

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 347

BY WAYS AND MEANS COMMITTEE

AN ACT

1  
2 RELATING TO THE SALES AND USE TAX ON EQUIPMENT USED IN ALTERNATIVE METHODS OF  
3 GENERATION OF ELECTRICITY; AMENDING SECTION 63-3622QQ, IDAHO CODE, TO  
4 REVISE REQUIREMENTS REGARDING THE SALES TAX REBATE FOR EQUIPMENT USED  
5 IN ALTERNATIVE METHODS OF GENERATION OF ELECTRICITY; AMENDING SECTION  
6 2, CHAPTER 355, LAWS OF 2005, TO EXTEND THE SUNSET DATE; AND DECLARING AN  
7 EMERGENCY.

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 63-3622QQ, Idaho Code, be, and the same is  
10 hereby amended to read as follows:

11 63-3622QQ. EQUIPMENT USED IN ALTERNATIVE METHOD OF GENERATION OF  
12 ELECTRICITY. (1) Purchasers of qualifying machinery and equipment used di-  
13 rectly in generating electricity using fuel cells, low impact hydro, wind,  
14 geothermal resources, biomass, cogeneration, sun or landfill gas as the  
15 principal source of power may qualify for a rebate of sales or use taxes paid  
16 on such purchases but only if the purchaser achieves commercial operation  
17 of an electrical generating facility by December 31, 2014, and develops  
18 with such qualifying machinery, equipment, and tangible personal property a  
19 facility capable of generating not less than twenty-five (25) kilowatts of  
20 electricity.

21 (2) For purposes of this section:

22 (a) "Landfill gas" means biomass fuel of the type qualified for fed-  
23 eral tax credits under 26 U.S.C. section 29 collected from a landfill.

24 "Landfill" means a landfill as defined in section 39-7403, Idaho Code;

25 (b) "Qualifying mMachinery and equipment" means industrial fixtures,  
26 devices, and support facilities that are integral and necessary to the  
27 generation of electricity using fuel cells, low impact hydro, wind,  
28 geothermal resources, biomass, cogeneration, sun, or landfill gas as  
29 the principal source of power. "Qualifying mMachinery and equipment"  
30 includes all operating property as described in section 63-3501(h),  
31 Idaho Code;

32 (c) Notwithstanding subsection (2) (b) of this section, "qualifying ma-  
33 chinery and equipment" does not include:

34 (i) Hand-powered tools;

35 (ii) Property with a useful life of less than one (1) year;

36 (iii) Repair parts required to restore machinery and equipment to  
37 normal working order;

38 (iv) Replacement parts that do not increase productivity, improve  
39 efficiency, or extend the useful life of machinery and equipment;

40 (v) Buildings; or

1 (vi) Building fixtures that are not integral and necessary to the  
 2 generation of electricity that are permanently affixed to and be-  
 3 come a physical part of a building;

4 (d) Qualifying machinery and equipment is "used directly" in gener-  
 5 ating electricity with fuel cells or by low impact hydro, wind energy,  
 6 geothermal resources, biomass, cogeneration, solar energy or landfill  
 7 gas power if it provides any part of the process that captures the en-  
 8 ergy of the fuel cells, low impact hydro, wind, geothermal resources,  
 9 biomass, cogeneration, sun, or landfill gas, converts that energy to  
 10 electricity, and stores, transforms or transmits that electricity for  
 11 entry into or operation in parallel with electric transmission and dis-  
 12 tribution systems;

13 (e) "Fuel cell" means an electrochemical reaction that generates elec-  
 14 tricity by combining atoms of hydrogen and oxygen in the presence of a  
 15 catalyst;

16 (f) "Low impact hydro" means an electric generating facility utilizing  
 17 water for the generation of electricity, housed in existing canals or  
 18 existing reservoirs and having a power production capacity twenty-five  
 19 (25) kilowatts or greater.

20 (3) To qualify for the rebate, the taxpayer and his contractors must:

21 (a) pay sales and use tax on their purchases of property. Once Obtain  
 22 a certification from a public utility, a cooperative, a municipality  
 23 or the public utilities commission certifies that the project will gener-  
 24 erate at least twenty-five (25) kilowatts of electricity, the taxpayer  
 25 may file a refund request with the state tax commission.;

26 (b) The refund request shall state that the taxpayer will construct or  
 27 has constructed On or before December 31, 2014, achieve commercial op-  
 28 eration of a project that will generate sufficient kilowatts of elec-  
 29 tricity at the project site to be eligible for the rebate and that the  
 30 taxpayer is entitled to receive a rebate;

31 (c) Pay sales and use tax on purchases of property and file a refund re-  
 32 quest of all sales and use taxes paid that qualifies for the rebate cre-  
 33 ated by this section; and

34 (d) For those taxpayers selling electricity generated from a wind or  
 35 solar qualifying facility to a utility regulated by the Idaho public  
 36 utilities commission at rates approved by the public utilities commis-  
 37 sion and, obtain by October 31, 2011, approval from the Idaho public  
 38 utilities commission of a power purchase agreement.

39 (4) Upon filing of a written refund claim by the taxpayer entitled to  
 40 the rebate, and subject to such reasonable documentation and verification as  
 41 the state tax commission may require, the rebate shall be paid by the state  
 42 tax commission as a refund allowable under section 63-3626, Idaho Code. A  
 43 claim for rebate under this section must be filed on or before the last day  
 44 of the third calendar year following the year in which the taxes sought to be  
 45 rebated were paid or the right to the rebate is lost.

46 (5) Any rebate paid shall be subject to recapture by the state tax com-  
 47 mission. In the event the property is not used, stored or otherwise consumed  
 48 in the process of generating electricity for a period of sixty (60) months,  
 49 the state tax commission may recapture the tax paid in the same proportion as

1 an amount of credit required to be recaptured under section 63-3029B, Idaho  
2 Code.

3 (6) Any recapture amount due under this section shall be a deficiency  
4 in tax for the period in which the disqualification first occurs for pur-  
5 poses of section 63-3629, Idaho Code, and may be enforced and collected in  
6 the manner provided by the Idaho sales tax act, provided however, that in  
7 lieu of the provisions of section 63-3633, Idaho Code, the period of time  
8 within which the commission may issue a notice under section 63-3629, Idaho  
9 Code, in regard to an amount subject to recapture shall be the later of five  
10 (5) years after the end of the taxable year, for income tax purposes, in which  
11 the project period ends.

12 SECTION 2. That Section 2, Chapter 355, Laws of 2005, be, and the same is  
13 hereby amended to read as follows:

14 SECTION 2. An emergency existing therefor, which emergency is hereby  
15 declared to exist, this act shall be in full force and effect on and after its  
16 passage and approval, and shall be null, void and of no force and effect on  
17 and after ~~July 1, 2011~~ December 31, 2014.

18 SECTION 3. An emergency existing therefor, which emergency is hereby  
19 declared to exist, this act shall be in full force and effect on and after its  
20 passage and approval.