

IC 6-3.1-29

Chapter 29. Coal Gasification Technology Investment Tax Credit

IC 6-3.1-29-0.1

Application of chapter; severability

Sec. 0.1. (a) The addition of this chapter by P.L.191-2005 applies to taxable years beginning after December 31, 2005.

(b) Each individual provision of P.L.191-2005 is fully severable. If a provision requiring an agreement executed under section 19 of this chapter, as added by P.L.191-2005, to include a particular term is declared invalid, the invalidity of the provision does not affect the validity of:

- (1) the other provisions of this chapter, as added by P.L.191-2005;
- (2) the other terms of the agreement executed under section 19 of this chapter, as added by P.L.191-2005; or
- (3) a tax credit awarded under this chapter, as added by P.L.191-2005.

As added by P.L.220-2011, SEC.143.

IC 6-3.1-29-1

Legislative intent; use of women and minority businesses as vendors

Sec. 1. The general assembly declares that the opportunity for the participation of underutilized small businesses, especially women and minority business enterprises, in the coal gasification industry is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by this chapter. A recipient of a credit under this chapter is encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-2

"Commission"

Sec. 2. As used in this chapter, "commission" refers to the Indiana utility regulatory commission.

As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-3

"Corporation"

Sec. 3. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-4

"Department"

Sec. 4. As used in this chapter, "department" refers to the

department of state revenue.
As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-4.5

"Fluidized bed combustion technology"

Sec. 4.5. As used in this chapter, "fluidized bed combustion technology" means a technology that involves the combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid like state by the means of air or other gasses being passed through the materials.

As added by P.L.122-2006, SEC.10.

IC 6-3.1-29-5

"Indiana coal"

Sec. 5. As used in this chapter, "Indiana coal" has the meaning set forth in IC 21-47-1-4.

As added by P.L.191-2005, SEC.15. Amended by P.L.2-2007, SEC.125.

IC 6-3.1-29-6

"Integrated coal gasification powerplant"

Sec. 6. As used in this chapter, "integrated coal gasification powerplant" means a facility that satisfies all the following requirements:

- (1) The facility is located in Indiana and is a newly constructed energy generating plant.
- (2) The facility converts coal into synthesis gas that can be used as a fuel to generate energy or as a substitute for natural gas.
- (3) The facility uses the synthesis gas as a fuel to generate electric energy or produces synthesis gas that can be used as a substitute for natural gas.
- (4) The facility is dedicated primarily to production of electricity or gas for use by energy utilities serving Indiana retail electric or gas utility consumers.

As added by P.L.191-2005, SEC.15. Amended by P.L.175-2007, SEC.4.

IC 6-3.1-29-7

"Minority"

Sec. 7. As used in this chapter, "minority" means a member of a minority group (as defined in IC 4-13-16.5-1.)

As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-8

"Minority business enterprise"

Sec. 8. As used in this chapter, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

As added by P.L.191-2005, SEC.15. Amended by P.L.1-2006, SEC.144.

IC 6-3.1-29-9**"Pass through entity"**

Sec. 9. As used in this chapter, "pass through entity" means:

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company;
- (4) a limited liability partnership;
- (5) a corporation organized under IC 8-1-13; or
- (6) a corporation organized under IC 23-17-1 that is an electric cooperative and that has at least one (1) member that is a corporation organized under IC 8-1-13.

As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-10**"Qualified investment"**

Sec. 10. As used in this chapter, "qualified investment" means a taxpayer's expenditures for:

- (1) all real and tangible personal property incorporated in and used as part of an integrated coal gasification powerplant or a fluidized bed combustion technology; and
- (2) transmission equipment and other real and personal property located at the site of an integrated coal gasification powerplant or a fluidized bed combustion technology that is employed specifically to serve the integrated coal gasification powerplant or fluidized bed combustion technology.

As added by P.L.191-2005, SEC.15. Amended by P.L.122-2006, SEC.11.

IC 6-3.1-29-11**"State tax liability"**

Sec. 11. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 6-5.5 (the financial institutions tax);
- (3) IC 27-1-18-2 (the insurance premiums tax); and
- (4) IC 6-2.3 (the utility receipts tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-12**"Taxpayer"**

Sec. 12. As used in this chapter, "taxpayer" means a person, a corporation, a partnership, or other entity that makes a qualified investment.

As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-13

"Women's business enterprise"

Sec. 13. As used in this section, "women's business enterprise" has the meaning set forth in IC 4-13-16.5-1.3.
As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-14

Credit

Sec. 14. (a) A taxpayer that:

- (1) is awarded a tax credit under this chapter by the corporation;
and
- (2) complies with the conditions set forth in this chapter and the agreement entered into by the corporation and the taxpayer under this chapter;

is entitled to a credit against the taxpayer's state tax liability for a taxable year in which the taxpayer places into service an integrated coal gasification powerplant or a fluidized bed combustion technology and for the taxable years provided in section 16 of this chapter.

(b) A tax credit awarded under this chapter must be applied against the taxpayer's state tax liability in the following order:

- (1) Against the taxpayer's liability incurred under IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax).
- (2) Against the taxpayer's liability incurred under IC 6-5.5 (the financial institutions tax).
- (3) Against the taxpayer's liability incurred under IC 27-1-18-2 (the insurance premiums tax).
- (4) Against the taxpayer's liability incurred under IC 6-2.3 (the utility receipts tax).

As added by P.L.191-2005, SEC.15. Amended by P.L.122-2006, SEC.12.

IC 6-3.1-29-15

Computation of credit amount

Sec. 15. (a) Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled for a qualified investment in an integrated coal gasification powerplant is equal to the sum of the following:

- (1) Ten percent (10%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.
- (2) Five percent (5%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000) only if the facility is dedicated primarily to serving Indiana retail electric or gas utility consumers.

(b) Subject to section 16 of this chapter, the amount of the credit to which a taxpayer is entitled for a qualified investment in a fluidized bed combustion technology is equal to the sum of the following:

- (1) Seven percent (7%) of the taxpayer's qualified investment for the first five hundred million dollars (\$500,000,000) invested.

(2) Three percent (3%) of the amount of the taxpayer's qualified investment that exceeds five hundred million dollars (\$500,000,000).

As added by P.L.191-2005, SEC.15. Amended by P.L.122-2006, SEC.13; P.L.175-2007, SEC.5.

IC 6-3.1-29-16

Limitations on use of credit

Sec. 16. (a) A credit awarded under section 15 of this chapter must be taken in ten (10) annual installments, beginning with the year in which the taxpayer places into service an integrated coal gasification powerplant or a fluidized bed combustion technology.

(b) Subject to section 20 of this chapter, the amount of an annual installment of the credit awarded under section 15 of this chapter is equal to the amount determined in the last of the following STEPS:

STEP ONE: Determine the lesser of:

(A) the credit amount determined under section 15 of this chapter, divided by ten (10); or

(B) the greater of:

(i) the taxpayer's total state tax liability for the taxable year, multiplied by twenty-five percent (25%); or

(ii) the taxpayer's liability for the utility receipts tax imposed under IC 6-2.3 for the taxable year.

STEP TWO: Multiply the STEP ONE amount by the percentage of Indiana coal used in the taxpayer's integrated coal gasification powerplant or fluidized bed combustion technology in the taxable year for which the annual installment of the credit is allowed.

(c) If the credit allowed by this chapter is available to a member of an affiliated group of corporations filing a consolidated return under IC 6-2.3-6-5 or IC 6-3-4-14, the credit shall be applied against the state tax liability of the affiliated group.

As added by P.L.191-2005, SEC.15. Amended by P.L.122-2006, SEC.14.

IC 6-3.1-29-17

Preconstruction application for credit

Sec. 17. A person that proposes to place a new integrated coal gasification powerplant or fluidized bed combustion technology into service may apply to the corporation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The corporation shall prescribe the form of the application.

As added by P.L.191-2005, SEC.15. Amended by P.L.122-2006, SEC.15.

IC 6-3.1-29-18

Conditions for granting credit application

Sec. 18. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter

if the corporation determines that the taxpayer's proposed investment satisfies the requirements of this chapter.

As added by P.L.191-2005, SEC.15.

IC 6-3.1-29-19

Terms of required agreement; certificate of compliance

Sec. 19. (a) The corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

- (1) A detailed description of the project that is the subject of the agreement.
- (2) The first taxable year for which the credit may be claimed.
- (3) The maximum tax credit amount that will be allowed for each taxable year.
- (4) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.
- (5) If the facility is an integrated coal gasification powerplant, a requirement that the taxpayer shall pay an average wage to its employees at the integrated coal gasification powerplant, other than highly compensated employees, in each taxable year that a tax credit is available, that equals at least one hundred twenty-five percent (125%) of the average county wage in the county in which the integrated coal gasification powerplant is located.
- (6) For a project involving a qualified investment in an integrated coal gasification powerplant, a requirement that the taxpayer will maintain at the location where the qualified investment is made, during the term of the tax credit, a total payroll that is at least equal to the payroll that existed on the date that the taxpayer placed the integrated coal gasification powerplant into service.
- (7) A requirement that:
 - (A) one hundred percent (100%) of the coal used:
 - (i) at the integrated coal gasification powerplant, for a project involving a qualified investment in an integrated coal gasification powerplant; or
 - (ii) as fuel in a fluidized bed combustion unit, in a project involving a qualified investment in a fluidized bed combustion technology, if the unit is dedicated primarily to serving Indiana retail electric utility consumers; must be Indiana coal, unless the applicant wishes to assign the tax credit as allowed under section 20.5(c) of this chapter or elects to receive a refundable tax credit under section 20.7 of this chapter and the applicant certifies to the corporation that partial use of other coal is necessary to result in lower rates for Indiana retail utility customers; or
 - (B) seventy-five percent (75%) of the coal used as fuel in a fluidized bed combustion unit must be Indiana coal, in a project involving a qualified investment in a fluidized bed

combustion technology, if the unit is not dedicated primarily to serving Indiana retail electric utility consumers.

(8) A requirement that the taxpayer obtain from the commission a determination under IC 8-1-8.5-2 that public convenience and necessity require, or will require:

(A) the construction of the taxpayer's integrated coal gasification powerplant, in the case of a project involving a qualified investment in an integrated coal gasification powerplant; or

(B) the installation of the taxpayer's fluidized bed combustion unit, in the case of a project involving a qualified investment in a fluidized bed combustion technology.

(b) A taxpayer must comply with the terms of the agreement described in subsection (a) to receive an annual installment of the tax credit awarded under this chapter. The corporation shall annually determine whether the taxpayer is in compliance with the agreement. If the corporation determines that the taxpayer is in compliance, the corporation shall issue a certificate of compliance to the taxpayer.

As added by P.L.191-2005, SEC.15. Amended by P.L.122-2006, SEC.16; P.L.175-2007, SEC.6; P.L.52-2008, SEC.1; P.L.182-2009(ss), SEC.203.

IC 6-3.1-29-20

Allocation of credit among shareholders, partners, and members

Sec. 20. (a) This section applies if a qualified investment is made by a pass through entity or by taxpayers who are co-owners of an integrated coal gasification powerplant or a fluidized bed combustion technology.

(b) If the credit allowed by this chapter for a taxable year is greater than the state tax liability of the pass through entity against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year in excess of the pass through entity's state tax liability for the taxable year; multiplied by

(2) in the case of a pass through entity described in:

(i) section 9(1), 9(2), 9(3), or 9(4) of this chapter, the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled; and

(ii) section 9(5) or 9(6) of this chapter, the relative percentage of the corporation's patronage dividends allocable to the member for the taxable year.

(c) If an integrated coal gasification powerplant or a fluidized bed combustion technology is co-owned by two (2) or more taxpayers, the amount of the credit that may be allowed to a co-owner in a taxable year is equal to:

(1) the tax credit determined under sections 15 and 16 of this chapter with respect to the total qualified investment in the integrated coal gasification powerplant or fluidized bed

combustion technology; multiplied by

(2) the co-owner's percentage of ownership in the integrated coal gasification powerplant or fluidized bed combustion technology.

(d) The amount of an annual installment of the credit allowed to a shareholder, partner, or member of a pass through entity or a co-owner shall be determined under section 16 of this chapter modified as follows:

(1) Section 16(b) STEP ONE (A) of this chapter shall be based on the percentage of the credit allowed to the shareholder, partner, member, or co-owner under this section.

(2) Section 16(b) STEP ONE (B) of this chapter shall be based on the:

(A) state tax liability; or

(B) utilities receipts tax liability;

of the shareholder, partner, member, or co-owner.

As added by P.L.191-2005, SEC.15. Amended by P.L.122-2006, SEC.17.

IC 6-3.1-29-20.5

Assignability of credit by contract

Sec. 20.5. (a) Subject to subsection (c), part or all of the credit to which a taxpayer is entitled under section 15 of this chapter may be assigned by the taxpayer to one (1) or more utilities that have entered into a contract that:

(1) is approved by the Indiana utility regulatory commission;

(2) provides for the purchase of electricity or substitute natural gas (as defined in IC 8-1-2-42.1) by the utility from the taxpayer; and

(3) expressly allows the assignment of tax credits under this section.

A tax credit assigned to a utility under this section must be applied against the utility's state tax liability in the order set forth in section 14(b) of this chapter.

(b) Notwithstanding section 16 of this chapter, any part of a taxpayer's credit under section 15 of this chapter that is assigned by the taxpayer under this section must be taken in twenty (20) annual installments, beginning with the year in which the taxpayer places into service an integrated coal gasification powerplant or a fluidized bed combustion technology.

(c) The part of a taxpayer's credit under section 15 of this chapter that may be assigned by the taxpayer with respect to any one (1) taxable year is subject to the following:

(1) The total amount of the taxpayer's credit under section 15 of this chapter that may be assigned by the taxpayer with respect to the taxable year may not exceed the product of:

(A) the total credit amount to which the taxpayer is entitled under section 15 of this chapter, divided by twenty (20); multiplied by

(B) the percentage of Indiana coal used in the taxpayer's

integrated coal gasification powerplant or fluidized bed combustion technology in the taxable year for which the annual installment of the credit is allowed.

(2) The part of the amount determined under subdivision (1) that may be assigned to any one (1) utility with respect to the taxable year may not exceed the greater of:

(A) the utility's total state tax liability for the taxable year, multiplied by twenty-five percent (25%); or

(B) the utility's total utility receipts tax liability for the taxable year.

(d) Any part of the taxpayer's credit under section 15 of this chapter that is assigned to one (1) or more utilities by a taxpayer under this section with respect to a taxable year may not be claimed by the taxpayer or the taxpayer's shareholders, partners, or members. However, any part of the credit to which the taxpayer is entitled under section 15 of this chapter and that is not assigned by the taxpayer with respect to the taxable year may be taken and applied by the taxpayer, or the taxpayer's shareholders, partners, or members, in accordance with sections 16 and 20 of this chapter.

As added by P.L.175-2007, SEC.7.

IC 6-3.1-29-20.7

Findings; election to receive refundable credit

Sec. 20.7. (a) The findings in IC 4-4-11.6-12 are incorporated by reference into this section. The general assembly further finds that the refundable credit provided by this section is also necessary to achieve the purposes set forth in IC 4-4-11.6-12.

(b) This section applies to a taxpayer that:

(1) makes a qualified investment in an integrated coal gasification powerplant; and

(2) enters into a contract to sell substitute natural gas (as defined in IC 4-4-11.6-11) to the Indiana finance authority under IC 4-4-11.6.

(c) Notwithstanding anything in this chapter to the contrary, a taxpayer may elect in the manner prescribed by the department to take and receive all credits to which the taxpayer is entitled under section 15 of this chapter (without regard to section 16 of this chapter) as a refundable credit against the taxpayer's state tax liability, if any, over a period of twenty (20) taxable years, beginning not later than the taxable year in which the taxpayer places into service its integrated coal gasification powerplant. If, in a taxable year, a taxpayer that makes an election under this subsection has no state tax liability, the department shall pay to the taxpayer the full amount of the refundable credit for that taxable year.

(d) The amount of a credit to which a taxpayer that makes an election under subsection (c) is entitled for a particular taxable year equals the result determined under STEP FOUR:

STEP ONE: Determine the total credit amount to which the taxpayer is entitled under section 15 of this chapter (without regard to section 16 of this chapter).

STEP TWO: Divide the STEP ONE amount by twenty (20).

STEP THREE: Determine the ratio of Indiana coal to total coal used in the taxpayer's integrated coal gasification powerplant in the taxable year.

STEP FOUR: Multiply the STEP TWO and STEP THREE amounts.

(e) A taxpayer shall claim a refund under this section in the manner provided by the department. The department shall pay the refunded amount to the taxpayer not more than ninety (90) days after the date on which the refund is claimed.

(f) The shareholders, members, or partners of a pass through entity that makes an election under subsection (c) are not entitled to a credit allowed under section 20(b) of this chapter.

(g) A credit allowed under this section is not assignable under section 20.5 of this chapter.

As added by P.L.182-2009(ss), SEC.204.

IC 6-3.1-29-21

Claiming tax credit

Sec. 21. To receive the credit awarded by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department a copy of the commission's determination required under section 19 of this chapter, a copy of the taxpayer's certificate of compliance issued under section 19 of this chapter, and all information that the department determines is necessary for the calculation of the credit provided by this chapter.

As added by P.L.191-2005, SEC.15.