibility shall be re-allocated to a qualified company with the next priority placement number. (A.R.S. § 41-1511 (K)) The form “Voluntary Relinquishment of Tax Credits” needs to be signed by an officer of the applicant company empowered to sign for the company.
- G. If in any year there is an unused tax credit amount Commerce shall allocate the balance to a qualified company that successfully appeals the denial of tax incentives under this program. If sufficient unused tax credit amount is not available from the current or previous years’ caps to satisfy a successful appeal, Commerce shall allocate tax credits from the next calendar year’s cap. (A.R.S. § 41-1511 (J) (1)) Any unused credits may be allocated to any company waiting for an allocation of tax credits for that year or, if there are no companies to accept the credits, the credits will roll forward to the next calendar year’s cap. Unused tax credit amounts may only roll forward one calendar year; if after rolling forward, the credits continue to be unused, the tax credits are permanently lost.

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## Section 6. Submittal of Initial Applications

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The acceptance process described in this section will determine the priority placement number assigned to initial applications. Commerce will date and time stamp each initial application on the date of receipt and assign a priority placement number accordingly. Postmarks will be disregarded when determining the date of receipt. The priority placement number determines the order in which Commerce allocates that calendar year’s cap.

Commerce shall only accept original, initial applications delivered via United States Postal Service, private delivery service or hand delivery. Any other form of delivery for an initial application, including emailed or faxed copies will not be accepted by Commerce.

Commerce shall accept initial applications for a calendar year’s cap on or after the first business day of every calendar year. Any initial application for a calendar year’s cap received prior to the first business day of the calendar year will be returned to the applicant. If a calendar year’s cap is exhausted by October 31<sup>st</sup> of a year, Commerce can begin accepting applications for the next calendar year’s cap. Commerce will notify applicants when the cap has been exhausted and will begin accepting applications on or after November 1<sup>st</sup> for the next calendar year.

Any initial application for a calendar year’s cap that is not substantially complete will be considered withdrawn by the applicant and the applicant notified. Once an initial application is deemed withdrawn by the applicant, processing will cease and the priority placement number will be voided. The applicant is responsible to timely submit any additional information requested by Commerce. If an initial application is considered withdrawn, a company may file a revised initial application for the same renewable energy project at a later date and receive a new priority placement number.

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## Section 7. Processing Initial Applications

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- A. Application can be made by submitting the Commerce form: “Initial Application for Pre-Approval”. Initial Applications must be original applications, delivered via United States Postal Service, private delivery service or hand delivery. Facsimile or electronically transferred applications will not be accepted. A company working on more than one renewable energy project may have more than one initial application at any given time.

The Initial Application, according to A.R.S. § 41-1511 (B), shall include:

1. Name, contact information and federal identification number for the company
2. Name and contact information of an individual who can be contacted with regard to the application
3. The address of where the qualifying facility will be located
4. A detailed description of the qualifying facility and fixed capital assets
5. An estimate of the capital investment and number of employment positions at the qualifying facility

6. The company must submit to Commerce an affidavit signed by an officer of the applicant company. By signing the affidavit the company agrees, but is not limited, to the following:
    - a. That the information contained in the initial application is true and correct under penalty of perjury
    - b. To furnish records of expenditures to Commerce or Revenue on request
    - c. That property being reclassified is primarily dedicated to renewable energy manufacturing or headquarters operations, if applicable
    - d. To not be involved in any action that liquidates the AZ business assets or relocates the AZ operation out-of-state for five years after post-approval
    - e. Continue in business at the qualifying facility for five full calendar years after post-approval
    - f. To furnish information regarding the amount of tax benefits claimed each year to Commerce on request.
    - g. Revenue providing tax information to Commerce pursuant to A.R.S. § 42-2003 for the purpose of determining any inconsistency in information
    - h. The disclosure by Commerce of the amount of tax benefits received each year in composite form, without specific identification of any taxpayer.
    - i. To allow site visits and audits to verify the applicant's continuing qualification and the accuracy of information submitted to Commerce.
    - j. To the adjustment or recapture of any amount of income tax credit due to noncompliance
  7. A non-refundable processing fee of \$500 - \$2,500 depending on the total capital investment amount of the project
    - a. \$500 for projects less than \$5 million;
    - b. \$750 for projects between \$5 million and \$9,999,999;
    - c. \$1,000 for projects between \$10 million and \$14,999,999;
    - d. \$1,500 for projects between \$15 million and \$19,999,999;
    - e. \$2,000 for projects between \$20 million and \$24,999,999; and
    - f. \$2,500 for projects exceeding \$25 million.
  8. Revenue's [Form 285B](#) authorizing Commerce to obtain confidential taxpayer information from Revenue
  9. Copies of the letters of good standing from:
    - a. Revenue and
    - b. the County Treasurer of the county in which the project is located
- B. Prior to submittal of an initial application to Commerce:
1. A company must request a letter of good standing from Revenue by submitting form "Tax Clearance Application." If a company files multiple initial applications for different projects, a separate tax clearance application must be submitted to Revenue for each initial application. If a separate tax clearance application is not submitted to Revenue and approval received, a company will not receive a letter of good standing for that initial application.
  2. A company must request a letter of good standing from the County Treasurer in the county the project will be located in by submitting a written request to the County Treasurer. If a company files multiple initial applications for different projects, a separate request must be submitted to the County Treasurer for each initial application. If a separate request is not submitted to the County Treasurer and approval received, a company will not receive a letter of good standing for that initial application.
  3. In accordance with A.R.S. §§ 23-214(b) and 35-397, all applicant employers must be participating in the E-Verify program in order to receive Renewable Energy Tax Incentives. Further, pursuant to the above statutes, the applicant is certifying that the company does not have scrutinized business operations in Iran or Sudan and is not otherwise lawfully precluded from participating in any public funding activity with any Federal, State or Local Government. Signing an application without disclosing all pertinent information about business investments and business operations in Iran or Sudan shall result in rejection or cancellation of the application. The State may also exercise any other remedy available by law.
- C. During review of the substantially complete initial application, Commerce may request additional information, conduct a site visit or discuss the initial application with the company. The company will have 14 calendar days to supply any additional information requested by Commerce. If the information provided does not complete the application the company can be given one extension of an additional 14 calendar days to supply the requested information. If the company does not satisfy the request within the allotted timeframe, the application will be considered withdrawn by the company and the priority placement number assigned to the initial application will be cancelled.

- D. Commerce shall make a determination with regard to each initial application within 30 days after the date of receipt of a complete initial application.
- E. If Commerce denies pre-approval, the company may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10. A company may appeal this decision; however, the denial of pre-approval prohibits a company from receiving tax incentives under this program unless the appeal is successful.
- F. If the company is qualified for tax incentives, Commerce shall issue a pre-approval (letter of qualification) and transmit a copy to Revenue and the appropriate County Assessor. Pre-approval is issued to a qualified company for each initial application and is effective until the company submits an application for post-approval as long as the company maintains eligibility. A pre-approval includes an estimated dollar amount and the percentage of calendar year cap allocated, the effective date, the priority placement number and the project name. Pre-approval does not guarantee receipt of tax incentives under this program because pre-approval is issued before Commerce determines final eligibility. Nor does pre-approval of a company for the purposes of tax incentives, imply compliance with any other provision of law or any regulatory rule, order, procedure, permit or other measure required by law. Note: January 1<sup>st</sup> will be the effective date of the pre-approval letters for all applications received during November 1<sup>st</sup> and December 31<sup>st</sup> that are intended for the next calendar year's cap.

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## **Section 8. Next Steps: Following Pre-approval**

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### A. Within 12-Months After Pre-approval

A company must submit a substantially complete "12-Month Interim Report" to Commerce and demonstrate that it has spent at least \$250,000 in qualified expenses. A 12-Month Interim Report and proof that the \$250,000 investment threshold has been met must be demonstrated to Commerce for each twelve-month period until the company applies for post-approval on an initial application.

If the company fails to timely submit the report and demonstrate its expenditures the pre-approval lapses, the application is void and the pre-approved tax credits will be returned to the calendar year cap from which they came. Commerce may require additional documentation, conduct inspections or audits, as necessary, to verify compliance.

### B. Qualifying Investment

For the purposes of this program, total qualifying investment means investment in land, buildings, machinery and fixtures for expansion of an existing facility or establishment of a new facility in this state. Qualifying investment does not include relocating an existing facility in this state to another location in this state without additional \$250,000 capital investment. Further, qualifying investment does not include costs incurred prior to September 30, 2009, operating expenses and employee payroll expenses. Any expense incurred subsequent to submittal of the "Application for Post-Approval" will not be considered a qualifying expense, nor will it be counted toward the \$250,000 investment threshold. (A.R.S. §§ 41-1511 (P) and 41-1511 (X)) Please note: a company with two or more initial applications must make a separate \$250,000 investment to individually qualify each project.

Only qualifying costs that are incurred by the applicant company or its affiliate and that are directly attributable to a project as shown in the initial application can be counted toward the investment threshold and the total amount of qualifying investment. Ownership of all assets must be in the name of the qualified company or its affiliate. Investments in leased property may be a qualifying cost, if the ownership of the asset transfers to the qualified company or its affiliate at the end of the lease.

Prior to issuing post-approval, Commerce may check all or some of the expenses to ensure compliance and will request documentation of the expenses, as necessary. Acceptable documentation of qualifying costs include copies of paid invoices and cancelled checks. Other documentation may include: a real estate settlement sheet, county affidavit of property value, Arizona business property statement, copies of capital leases for equipment, or a Federal IRS Form 4562 and all supporting schedules that identify, at a minimum, the piece of equipment, the date acquired and the cost.

A qualified company must maintain records of expenditures for each initial application in order to certify costs to Commerce or Revenue upon completion of the project. Commerce may require additional documentation, conduct inspections or audits, as necessary, to verify compliance.

### C. Qualified Employment Positions & Levels of Employment

To be eligible to receive Renewable Energy Tax Incentives, a company must create new jobs and make new capital investment at follows:

- Renewable energy manufacturing operations must create at least one and one half (1.5) full-time employment positions for each \$500,000 increment of capital investment. (A.R.S. § 41-1511 (A) and (F))
- Renewable energy headquarter operations must create at least one (1) full-time employment position for each \$200,000 increment of capital investment. (A.R.S. § 41-1511 (A) and (F))

Of the new full-time employment positions created, at least 51% must be qualified employment positions for the company to qualify for tax incentives. For the purposes of this program, a full-time employment position is a position that is:

- Permanent with a minimum of 1,750 hours per year
- Filled by either a U.S. citizen or employee having authorization to work legally in the U.S.
- The company must offer health insurance coverage for the employee for which the employer pays at least 80% of premium or membership cost. If an employer is self-insured for employee health costs, the employer must attach documentation showing the employer pays at least 80% of the plan administration costs, or some other fixed cost that is similar to a regular premium. The day the health insurance coverage is offered to the employee is the day the eligibility begins (as long as all other eligibility requirements have been met.)

Pursuant to A.R.S. § 43-1083.01 (A) and (E) and A.R.S. § 43-1164.01 (A) and (E), a qualified employment position is a position that meets all of the following requirements:

- The position must be full-time and permanent with a minimum of 1,750 hours per year
- The position must have been filled for at least 90 days during the first taxable year (A new qualified employment position filled during the last 90 days of the taxable year shall be considered a new qualified employment position for the next taxable year.)
- The position must have been filled by either a U.S. citizen or employee having authorization to work legally in the U.S.
- Job duties must be performed primarily (more than 50%) at the renewable energy operations
- The employee must not have been previously employed by the taxpayer within 12 months before the current date of hire
- The employee must be paid at least 125% of the median annual wage as computed annually by Commerce.

Year	For Tax Periods Beginning	AZ Median Wage	125% of the Median Wage
2008	6/1/09 through 5/31/10	\$30,940	\$38,675 per year
2009	6/1/10 through 5/31/11	\$32,220	\$40,275 per year
2010	6/1/11 through 5/31/12	\$33,051	\$41,314 per year

When determining the median wage paid to employees, the following wages can be included:

- Base Rate
- Commissions
- Tips
- Deadheading Pay
- Guaranteed Pay
- Hazard Pay
- Incentive Pay
- Longevity Pay
- Piece Rate
- Portal-to-Portal Rate
- Production Bonus
- Cost-of-Living Allowance

Definitions for these terms are posted at the following website: <http://www.bls.gov/ncs/ocs/sp/ncbl0062.pdf>

A qualified company must maintain records of employment for each initial application in order to certify employment numbers to Commerce or Revenue upon completion of the project. Commerce may require additional documentation, conduct inspections or audits, as necessary, to verify compliance.

**D. Written Managed Review**

Pursuant to A.R.S. § 41-1511(O), before a qualified company applies for post-approval, the company must enter into a written managed review agreement with Commerce. At the company's expense, the company will select a certified public accountant, who is licensed in Arizona and who is approved by Commerce, to conduct the written managed review. The certified public accountant and the firm the certified public accountant is affiliated with shall not regularly perform services for the company or its affiliates.

To confirm the amount of credit or property tax incentive, the managed review shall include an analysis of the company's invoices, checks, accounting records and other documents and information to verify its investment and other requirements of A.R.S. §§ 42-12006, 43-1083.01 or 43-1164.01. The certified public accountant shall furnish its findings in writing to Commerce; who will review the findings and may examine records and perform other reviews it considers necessary to verify that the managed review substantially conforms to the terms of the managed review agreement. Commerce shall accept or reject the findings of the managed review. If Commerce rejects all or part of the managed review, Commerce shall provide written reasons for the rejection.

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## **Section 9. Processing Applications for Post-Approval**

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- A. Pursuant to A.R.S. § 41-1511 (P), a company can apply to Commerce for post-approval once the facility "begins operations." To demonstrate that the facility has begun operations, a company must submit evidence to Commerce that it's:
- Headquarters facility is open for public business, or
  - Manufacturing facility is producing commercial quantities of usable products.
- In addition, the company must also submit an "Application for Post-Approval" to Commerce to receive post-approval for renewable energy tax incentives. (A.R.S. § 41-1511 (P))
- B. To generate a tax credit and be eligible for property tax reclassification a company must document compliance with the provisions of A.R.S. § 41-1511 and the requirements established by the Program Guidelines.
- C. During review of a substantially complete Application for Post-Approval, Commerce may request additional information, conduct a site visit or discuss the application with the applicant. It is the applicant's responsibility to ensure timely submittal of any additional information requested by Commerce. If the requested information is not timely submitted, Commerce cannot continue processing the Application for Post-Approval until all necessary information is supplied. Commerce shall attempt to make a determination with regard to the Application for Post-Approval within sixty days after the date of receipt of a complete application.
- D. If Commerce denies post-approval, the applicant may appeal the decision in accordance with A.R.S. Title 41 Chapter 6 Article 10.
- E. If the applicant is eligible for tax incentives, Commerce shall issue post-approval. The post-approval will include the project name, a specific dollar amount and the percentage of tax credits the eligible company may claim. Commerce will review total qualifying costs and recalculate the final amount of tax credits, as needed. The post-approved amount may be less than the pre-approved amount (if expenses were less than estimated), but never higher. The post-approval letter will also verify whether the applicant can receive the property tax reduction and the period of time the property is eligible for reclassification. Note: post-approval of a company for the purposes of renewable energy tax incentives do not constitute or imply compliance with any other provision of law or any regulatory rule, order, procedure, permit or other measure required by law.
- F. The post-approved company must claim the tax credits with Revenue on its original Arizona tax return for the tax year due when the post-approval was received. If the return is not timely filed or if it is not on an original return, Revenue may deny the credit.
- G. The post-approved company must timely submit a written request to the appropriate County Assessor each year to receive the property tax reclassification. If the written request is not timely submitted, the County Assessor may not reclassify the property at the facility.

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## **Section 10. Annual Reporting Requirements Following Post-Approval**

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A company must maintain eligibility for five (5) calendar years following receipt of post-approval. Each year a company must submit the form "Annual Report" and demonstrate that the post-approved company is still in operations and has maintained eligibility for the tax incentives.

The Annual Report, shall include:

1. The amount of tax incentives claimed by the eligible company during the previous 12-month period
2. Proof that the renewable energy operations have continued at the facility
3. Other documentation required by Commerce

Failure to submit the Annual Report may result in the revocation of the company's post-approval and therefore its eligibility to receive tax incentives under this program.

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## Section 11. Revocation of Qualification and Recapture of Incentives

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- A. As provided by A.R.S. § 41-1511 (M), if a company fails to spend and notify Commerce of its expenditures of at least \$250,000 in qualifying investments within a twelve month period, the pre-approval lapses, the application is void, and the pre-approved tax credits will be returned to the calendar year cap from which they came.
- B. Pursuant to A.R.S. § 41-1511 (Q) Commerce may rescind the company's certification if the business no longer meets the terms and conditions required for qualifying for the tax incentives. Commerce may give special consideration, or allow temporary exemption from recapture of tax benefits, in the case of extraordinary hardship due to factors beyond the control of the qualifying company. If Commerce rescinds a company's pre-approval, it shall notify the Department of Revenue and the appropriate County Assessor of the action and the conditions of noncompliance.
- The Department of Revenue may require the company to file appropriate amended tax returns reflecting any recapture of income tax credits under A.R.S. §§ 43-1083.01 or 43-1164.01. Recapture of credits is computed by increasing the amount of taxes imposed in the year following the year of termination or revocation by the full amount of all credits previously allowed.
  - The County Assessor may change the property's legal classification from Class 6 to the appropriate legal class under A.R.S. Title 42 Chapter 12 Article 1.
- C. To maintain qualification for tax incentives under this section, a company must separately comply with all environmental, employment and other regulatory measures. Commerce may periodically request information or conduct a site visit to verify the pre-approved company's compliance with these regulatory measures. A.R.S. § 41-1511 (S)
- D. Pursuant to A.R.S. § 41-1511 (T) for five calendar years after a company receives post-approval, any action involving the liquidation of the business assets or relocation out of state, the State of Arizona claims the position of a secured creditor of the business in the amount of income tax credits the company received pursuant to A.R.S. §§ 43-1083.01 or 43-1164.01.
- E. Pursuant to A.R.S. § 43-1083.01 (G) and 43-1164.01 (G), if within five taxable years after first receiving a credit, the certification of qualification of a company is terminated or revoked, other than for reasons beyond the control of the business as determined by Commerce, the taxpayer is permanently disqualified from credits under the renewable energy program in subsequent taxable years and the credits allowed the taxpayer in all taxable years are subject to recapture. Recapture of credits is computed by increasing the amount of taxes imposed in the year following the year of termination or revocation by the full amount of all credits previously allowed.
- F. Failure to submit the Annual Report may result in the revocation of the company's post-approval and therefore its eligibility to receive tax incentives under this program. (A.R.S. § 43-1083.01 (G) and 43-1164.01 (G))

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## Section 12. Definitions of Program Terms

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For purposes of applying for and maintaining eligibility for the Renewable Energy Tax Incentive Program, the following terms are either defined by Commerce or defined in A.R.S. § 41-1511. If a term is not defined, the most commonly accepted meaning will apply. For purposes of this program:

1. "12-Month Interim Report" means the Commerce form "12-Month Interim Report for a Renewable Energy Company" and all required attachments to demonstrate continued eligibility for tax incentives.
2. "Affiliate" means a member of an Arizona affiliated group as defined by A.R.S. § 43-947 or a member who files a combined return pursuant to A. A. C. 15-2D-401.
3. "Annual Report" means the Commerce form "Annual Report for a Renewable Energy Company" and all required attachments to demonstrate continued eligibility for tax incentives.
4. "Application for Post-Approval" means the Commerce form "Application for Post-Approval for a Renewable Energy Company" and all required attachments to demonstrate eligibility for tax incentives.
5. "Business day" means a day other than Saturday, Sunday, a legal holiday or the day the State of Arizona observes a legal holiday.
6. "Calendar year cap" or "cap": means the tax credit amount prescribed by A.R.S. § 41-1511 (J) for allocation in a specific calendar year.

7. "Capital investment" means an expenditure to acquire, lease or improve property that is used in operating a business, including land, buildings, machinery and fixtures.
8. "Costs incurred" means an expense paid by the qualified company or its affiliate to a retailer, lessor or contractor that is directly attributable to the renewable energy manufacturing or headquarters operation.
9. "Date of receipt" means the day and time the initial application is delivered to and accepted by Commerce via United States Postal Service, private delivery service or hand delivery. Postmarks will be disregarded when determining the date of receipt. Any other form of delivery for an initial application, including emailed or faxed copies will not be accepted by Commerce.
10. "Eligible" means a company for which an application for post-approval has been submitted and Commerce has issued a notice of post-approval.
11. "Facility" means a building or group of buildings and the Arizona land on which the building or group of buildings is located at which qualifying investments are made and where a company engages in renewable energy operations.
12. "Headquarters" means a principal central administrative office where regional, national or global primary headquarters related functions and services are performed, including financial, personnel, administrative, legal, planning and similar business functions are performed.
13. "Initial application" means the Commerce form "Initial Application for Pre-Approval for a Renewable Energy Company" and all required attachments to apply for tax incentives.
14. "Investment threshold" means qualifying investment expenditures on a pre-approved renewable energy project totaling at least \$250,000.
15. "Manufacturing" means fabricating, producing or manufacturing raw or prepared materials into usable products, imparting new forms, qualities, properties and combinations. Manufacturing does not include generating electricity for off-site consumption.
16. "Net new" means the extent to which the average number of full-time employment positions in the current tax year exceeds the average number of full-time employment positions in the previous tax year at a facility.
17. "Permanent" means an employment position that is not established for a specified or limited period of time.
18. "Primarily engaged" means that more than 50% of a company's business activity at a particular facility directly involves renewable energy operations, measured by revenues received, expenses incurred, square footage, or number of individuals employed.
19. "Project" means activities undertaken by a company to expand or locate renewable energy operations in this state.
20. "Qualified" means a company for which an application for pre-approval has been submitted and Commerce has issued a letter of qualification.
21. "Qualifying investment" means investment in land, buildings, machinery and fixtures for expansion of an existing renewable energy operation or establishment of a new renewable energy operation in this state after September 30, 2009. Qualifying investment does not include relocating an existing renewable energy operation in this state to another location in this state without additional capital investment of at least two hundred fifty thousand dollars.
22. "Qualifying renewable energy operation" means the facility where a qualifying investment was made.
23. "Renewable energy" means usable energy, including electricity, fuels, gas and heat, produced through the conversion of energy provided by sunlight, water, wind, geothermal, heat, biomass, biogas, landfill gas or other nonfossil renewable resource.
24. "Renewable energy business" or "qualified company" means a person primarily engaged in the business of renewable energy manufacturing operations or renewable energy headquarters operations.
25. "Renewable energy operations" are limited to manufacturers of, and headquarters for, systems and components that are used or useful in manufacturing renewable energy equipment for the generation, storage, testing and research and development, transmission or distribution of electricity from renewable resources, including specialized crates necessary to package the renewable energy equipment manufactured at the qualifying renewable energy operation.
26. "Renewable resource" means a resource that is replaced by natural and assisted processes at a rate that is comparable to or faster than its rate of natural depletion and consumption by humans.

27. "Substantially complete" means all questions in the application or application for post-approval are fully addressed by the applicant and all documents required by Commerce are attached or can be supplied within 14 calendar day after receipt of notification by Commerce of any deficiencies. One extension of an additional 14 calendar days may be requested and granted by the program manager. Applications or completion reports that are not substantially complete will be rejected and the applicant notified.
28. "Tax incentives" means the tax credits against Arizona tax liability provided under A.R.S. §§ 43-1083.01 and 43-1164.01 and the real and personal property tax reduction provided under A.R.S. §§ 42-12006, 42-12057 and 42-15006.

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