

NOTICE OF RULE MAKING
Arizona Commerce Authority Rule
Notice of Rule Making No. 14-02

1. Rule:

Arizona Commercial/Industrial Solar Energy Tax Credit Program (the “Program”)

2. Preamble.

A. Reference to the specific statutory authority for the Rule.

A.R.S. § 41-1510.01

B. An explanation of the Rule, including the agency's reasons for initiating the rule making.

This Rule, which will supersede the existing Program Rule, incorporates the preapproval process for the certification of Program credits added to A.R.S. § 41-1510.01 by Section 2 of S.B. 1313 (Fifty-first Legislature, First Regular Session (2013)), and makes various conforming and clarifying changes to the existing Program Rule.

3. The exact wording of the Rule.

See attached.

4. The name and contact information of agency personnel with whom persons may communicate regarding the Rule.

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5. Where written submissions on the proposed Rules may be inspected (by appointment only).

Written submissions on the proposed Rules may be inspected (by appointment only) at the following location:

Arizona Commerce Authority
333 North Central, Suite 1900
Phoenix, Arizona 85004

6. The time during which written submissions may be made and the time and place, if scheduled, where oral comments may be made.

Written submissions may be made within thirty (30) days after the date of posting of the Notice of Rule Making. Written submissions should be directed to:

Arizona Commerce Authority
333 North Central, Suite 1900
Phoenix, Arizona 85004

No hearing at which oral comments may be made has been scheduled as of this time.

7. Any known timetable for agency decisions or other action in the proceeding.

None at this time.

8. The date of posting the Notice of Rule Making.

April 11, 2014.

9. The deadline for the Authority to file a notice of adoption of the Rules.

One hundred and eighty (180) days from the date of posting of the Notice of Rule Making.

Arizona Commerce Authority
COMMERCIAL/INDUSTRIAL SOLAR ENERGY TAX CREDIT PROGRAM

Program Rules & Guidelines¹

“Preliminary – Pending ACA Rules Process”

Section 1. Overview

Pursuant to A.R.S. §§ 41-1510.01, 43-1085 and 43-1164, the Commercial/Industrial Solar Energy Tax Credit Program (the “Program”) stimulates the use of Qualified Solar Energy Devices in commercial, industrial or other non-residential applications by providing Arizona nonrefundable income tax credits (“Tax Credits”) to offset the costs of such devices. Tax Credits generally equal 10% of the installed costs of a Qualified Solar Energy Device, up to \$25,000 per facility in a tax year and up to \$50,000 per taxpayer in a tax year. If allowable Tax Credits exceed the taxes due in a tax year, a taxpayer may carry the unused credits forward for up to the next five consecutive tax years.

Tax Credits are available to a qualifying business that purchases a Qualified Solar Energy Device and causes the device to be installed at the business’s Arizona facility. Tax Credits may be transferred to a taxpayer that financed, installed or manufactured the Qualified Solar Energy Device.

The Program offers \$1 million of Tax Credits per calendar year (the “Calendar Year Cap”). Eligibility for Tax Credits within the Calendar Year Cap is secured through a preapproval process administered by the Arizona Commerce Authority (“Commerce”). Preapproval is granted on a first-come, first-served basis, according to the date and time stamp on a substantially complete application for preapproval.

The Program is effective for tax years beginning through December 31, 2018.

Section 2. Eligibility

Subject to all additional requirements set forth in these Rules, a taxpayer² is eligible to claim Tax Credits if the taxpayer:

- Either:
 - (a) Is a business that purchases a Qualified Solar Energy Device and causes the device to be installed at a Facility at which the business operates;
 - or
 - (b) Finances, installs, or manufactures a Qualified Solar Energy Device and is the transferee (“a Qualified Third Party Transferee”) of Tax Credits secured by the purchaser of the device;

¹ These Program Rules & Guidelines (these “Rules”) are issued under the authority of A.R.S. §§ 41-1005(A)(28) and 41-1510.01(G) to govern administration of the Program and apply in respect to applications for preapproval submitted on or after January 1, 2014. In the case of any conflict between these Rules and governing statutes, the statutes will prevail. Section 8 of these Rules provides a glossary of capitalized terms used in more than one section of these Rules.

² The term “taxpayer” as used in these Rules includes an exempt organization subject to tax on unrelated business taxable income (“UBTI”) if the relevant Tax Credits relate to activities that generate UBTI.

and

- Complies with all preapproval and postapproval application requirements set forth herein.

Section 3. Tax Credit Amount

A. Tax Credits equal 10% of the Installed Cost of the Qualified Solar Energy Device, up to \$25,000 for a Facility in a tax year (whether one or more Qualified Solar Energy Devices are installed at the Facility).

B. A taxpayer (including a Qualified Third Party Transferee) may claim up to \$50,000 in Tax Credits in a tax year.

C. Tax Credits claimed by a taxpayer in any case may not exceed the Tax Credits authorized by Commerce.

Section 4. Applications, Review and Disposition

A. Forms for Filing Applications. Copies of all Program Application forms are available on Commerce’s website.

B. Method for Submitting Applications. Applications must be filed electronically through Commerce’s Electronic Application System (“EASY”) and are subject to EASY’s [terms and conditions](#). EASY will date and time stamp submitted materials upon receipt for purposes of processing and allocating Tax Credits within the Calendar Year Cap.

C. Applying for Preapproval.

1. Application Form. A business must submit a “Request for Preapproval” Application form (a “Preapproval Form”). If granted, preapproval, among other things, confirms eligibility of the device as a Qualified Solar Energy Device and reserves Tax Credits within the Calendar Year Cap.

2. Time of Filing.

a. Calendar Year Businesses. A business whose taxable year is the calendar year must submit a Preapproval Form in the calendar year in which the Qualified Solar Energy Device is installed and becomes operational.³ A Preapproval Form can be submitted as early as the first day of that year and must be submitted not later than the *earlier of* (a) the last day of that year or (b) the date on which a postapproval Application is submitted in accordance with subsection 4.D.1 below.

b. Fiscal Year Businesses. A business that employs a fiscal year tax year may submit a Preapproval Form during applicable portions of one of two different calendar years, or in some cases both calendar years. With respect to the *taxable year in which the device is installed and becomes operational*, such business may submit a Preapproval Form either in (a) the calendar year in which such business’s taxable year begins or (b) the calendar year in which such business’s taxable year ends. In both cases, the Preapproval Form may be filed as early as the first day of the calendar year. A business can submit Preapproval Forms in *both* calendar years if preapproval in the first calendar year was denied due to lack of Calendar Year Cap availability (but not otherwise). Preapproval Forms for fiscal year-businesses must be submitted not later than the *earlier of* (a) the last day of the business’s taxable year in which the device is installed and becomes operational or (b) the date on which a postapproval Application is submitted in accordance with subsection 4.D.1 below.

³ A Qualified Solar Energy Device is considered “operational” when the device is ready for use.

3. Voiding of Preapproval. Preapproval will be voided if the applicable Qualified Solar Energy Device is not installed and operational by the end of the business's taxable year identified in the Preapproval Form, or if postapproval is not obtained for any reason.

4. Application Fees. Preapproval is subject to a non-refundable processing fee equal to 1% of the amount of Tax Credits reserved. When a business is notified that its Preapproval Form will be approved pending payment of the processing fee, the business must remit the processing fee within ten (10) Business Days of such notice or the Preapproval Form will be deemed "withdrawn." Commerce accepts only checks in payment of processing fees.

5. Multiple Devices. A business must submit a separate Preapproval Form for *each* Qualified Solar Energy Device irrespective of whether multiple devices are installed at a single Facility or multiple Facilities.

D. Applying for Postapproval.

1. Application Form. A business must apply to Commerce for postapproval by submitting a "Request for Postapproval" Application form (a "Postapproval Form"). Among other items, a Postapproval Form and related attachments must demonstrate that the Qualified Solar Energy Device has, in a timely manner, been installed at the business's Facility at which it conducts operations and that the device is operational. Commerce requires a Commissioned Report certifying that a Qualified Solar Energy Device was installed and was operational as of a specified date.

2. Time of Filing. A Postapproval Form can be submitted as early as the date the Qualified Solar Energy Device is installed and operational, provided that a Preapproval Form was previously submitted or is contemporaneously submitted. Unless subsection 5.F below applies, a Postapproval Form must be submitted not later than the last day of the calendar year immediately following the calendar year in which the approved Preapproval Form for the Qualified Solar Energy Device was submitted. If a Postapproval Form is not timely submitted, the Tax Credits reserved for the business in connection with the preapproval process are forfeited.

E. Processing Applications; Dispositions.

1. Substantially Complete Applications. Commerce processes only Substantially Complete Applications. An Application that is not Substantially Complete is not treated as submitted. Accordingly, a Preapproval Form that is not Substantially Complete at the time of submittal has no priority in respect to an allocation of Tax Credits within the applicable Calendar Year Cap. If notified by Commerce that its Preapproval Form is not Substantially Complete at the time of submittal, the applicant-business is required to submit a new Preapproval Form if it continues to seek Tax Credits.

2. Additional Information, Site Visits. When reviewing Applications, Commerce may discuss the Application with the applicant-business, request additional information, and/or conduct a site visit. If an applicant-business does not satisfy a request for additional information within the allotted timeframe (generally a maximum of 28 calendar days pursuant to the definition of "Substantially Complete" set forth in Rules Section 8), the Application will be considered "withdrawn" and, in the case of a Preapproval Form, any priority otherwise achieved in respect to processing the Application and allocating Tax Credits within the Calendar Year Cap associated with the date and time of submission of the Preapproval Form will be lost.

3. Time for Review. Commerce will attempt to make a determination with regard to any Substantially Complete Application within 30 calendar days after receipt of any or all information requested by Commerce in order for the Application to be rendered complete or, in the absence of a request for additional information, within 30 calendar days of the Application's submission.

4. Approvals.

a. Approval of Preapproval Form; Initial Certification. If a Preapproval Form is approved and the business submits the requisite processing fee in a timely manner, Commerce will issue a preapproval letter (an “Initial Certification”). An Initial Certification will reflect, among other information, the name of the applicant-business, a description of and unique identifying number for the Qualified Solar Energy Device, the amount of Tax Credits reserved, and the business’s tax year. Unless or until an Initial Certification is issued, preapproval is not granted and Tax Credits are not considered reserved for the applicant-business. An Initial Certification does not guarantee a business’s ability to claim Tax Credits because the document is issued before final eligibility for Tax Credits is determined in accordance with the postapproval process described in the subsection immediately below. **FURTHER, FOR RULES RELATING TO APPLICATION OF THE CALENDAR YEAR CAP IN THE CONTEXT OF THE PREAPPROVAL PROCESS, SEE SECTION 5, BELOW.**

b. Approval of Postapproval Form; Credit Certificate. If a Postapproval Form is approved, Commerce will issue a post approval letter (a “Credit Certificate”) to the applicant-business and also transmit a copy to the Department of Revenue (“Revenue”). A Credit Certificate will reflect, among other information, the name of the applicant-business, a description of and unique identifying number for the Qualified Solar Energy Device, the maximum amount of Tax Credits the business may claim and the business’s tax year in which the Qualified Solar Energy Device was installed and became operational. The amount of Tax Credits specified in a Credit Certificate will never exceed the amount specified in the corresponding Initial Certification. If fewer Tax Credits are set forth in a Credit Certificate than were reserved in the corresponding Initial Certification, the remaining Tax Credits that had been reserved will be considered *forfeited*, including for purposes of the operation of subsection 5.F below.

F. Denial of an Application. If Commerce does not approve an Application, the applicant-business may appeal the decision in accordance with the provisions of A.R.S. Title 41, Chapter 6, Article 10. Pending an appeal, the business may submit a new Application.

Section 5. Management of Calendar Year Cap

A. Commerce is authorized to issue Initial Certifications reserving up to \$1 million in aggregate Tax Credits for a calendar year.

B. Unallocated Tax Credits in any calendar year do not roll forward to the next calendar year and, accordingly, do not increase the following year’s Calendar Year Cap.

C. Tax Credits reserved through an Initial Certification reduce availability under the Calendar Year Cap in respect to the calendar year *in which the corresponding Preapproval Form was submitted*. To illustrate, assume that (a) a business submits a Preapproval Form in 2015 which is approved through issuance of an Initial Certification that reserves Tax Credits for the business and (b) the business subsequently submits a Postapproval Form in 2016 which is approved through issuance of a Credit Certificate. In such case, the Tax Credits are treated as counting against the 2015 Calendar Year Cap; the 2016 Calendar Year Cap in this case is not impacted.

D. Commerce will reserve Tax Credits for the first \$1 million in Preapproval Forms approved in a calendar year. After \$1 million of Tax Credits are reserved in Initial Certifications, Commerce will provide notification to such effect on its website and will suspend reserving further Tax Credits for the balance of that calendar year. However, after such notification and continuing through the end of that calendar year, Commerce will continue to review Preapproval Forms and, with respect to each Preapproval Form satisfying Program requirements, Commerce will provide the applicant-businesses (a) with notice that the device is a Qualified Solar Energy Device and (b) with a priority placement number assigned by Commerce to the Preapproval Form. Applicant-businesses receiving such notification may have an opportunity to claim Tax Credits

pursuant to operation of subsection 5.F below if credits theretofore reserved for *other* businesses have been forfeited.

E. If an Initial Certification is ready for issuance and Calendar Year Cap availability remains but is insufficient in volume to reserve the entire Tax Credit requested, Commerce will, subject to all other limitations herein, offer the applicant-business the remaining Calendar Year Cap availability. An applicant-business then has ten (10) Business Days within which to either (a) accept in writing Commerce's offer of the remaining Calendar Year Cap or (b) elect in writing to receive a priority placement number in accordance with subsection 5.D above in connection with the operation of subsection 5.F below. If a business takes neither of such actions in a timely manner, the business's Preapproval Form will be considered "withdrawn."

F. Each February (commencing in 2016), Commerce will determine whether all of the Tax Credits reserved through Initial Certifications issued two calendar years earlier have been reflected in Credit Certificates. If (a) Commerce determines that fewer than all Tax Credits reserved in Initial Certifications have been reflected in Credit Certificates and, hence, that some Tax Credits theretofore reserved have been *forfeited* and (b) the Calendar Year Cap for the applicable calendar year (i.e., two calendar years preceding the calendar year in which the review under this subsection occurs) was exhausted, Commerce will notify, in the order of priority placement numbers issued under subsection 5.D above, the applicant-businesses which, in the applicable calendar year, received priority placement numbers. Commerce will, subject to all other limitations herein, offer such applicant-businesses Tax Credits until the full amount of the forfeited Tax Credits is absorbed. If a business does not accept the offer by paying the applicable processing fee within ten (10) Business Days, the offer will be rescinded and the business's Preapproval Form will be considered "withdrawn." The ability to claim Tax Credits by a business that accepts the offer described herein is further conditioned upon (a) submittal by the business of a Postapproval Form not later than 90 calendar days following the notification and (b) Commerce's approval thereof through issuance of a Credit Certificate.

Section 6. Clarifications Regarding Eligible Facilities and Qualified Solar Energy Device Financing Arrangements

A. Eligible Businesses. A business is eligible to apply for Tax Credits under the Program only if the business (a) purchases a Qualified Solar Energy Device and (b) causes the device to be installed and become operational at a Facility at which the business operates.

B. Ineligible Businesses. A business that sells, leases, finances, installs or manufactures a Qualified Solar Energy Device is not eligible to apply for Tax Credits relating to that Qualified Solar Energy Device unless the business meets the description of subsection 6.A above with respect to the device.

C. Eligible Third-Party Transferees of Tax Credits. A Qualified Third-Party Transferee that financed, installed or manufactured a Qualified Solar Energy Device may be the transferee of Tax Credits if the business that purchased the Qualified Solar Energy Device and caused the device to be installed and operational at a Facility at which the business conducts operations (a) applies on its own behalf for Tax Credits for the Qualified Solar Energy Device, (b) receives a Credit Certificate and (c) transfers the Tax Credits to the Qualified Third Party Transferee in accordance with procedures established by Revenue. For the avoidance of doubt, it is expressly noted that a business may not *apply for* Tax Credits on behalf of another business; hence, any business that applies for Tax Credits must qualify on its own for the Tax Credits.

D. Solar Energy Device Leases and Licenses Do Not Create Facilities. For the avoidance of doubt, the leasing or licensing of real property or improvements to the seller or lessor of a Qualified Solar Energy Device for the installation and operation of a device does not create or establish a Facility at that location for the seller or lessor of the device.

E. Power Purchase Agreements. Devices installed under so-called “Power Purchase Agreements” (“PPAs”), as further described in Revenue Corporate Income Tax Ruling CTR 13-2, are not eligible for Tax Credits.

F. Conditional Sales Contracts (Capital Leases); Other Leases.

1. Conditional Sales Contracts (Capital Leases). An acquisition of a Qualified Solar Energy Device pursuant to a “conditional sales contract” (also sometimes referred to as a “capital lease”) is treated by the Program as a purchase of a Qualified Solar Energy Device. The parameters governing characterization of an acquisition agreement, however denominated (including an agreement captioned as or otherwise described as a “lease”), as a “conditional sales contract” are illustrated in IRS Revenue Ruling 55-540, 1955-2 C.B. 19.

2. True Leases, Operating Leases, Etc. For the avoidance of doubt, a Qualified Solar Energy Device that is leased by a business pursuant to a true lease, an operating lease or any other type of lease that fails to qualify as a “conditional sales contract” is not eligible for Tax Credits.

3. Contract Interpretation. If a business certifies under penalties of perjury that a lease of a Qualified Solar Energy Device qualifies as a “conditional sales contract,” Commerce is authorized to accept such certification in determining whether to issue an Initial Certification and/or a Credit Certificate to the business-lessee. Although Commerce may accept such certification in issuing an Initial Certification or a Credit Certificate, Revenue reserves the right to examine whether the lease actually constitutes a “conditional sales contract.”

G. Gifted Solar Energy Devices. A business is not eligible for Tax Credits if the business receives the device as a gift or otherwise fails to pay for the device. In any such event, the Installed Cost of the device is zero.

H. Facilities with a Residential Component. A business is not eligible for Tax Credits if the Facility at which the Qualified Solar Energy Device is installed has a residential component, unless the residential component provides housing to business staff and the business is one at which staff are customarily housed on-site as an element of business operations.

Section 7. Claiming or Transferring Tax Credits

A. After a taxpayer receives a Credit Certificate from Commerce relating to a Qualified Solar Energy Device, the taxpayer may either (a) claim 100% of the Tax Credits or (b) transfer 100% of the Tax Credits to a Qualified Third Party Transferee.

B. Tax Credits must be claimed on an Arizona income tax return that includes Revenue Form 336. If the taxpayer-claimant is the purchaser of the Qualified Solar Energy Device, the taxpayer must claim the Tax Credits in its tax year during which the Qualified Solar Energy Device was installed and became operational, which must also correspond to the tax year for which preapproval for the device was sought and obtained. If the taxpayer-claimant is a Qualified Third Party Transferee, the Tax Credits must be claimed in the tax year identified by Revenue in its authorization of the Tax Credit transfer.

C. A taxpayer seeking to transfer Tax Credits to a Qualified Third Party Transferee may do so by complying with procedures established by Revenue. As set forth in subsection 3.B. above, a Qualified Third Party Transferee of Tax Credits may be eligible to claim up to \$50,000 in Program Tax Credits in the aggregate per year, including the Tax Credits received by transfer as well as any Tax Credits earned directly.

D. Tax Credits can be used to offset Arizona income tax liability. If the allowable Tax Credits are more than the taxes due, a taxpayer can carry the unused credits forward for up to five consecutive years.

E. Co-owners of a business (including partners of a partnership, members of a limited liability company and shareholders of an S corporation) may each claim their pro rata share of the certified Tax Credits. The total Tax Credits allowed all such co-owners may not exceed the amount that would have been allowed for a sole owner of the business.

Section 8. Definition of Program Terms

The following capitalized terms, which are used in more than one section of these Rules, have the meanings below. If a term used in these Rules is not defined herein, the most commonly accepted meaning of the term will govern.

1. “Application” means, as the case may be, either (a) a “Request for Preapproval” and any and all required supporting documents or (b) a “Request for Postapproval” and any and all required supporting documents.
2. “Business Day” means a day other than Saturday, Sunday, a legal holiday or the day the State of Arizona observes a legal holiday or a day on which Commerce is authorized or obligated by law or executive order to be closed.
3. “Calendar Year Cap” means as defined in section 1 herein.
4. “Commerce” means the Arizona Commerce Authority.
5. “Commissioned Report” means a document commissioned (and if applicable paid for) by a purchaser of a Qualified Solar Energy Device seeking Tax Credits, which is issued by the dealer or installer of the Qualified Solar Energy Device and which certifies, among other information, that the device is installed and operational, meaning that it is ready for use. The document must include the name of the dealer or installer, the name of the purchaser, the installation address and the date on which the device was installed and operational.
6. “Credit Certificate” means as defined in subsection 4.E.4.b herein.
7. “EASY” means as defined in subsection 4.B.1 herein.
8. “Facility” means any Arizona building located on a single parcel or contiguous parcels used by the owner or lessee thereof in the operation of its business. Parcels that are separated only by a public thoroughfare or right-of-way are considered to be contiguous.
9. “Financing Costs” means any and all fees, interest, penalties and origination, servicing and closing charges related to any extension of credit associated with the acquisition and installation of a Qualified Solar Energy Device.
10. “Initial Certification” means as defined in subsection 4.E.4.a herein.
11. “Installed Cost” means, in respect to a Qualified Solar Energy Device, the acquisition cost of the Qualified Solar Energy Device (determined without regard to whether any portion of the acquisition cost is offset by a rebate) plus the installation charges, if any. For the avoidance of doubt, “Installed Cost” does not include Financing Costs. By way of illustration, assuming that a taxpayer (a) pays \$22,000 to a vendor for the purchase of a Qualified Solar Energy Device, (b) receives a rebate of \$3,000 from the manufacturer of the device or the local utility company, (c) incurs \$500 in charges for installation of the device and (d) incurs \$1,000 of Financing Costs associated with the device, the Installed Cost of the device is \$22,500. In such case, the only relevant items in the determination of the Installed Cost of the device are the applicable purchase price and installation charges.
12. “Preapproval Form” means as defined in subsection 4.C.1 herein

13. "Postapproval Form" means as defined in subsection 4.D.1 herein.
14. "Program" means as defined in section 1 herein.
15. "Qualified Solar Energy Device" means as the term "solar energy device" is defined by A.R.S. § 42-5001(15) (or the succeeding or corresponding provision of the A.R.S.) In determining whether to issue an Initial Certification, a device will not be considered a Qualified Solar Energy Device unless certified as such to Commerce by the Arizona Governor's Office on Energy Policy (or any successor state agency with expertise in solar energy devices).
16. "Qualified Third Party Transferee" means as defined in section 1 herein.
17. "Revenue" means the Arizona Department of Revenue.
18. "Rules" means as defined in section 1 herein.
19. "Substantially Complete" means, in respect to an Application, that the applicant-business has made a good faith effort, in Commerce's sole and absolute judgment, to appropriately answer all questions on the Application form and provide all required supporting documents and that any additional information requested by Commerce in order for the Application to be complete can be provided by the applicant-business within 14 calendar days of the receipt of notification from Commerce (or within an additional 14 calendar day period if requested by the taxpayer and granted by the Program manager). Applications that, without justification, lack required supporting documents or required answers (or that contain answers which do not substantively respond to one or more questions) will be rejected. Notifications to taxpayers requesting additional information will be transmitted via e-mail. A taxpayer will be treated as in *receipt* of any such notification on the date of Commerce's e-mail transmittal to the taxpayer provided that Commerce transmits the notification to the e-mail address furnished by the taxpayer in the Application or in any subsequent documentation received from the taxpayer.
20. "Tax Credits" means as defined in section 1 herein.

Commercial Solar Program
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Questions regarding the Commercial Solar Program can be
directed to: BlancaC@azcommerce.com