

Chapter 493

(House Bill 464)

AN ACT concerning

Maryland Clean Energy Incentive Act of 2010

FOR the purpose of extending a certain credit against the State income tax for electricity produced by certain facilities from certain qualified energy resources until a certain date; extending the period in which the Maryland Energy Administration may issue certain qualifying certifications; altering certain requirements for certain credit certificates; prohibiting the Administration from issuing initial credit certificates for less than a certain amount; providing for the refund of the credit under certain circumstances; and generally relating to a certain income tax credit for electricity produced from qualified energy resources.

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 10–720

Annotated Code of Maryland

(2004 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Tax – General

10–720.

(a) (1) In this section the following words have the meanings indicated.

(2) “Administration” means the Maryland Energy Administration.

(3) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, “qualified energy resources” has the meaning stated in § 45(c)(1) of the Internal Revenue Code.

(ii) “Qualified energy resources” includes any solid, nonhazardous, cellulosic waste material that is segregated from other waste materials and is derived from:

1. any of the following forest–related resources, not including old–growth timber:

- A. mill residues, except sawdust and wood shavings;
 - B. forest thinnings;
 - C. slash; or
 - D. brush;
- 2. waste pallets, crates, and dunnage and landscape or right-of-way trimmings; or
 - 3. agricultural sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

(iii) “Qualified energy resources” includes methane gas or other combustible gases resulting from the decomposition of organic materials from an agricultural operation, or from a landfill or wastewater treatment plant using one or a combination of the following processes:

- 1. anaerobic decomposition; or
- 2. thermal decomposition.

(4) “Qualified Maryland facility” means a facility located in the State that:

(i) primarily uses qualified energy resources to produce electricity and is originally placed in service on or after January 1, 2006, but before January 1, [2011] **2016**; or

(ii) produces electricity from a qualified energy resource that is co-fired with coal and initially begins co-firing a qualified energy resource on or after January 1, 2006, but before January 1, [2011] **2016**, regardless of when the original facility was placed in service.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, an individual or corporation that receives an initial credit certificate from the Administration may claim a credit against the State income tax for a taxable year in an amount equal to 0.85 cents for each kilowatt hour of electricity:

(i) produced by the individual or corporation from qualified energy resources at a qualified Maryland facility during the 5-year period specified in the initial credit certificate; and

(ii) sold by the individual or corporation to a person other than a related person, within the meaning of § 45 of the Internal Revenue Code, during the taxable year.

(2) If the electricity is produced from a qualified energy resource that is co-fired at a facility that produces electricity from coal, the credit is 0.5 cents for each kilowatt hour of electricity produced from the qualified energy resource instead of 0.85 cents.

(3) The annual tax credit under this subsection may not exceed one-fifth of the maximum amount of credit stated in the initial credit certificate.

(c) (1) Subject to the provisions of this subsection, on application by a taxpayer, the Administration shall issue an initial credit certificate if the taxpayer has demonstrated that the taxpayer will within the next 12 months produce electricity from qualified energy resources at a qualified Maryland facility.

(2) The initial credit certificate issued under this subsection shall:

(i) state the maximum amount of credit that may be claimed by the taxpayer **FOR ELECTRICITY PRODUCED** over a 5-year period;

(ii) state the earliest tax year for which the credit may be claimed; and

(iii) ~~expire after the 5th consecutive tax year beginning with the earliest tax year for which the credit may be claimed~~ **STATE THE 5-YEAR PERIOD DURING WHICH ELECTRICITY PRODUCED FROM QUALIFIED ENERGY RESOURCES AT THE QUALIFIED MARYLAND FACILITY QUALIFIES FOR THE CREDIT.**

(3) The maximum amount of credit stated in the initial credit certificate shall:

(i) for an energy producer, be in an amount equal to the lesser of:

1. the product of multiplying 5 times the taxpayer's estimated annual tax credit, based on estimated annual energy production, as certified by the Administration; or

2. \$2,500,000.

(4) The Administration may not issue initial credit certificates for maximum credit amounts in the aggregate totaling more than \$25,000,000.

(5) The Administration shall approve all applications that qualify for an initial credit certificate under this subsection on a first-come, first-served basis.

(6) If a taxpayer over a 3-year period does not claim on average at least 10% of the maximum credit amount stated in the initial credit certificate, the Administration at its discretion may cancel an amount of the taxpayer's initial credit certificate equal to the product of multiplying:

(i) the amount of the credit on average that was not claimed over the 3-year period; and

(ii) the remaining number of tax years that the taxpayer is eligible to take the credit.

(7) An applicant for an initial credit certificate or a taxpayer whose credits have been canceled under paragraph (6) of this subsection, may appeal a decision by the Administration to the Office of Administrative Hearings in accordance with Title 10, Subtitle 2 of the State Government Article.

(8) The Administration may not issue an initial credit certificate after December 31, [2010] **2015**.

(9) THE ADMINISTRATION MAY NOT ISSUE INITIAL CREDIT CERTIFICATES FOR CREDIT AMOUNTS LESS THAN \$1,000.

(d) If the credit allowed under this section in any taxable year exceeds the State income tax, ~~any unused credit may be carried forward and applied for succeeding taxable years until the earlier of:~~

~~(1) the full amount of the credit is used; or~~

~~(2) the expiration of the 10th taxable year after the taxable year in which the credit arose~~ **OTHERWISE PAYABLE BY THE CORPORATION OR INDIVIDUAL FOR THAT TAXABLE YEAR, THE CORPORATION OR THE INDIVIDUAL MAY CLAIM A REFUND IN THE AMOUNT OF THE EXCESS.**

(e) (1) On January 1, 2007, and each year thereafter, the Administration shall provide to the Comptroller a list of all taxpayers in the prior tax year that have been issued an initial credit certificate and shall specify for each taxpayer the earliest tax year for which the credit may be claimed and the maximum amount of credit allowed.

(2) (i) On or before October 1, 2007, and each year thereafter, the Comptroller and the Administration jointly shall submit to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly a written report regarding:

1. the number of certifications and taxpayers claiming the credit under this section;
2. the name and physical location of each taxpayer issued an initial credit certificate;
3. the maximum credit amount approved for each taxpayer;
4. the geographical distribution of the credits claimed; and
5. any other available information the Administration determines to be meaningful and appropriate.

(ii) The Comptroller shall ensure that the information is presented and classified in a manner consistent with the confidentiality of tax return information.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010.

Approved by the Governor, May 20, 2010.