SENATE BILL 372: Renewable Energy Safe Harbor

2015-2016 General Assembly

Committee:		**Date:**	
Introduced by:		**Prepared by:**	Heather Fennell Staff Attorney
Analysis of:	S.L. 2015-11		

SUMMARY: S.L. 2015-11, as amended by Sec. 54.3 of S.L. 2015-264, provides a delayed sunset for the credit for investing in renewable energy credit for the following taxpayers:

- ***Taxpayers that have incurred at least 80% of the costs, and partially constructed at least 80% of a project with less than 65 megawatts of capacity by January 1, 2016.***
- ***Taxpayers that have incurred at least 50% of the costs, and partially constructed at least 50% of a project with 65 megawatts of capacity or more by January 1, 2016.***

This act became effective April 30, 2015.

CURRENT LAW: Under current law, the credit for investing in renewable energy property applies to biomass equipment, hydroelectric generators, solar energy equipment, wind equipment, and geothermal heat pumps and equipment. The amount of the credit for investing in renewable energy property is 35% of the cost of the property placed in service. In the case of renewable energy property that services a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the credit must be taken in five equal installments, beginning with the taxable year in which the property is placed in service. The amount of the credit is subject to certain limits depending on the type of property and whether the property is placed in service in a residential or nonresidential setting. The credit will sunset on January 1, 2016.

The credit is subject to the following caps:

TYPE OF PROPERTY	**MAXIMUM CREDIT**
Non-residential property.	$2,500,000 per installation.
Residential property – Solar energy equipment for domestic water heating. The act clarifies that the credit also applies to solar energy equipment for pool heating.	$1,400 per dwelling unit.
Residential property – Solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.	$3,500 per dwelling unit.
Residential property – Geothermal heat pumps and equipment.	$8,400 per installation.
Residential property – All other renewable energy property for residential purposes.	$10,500 per installation.

The credit may be taken against the franchise tax, the income tax, or the gross premiums tax. The taxpayer must elect the tax against which the credit will be claimed when the credit is taken. The election is binding, and any carryforwards of the credit must be taken against the same tax.

The renewable energy tax credit has the following limitations and conditions:

- The renewable energy tax credit may not exceed 50% of the tax against which it is claimed for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.
- A taxpayer that claims any other credit allowed with respect to renewable energy property may not take the renewable energy tax credit with respect to the same property.
- A taxpayer may not take the renewable energy tax credit if the taxpayer leases the property from another person, unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit with respect to this property.

ANALYSIS: S.L. 2015-11 extends the credit for property placed in service prior to January 1, 2017, for taxpayers that meet certain requirements. In order to qualify for the extension, a taxpayer must submit an application to the Department of Revenue by October 1, 2015, and pay an application fee of $1,000 per megawatt of capacity, with a minimum fee of $5,000. The application must also provide the total anticipated credit amount and the total anticipated installed capacity.

To qualify for the delayed sunset of the credit, the tax payer must show the project is partially constructed as of January 1, 2016. The amount of the partial construction is based on the anticipated capacity of the proposed project. For projects that will have less than 65 megawatts of capacity, the project must be 80% complete by January 1, 2016. For projects that will have 65 megawatts of capacity or more, the project must be 50% complete by January 1, 2016.

In order to show the percentage completion, the taxpayer must submit the following documentation to the Department by March 1, 2016:

- A written certification by the taxpayer that the costs incurred and the partial physical construction prior to January 1, 2016, meets the minimum required percentage.
- A report from a licensed engineer that the partial construction of the project prior to January 1, 2016, meets the minimum required percentage.
- A report from a licensed CPA that the costs incurred for the project prior to January 1, 2016, meet the minimum required percentage.

EFFECTIVE DATE: This act became effective April 30, 2015.