

**1979 Assembly Bill 636**

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**CHAPTER 329, Laws of 1979**

AN ACT to repeal 71.09 (7) (k) to (L), (11) (n) and (12) (d); to renumber 101.57 (1) (a) and (b); to renumber and amend 71.09 (7) (n) and (11) (i) to (k); to amend 71.04 (15) (a) and (16) (a), 71.09 (12) (b), (c) and (e) and 101.57 (1) (intro.), (1m) (a) 1 to 3 and (b) 1 to 3, as renumbered, (3), (6), (7), (9) and (10); to repeal and recreate 71.09 (12) (i); and to create 71.04 (16) (d), 71.09 (12) (dg), (dr) and (f) and 101.57 (1) (a) to (d), (1m) (intro.), (5g), (5r), (7m), (12) and (13) of the

statutes, relating to revisions of renewable alternative energy system incentives and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 71.04 (15) (a), and (16) (a), as affected by chapter 34, laws of 1979, of the statutes are amended to read:

71.04 (15) (a) With the exception of sub. (2b), all provisions of this section relating to amortization or depreciation of depreciable property by corporations shall terminate as of the close of each corporation's 1971 taxable year for all purposes of the Wisconsin tax on or measured by net income, including but not limited to subs. (2a), (2c), (13) and (14). No loss or deduction shall be allowed to any corporation pursuant to under sub. (7) or (8), respectively, with respect to depreciable property in determining net income of the 1972 taxable year or taxable years thereafter unless such the loss or deduction is allowed as a deduction under the internal revenue code for federal income tax purposes. With the exception of pollution abatement plants and equipment, waste treatment facilities and renewable energy resource systems deducted, amortized or depreciated pursuant to ~~sub. (7) or (8), respectively,~~ sub. (2b), (2g) and (16) for all purposes of the Wisconsin corporation tax on or measured by net income of the 1972 taxable year and taxable years thereafter, the amount of depreciation or amortization on depreciable property allowable as a deduction from gross income shall be limited to the amount allowable as a deduction from gross income under the internal revenue code for federal income tax purposes, but no deduction for depreciation or amortization for depreciable property may exceed the Wisconsin "income tax cost" (basis) of depreciable property.

(16) (a) All expenses for designing, constructing, equipping and installing ~~an alternative a renewable energy resource system,~~ as defined in s. 101.57 (8), in this state which are incurred on or after April 20, 1977, may be deducted in the year paid, may be depreciated or may be amortized over a period of 5 years. Only an alternative a renewable energy resource system which is installed and which is certified in accordance with the procedure specified in s. 101.57 (3) is eligible for this election. The election, once made, may not be changed and shall be made on the first tax return filed after the expenses are incurred.

SECTION 2. 71.04 (16) (d) of the statutes is created to read:

71.04 (16) (d) No expenses may be deducted, depreciated or amortized under this subsection if a credit has been received under s. 71.09 (12) or a refund has been received under s. 101.57 for the same renewable energy resource system.

SECTION 3. 71.09 (7) (k) to (L) of the statutes are repealed.

SECTION 4. 71.09 (7) (n) of the statutes is renumbered 71.09 (13) (d) and amended to read:

71.09 (13) (d) Any person aggrieved by the department of revenue's redetermination under ~~this subsection (sub. (7), (11) or (12)),~~ except when the denial is based upon late filing of claim for credit or is based upon a redetermination under sub. (7) (m) of rent constituting property taxes accrued as at arms-length, may appeal ~~such the~~ redetermination to the tax appeals commission by filing a petition with the commission within 30 days after ~~such the~~ redetermination, as provided under s. 73.01 (5) with respect to income tax cases, and review of the commission's decision may be had under s. 73.015. For appeals brought under this paragraph, the filing fee required under s. 73.01 (5) (a) ~~shall does~~ not apply.

SECTION 5. 71.09 (11) (i) to (k) of the statutes are renumbered 71.09 (13) (a) to (c), respectively, and amended to read:

71.09 (13) (a) Whenever an audit of any claim filed under ~~this subsection sub. (7), (11) or (12)~~ indicates that an incorrect claim was filed, the department of revenue shall make a determination of the correct amount and notify the claimant of the determination and the reasons therefor. Notice of the determination shall be given to the claimant within 4 years of the last day prescribed by law for filing the claim. If the claim has been paid, or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and such assessment shall bear interest at 9% per ~~annum~~ year from the due date of the claim. Any person feeling aggrieved by the determination may, within 30 days after receipt, petition the department for redetermination. The department shall make a redetermination on the petition within 6 months after it is filed and notify the claimant. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive.

(b) A claimant who has filed a timely claim under ~~this subsection sub. (7), (11) or (12)~~ may file an amended claim with the department of revenue within 4 years of the last day prescribed by law for filing the original claim.

(c) In any case in which it is determined that a claim under sub. (7), (11) or (12) is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income taxes are assessed and such assessment shall bear interest from the due date of the claim, until refunded or paid, at the rate of 1.5% per month. The claimant in such case, and any person who assisted in the preparation or filing of the excessive claim or supplied information upon which the excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor. In any case in which it is determined that a claim is or was excessive and was negligently prepared, 10% of the corrected claim shall be disallowed and, if the claim has been paid or credited against income taxes otherwise payable, the credit shall be reduced or canceled and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and the assessment shall bear interest at 1.5% per month from the due date of the claim.

SECTION 6. 71.09 (11) (n) of the statutes is repealed.

SECTION 8. 71.09 (12) (b) and (c) of the statutes are amended to read:

71.09 (12) (b) Applications for credit under this subsection shall be made on a form prescribed by the department of revenue and attached to the applicant's state income tax return. If the allowable amount of claim under this subsection exceeds the income taxes otherwise due on the claimant's income or if there are no Wisconsin income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes shall be certified to the department of administration for payment to the claimant by check from the appropriation under s. 20.835 (2) (e). No interest shall be allowed on any payment made to a claimant under this paragraph. No claim filed under this subsection shall be allowed unless the claim is filed within 4 years of the taxable year in which the costs upon which it is based were incurred.

(c) The department of revenue shall approve the credit ~~in par. (a)~~ under this subsection if:

1. The ~~alternative~~ renewable energy resource system is a specified model which has been certified by the department of industry, labor and human relations as meeting the standards specified in ~~par. (d)~~ s. 101.57 (5); or

2. Based on design calculations or other appropriate documentation, specified by the department of industry, labor and human relations by rule, and submitted by the owner of ~~an alternative~~ a renewable energy resource system, the system has been certified by the

department of industry, labor and human relations as meeting the standards specified in ~~par. (d)~~ s. 101.57 (5).

SECTION 9. 71.09 (12) (d) of the statutes is repealed.

SECTION 10. 71.09 (12) (dg) and (dr) of the statutes are created to read:

71.09 (12) (dg) The department of industry, labor and human relations shall inspect selected renewable energy resource systems which have been installed and certified for purposes of this subsection to ensure compliance with the standards established under s. 101.57 (5).

(dr) Any person who intentionally files fraudulent information with the department of industry, labor and human relations for purposes of obtaining the certification of a renewable energy resource system as meeting the standards established under s. 101.57 (5) for purposes of this subsection is subject to the penalties under s. 71.11 (42) or (43).

SECTION 11. 71.09 (12) (e) of the statutes is amended to read:

71.09 (12) (e) If more than one person owns ~~an alternative~~ a renewable energy resource system eligible for the credit under this subsection, such persons may divide the credit among themselves as desired. If a business partnership owns such a system, each partner may claim the credit under par. (a) for up to \$10,000 of costs per partner, but the total claimed by the partnership may not exceed \$50,000 of costs per system. Once credit is claimed for ~~an alternative~~ a renewable energy resource system under this section, subsequent owners of the system are not eligible for credit under this subsection for the same system.

SECTION 12. 71.09 (12) (f) of the statutes is created to read:

71.09 (12) (f) No credit may be granted under this subsection if a credit has been received under this subsection in a prior taxable year for the same renewable energy resource system or if expenses relating to the same system have been deducted, depreciated or amortized under s. 71.04 (16).

SECTION 13. 71.09 (12) (i) of the statutes is repealed and recreated to read:

71.09 (12) (i) In this subsection "renewable energy resource system" has the same meaning as designated under s. 101.57 (8) (a).

SECTION 15. 101.57 (1) (intro.) of the statutes, as created by chapter 34, laws of 1979, is amended to read:

101.57 (1) (intro.) Any person other than a corporation owning ~~an alternative~~ a renewable energy resource system installed on the person's property in this state may apply for a refund of the ~~following~~ percentage determined under sub. (1m) of the total cost of the design, construction, equipment and installation of the alternative renewable energy resource system, but not exceeding \$10,000 of such costs, incurred during the calendar year per system if such costs exceed \$500 in a single year and the system is certified under sub. (4):

SECTION 16. 101.57 (1) (a) and (b) of the statutes, as created by chapter 34, laws of 1979, are renumbered 101.57 (1m) (a) and (b), respectively, and 101.57 (1m) (a) 1 to 3 and (b) 1 to 3, as renumbered, are amended to read:

101.57 (1m) (a) 1. For 1979 ~~and 1980~~ to 1981, 24%.

2. For ~~1981 and 1982 and 1983~~, 18%.

3. For ~~1983 and 1984 and 1985~~, 12%.

(b) 1. For 1979 ~~and 1980~~ to 1981, 16%.

2. For ~~1981 and 1982 and 1983~~, 12%.

3. For ~~1983 and 1984 and 1985~~, 8%.

SECTION 17. 101.57 (1) (a) to (d) of the statutes are created to read:

101.57 (1) (a) The installation of the system is completed during the year for which the refund is claimed;

(b) The system is installed on the person's property in this state;

(c) The total cost of the system exceeds \$500; and

(d) The system is certified under sub. (4).

SECTION 18. 101.57 (1m) (intro.) of the statutes is created to read:

101.57 (1m) (intro.) The percentage of the total cost of the renewable energy resource system which may be claimed under sub. (1) shall be:

SECTION 19. 101.57 (3) of the statutes, as created by chapter 34, laws of 1979, is amended to read:

101.57 (3) Applications for refund under this section shall be made to the department. If approved by the department, the amount of refund shall be certified to the department of administration for payment to the claimant by check from the appropriation under s. 20.445 (1) (e). Only one claim may be filed by any claimant during any year. No claim filed under this section may be allowed unless the claim is filed within 4 years of the year in which the costs upon which it is based were incurred. A claimant who has filed a timely claim under this section may file an amended claim with the department within 4 years of the last day prescribed by law for filing the original claim.

SECTION 20. 101.57 (5g) and (5r) of the statutes are created to read:

101.57 (5g) The department shall inspect selected renewable energy resource systems which have been installed and certified for purposes of this section or s. 71.04 (16) or 71.09 (12) to ensure compliance with the standards established under sub. (5).

(5r) Any person who intentionally files fraudulent information with the department for purposes of obtaining the certification of a renewable energy resource system as meeting the standards established under sub. (5) for purposes of this section or s. 71.04 (16) or 71.09 (12) is subject to the penalties under s. 71.11 (42) or (43).

SECTION 21. 101.57 (6) and (7) of the statutes, as created by chapter 34, laws of 1979, are amended to read:

101.57 (6) If more than one person owns ~~an alternative~~ a renewable energy resource system eligible for the refund under this section, such persons may divide the refund among themselves as desired. If a business partnership owns such a system, each partner may claim the refund under sub. (1) for up to \$10,000 of costs per partner, but the total claimed by the partnership may not exceed \$50,000 of costs per system. If a refund is claimed for ~~an alternative~~ a renewable energy resource system under this section, subsequent owners of the system are not eligible for a refund under this section for the same system.

(7) No person may claim the refund under this section for expenses incurred before the first day of the person's 1979 taxable year or after December 31, 1984 1985.

SECTION 22. 101.57 (7m) of the statutes is created to read:

101.57 (7m) No refund may be granted under this section if a tax credit has been received under s. 71.09 (12) in a prior year for the same renewable energy resource system or if expenses relating to the same system have been deducted, depreciated or amortized under s. 71.04 (16).

SECTION 23. 101.57 (9) and (10) of the statutes, as created by chapter 34, laws of 1979, are amended to read:

101.57 (9) In cooperation with the department of administration and the university of Wisconsin system-extension, the department shall develop materials to inform the public of the refunds and tax deductions for ~~alternative~~ renewable energy resource systems avail-

able under this section and s. 71.04 (16). Such material shall include information on the calculation of the life-cycle costs of alternative renewable energy resource systems.

(10) The department shall annually prepare a summary of the number of claims under this section and s. 71.04 (16), including but not limited to information concerning the costs, size and type of each alternative renewable energy resource system for which a refund or deduction is claimed.

SECTION 24. 101.57 (12) and (13) of the statutes are created to read:

101.57 (12) Whenever an audit of any claim filed under this section indicates that an incorrect claim was filed, the department shall make a determination of the correct amount and notify the claimant of the determination and the reasons therefor. Notice of the determination shall be given to the claimant within 4 years of the last day prescribed by law for filing the claim. If the claim has been paid, the refund shall be reduced or canceled, and the proper portion of any amount paid shall be certified to the department of revenue and recovered by assessment as income taxes are assessed and the assessment shall bear interest at 9% per year from the due date of the claim. Any person feeling aggrieved by the determination may, within 30 days after receipt, petition the department for redetermination. The department shall make a redetermination on the petition within 6 months after it is filed and notify the claimant. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive.

(13) In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full and, if the claim has been paid, the refund shall be canceled and the amount paid may be certified to the department of revenue and recovered by assessment as income taxes are assessed and the assessment shall bear interest from the due date of the claim, until refunded or paid, at the rate of 1.5% per month. The claimant in such case, and any person who assisted in the preparation or filing of the excessive claim or supplied information upon which the excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor. In any case in which it is determined that a claim is or was excessive and was negligently prepared, 10% of the corrected claim shall be disallowed and, if the claim has been paid, the refund shall be reduced or canceled and the proper portion of any amount paid shall be certified to the department of revenue and recovered by assessment as income taxes are assessed and the assessment shall bear interest at 1.5% per month from the due date of the claim.

SECTION 25. **Term changes.** (1) Wherever in the following sections of the statutes the phrase "alternative energy" is found, the phrase "renewable energy resource" is substituted: 20.445 (1) (e) (title), as created by chapter 34, laws of 1979, 20.835 (2) (e) (title), 71.09 (12) (a) (intro.) and 101.57 (title), (4) (a), and (5) (intro.) and (b) to (d) and (8) (a), as created by chapter 34, laws of 1979.

(2) Wherever in chapter 34, laws of 1979, section 2006m (1) (k) and (2) the phrase "alternative energy" is found, the term "renewable energy resource" is substituted.

(3) Wherever in the following sections of the statutes, the phrase "an alternative energy" is found, the phrase "a renewable energy resource" is substituted: 71.09 (12) (a) (intro.) and 101.57 (4) (b), as created by chapter 34, laws of 1979.

(4) Wherever in the following section of the statutes, the phrase "alternative energy source" is found, the phrase "renewable energy resource" is substituted: 16.956 (1) (a) and (b), as created by chapter 34, laws of 1979.

(5) Wherever in the following section of the statutes, the phrase "alternative energy sources" is found, the phrase "renewable energy resources" is substituted: 16.956 (1) (g) 1 and (2), as created by chapter 34, laws of 1979.

SECTION 26. **Applicability.** This act applies to all claims filed under section 101.57 of the statutes on or after January 1, 1979.