

# The Florida Senate

## 2016 Florida Statutes

<u>Title XIV</u> TAXATION AND FINANCE	<u>Chapter 220</u> INCOME TAX CODE  <u>Entire Chapter</u>	<b>SECTION 192</b> <b>Renewable energy technologies</b> <b>investment tax credit.</b>
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### **220.192 Renewable energy technologies investment tax credit.—**

(1) DEFINITIONS.—For purposes of this section, the term:

(a) “Biodiesel” means biodiesel as defined in s. [212.08](#)(7)(hhh).

(b) “Corporation” includes a general partnership, limited partnership, limited liability company, unincorporated business, or other business entity, including entities taxed as partnerships for federal income tax purposes.

(c) “Eligible costs” means 75 percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2012, and June 30, 2016, not to exceed \$1 million per state fiscal year for each taxpayer and up to a limit of \$10 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel distribution qualify as an eligible cost under this section.

(d) “Ethanol” means ethanol as defined in s. [212.08](#)(7)(hhh).

(e) “Renewable fuel” means a fuel produced from biomass that is used to replace or reduce the quantity of fossil fuel present in motor fuel or diesel fuel. “Biomass” means biomass as defined in s. [366.91](#), “motor fuel” means motor fuel as defined in s. [206.01](#), and “diesel fuel” means diesel fuel as defined in s. [206.86](#).

(f) “Taxpayer” includes a corporation as defined in paragraph (b) or s. [220.03](#).

(2) TAX CREDIT.—For tax years beginning on or after January 1, 2013, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2013, and ending December 31, 2016, after which the credit shall expire. If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in tax years beginning January 1, 2013, and ending December 31, 2018, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. [220.131](#)(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. [220.13](#).

(3) CORPORATE APPLICATION PROCESS.—Any corporation wishing to obtain tax credits available under this section must submit to the Department of Agriculture and Consumer Services an application for tax credit that includes a complete description of all eligible costs for which the corporation is seeking a credit and a description of the total amount of credits sought. The Department of Agriculture and Consumer Services shall make a determination on the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue. The corporation must attach the Department of Agriculture and Consumer Services’ certification to the tax return on which the credit is claimed. The Department of Agriculture and Consumer Services is responsible for ensuring that the corporate income tax credits granted in each fiscal year do not exceed the limits provided for in this section. The Department of Agriculture and Consumer Services may adopt the necessary rules and forms for the application process.

(4) TAXPAYER APPLICATION PROCESS.—To claim a credit under this section, each taxpayer must apply to the Department of Agriculture and Consumer Services for an allocation of each type of annual credit by the date established by the Department of Agriculture and Consumer Services. The application form adopted by rule of the Department of Agriculture and Consumer Services must include an affidavit from each taxpayer certifying that all information contained in the application, including all records of eligible costs claimed as the basis for the tax credit, are true and correct. Approval of the credits under this section is on a first-come, first-served basis, based upon the date complete applications are received by the Department of Agriculture and Consumer Services. A taxpayer must submit only one complete application based upon eligible costs incurred within a particular state fiscal year.

Incomplete placeholder applications will not be accepted and will not secure a place in the first-come, first-served application line. If a taxpayer does not receive a tax credit allocation due to the exhaustion of the annual tax credit authorizations, then such taxpayer may reapply in the following year for those eligible costs and will have priority over other applicants for the allocation of credits. If the annual tax credit authorization amount is not exhausted by allocations of credits within that particular state fiscal year, any authorized but unallocated credit amounts may be used to grant credits that were earned pursuant to s. [220.193](#) but unallocated due to a lack of authorized funds.

(5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.—

(a) In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, which are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with this section. The Department of Agriculture and Consumer Services shall provide technical assistance when requested by the Department of Revenue on any technical audits or examinations performed pursuant to this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of an audit or examination or from information received from the Department of Agriculture and Consumer Services, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of the state.

(c) The Department of Agriculture and Consumer Services may revoke or modify any written decision granting eligibility for tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this section. The Department of Agriculture and Consumer Services shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

(d) The taxpayer shall file with the Department of Revenue an amended return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax and interest within 60 days after the taxpayer receives notification from the Department of Agriculture and Consumer Services that previously approved tax credits have been revoked or modified. If the revocation or modification order is contested, the taxpayer shall file an amended return or other report as provided in this paragraph within 60 days after a final order is issued after proceedings.

(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Department of Agriculture and Consumer Services that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

(6) TRANSFERABILITY OF CREDIT.—

(a) For tax years beginning on or after January 1, 2014, any corporation or subsequent transferee allowed a tax credit under this section may transfer the credit, in whole or in part, to any taxpayer by written agreement without transferring any ownership interest in the property generating the credit or any interest in the entity owning such property. The transferee is entitled to apply the credits against the tax with the same effect as if the transferee had incurred the eligible costs.

(b) To perfect the transfer, the transferor shall provide the Department of Revenue with a written transfer statement notifying the Department of Revenue of the transferor's intent to transfer the tax credits to the transferee; the date the transfer is effective; the transferee's name, address, and federal taxpayer identification number; the tax period; and the amount of tax credits to be transferred. The Department of Revenue shall, upon receipt of a transfer statement conforming to the requirements of this section, provide the transferee with a certificate reflecting the tax credit amounts transferred. A copy of the certificate must be attached to each tax return for which the transferee seeks to apply such tax credits.

(c) A tax credit authorized under this section that is held by a corporation and not transferred under this subsection shall be passed through to the taxpayers designated as partners, members, or owners, respectively, in the manner agreed to by such persons regardless of whether such partners, members, or owners are allocated or allowed any portion of the federal energy tax credit for the eligible costs. A corporation that passes the credit through to a partner, member, or owner must comply with the notification requirements described in paragraph (b). The partner,

member, or owner must attach a copy of the certificate to each tax return on which the partner, member, or owner claims any portion of the credit.

(7) RULES.—The Department of Revenue and the Department of Agriculture and Consumer Services shall have the authority to adopt rules pursuant to ss. [120.536](#)(1) and [120.54](#) to administer this section, including rules relating to:

(a) The forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(b) The implementation and administration of the provisions allowing a transfer of a tax credit, including rules prescribing forms, reporting requirements, and specific procedures, guidelines, and requirements necessary to transfer a tax credit.

(8) PUBLICATION.—The Department of Agriculture and Consumer Services shall determine and publish on its website on a regular basis the amount of available tax credits remaining in each fiscal year.

**History.**—s. 12, ch. 2006-230; s. 11, ch. 2008-227; s. 15, ch. 2010-138; s. 22, ch. 2011-3; s. 501, ch. 2011-142; s. 6, ch. 2012-117.

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