

AGRICULTURAL BIOMASS TAX CREDIT INSTRUCTIONS

About This Credit: A tax credit is available for a taxpayer who owns a dairy or feedlot and who files a personal or corporate income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2020. The Taxation and Revenue Department (TRD) may allow a tax credit equal to \$5 per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.

A taxpayer who claims an agricultural biomass personal income tax credit **shall not also** claim an agricultural biomass corporate income tax credit for transportation of the same agricultural biomass on which the claim for that agricultural biomass tax credit is based.

Obtaining the Certificate of Eligibility from EMNRD: The owner of the facility must first obtain a certificate of eligibility, from the Energy, Minerals and Natural Resources Department (EMNRD), for the transportation of agricultural biomass to a qualified facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use for purposes of obtaining an agricultural biomass tax credit. EMNRD determines accurate recording of the quantity of agricultural biomass transported and used for the purpose allowed. If approved, EMNRD will issue the facility owner a certificate of eligibility. To apply for a certificate of eligibility, contact the Energy Conservation & Management Division of EMNRD at (505) 476-3315; write to Energy, Minerals, and Natural Resources Department, Energy Conservation & Management Division, 1220 So. St. Francis Dr., Wendell Chino Building, 1st Floor, Santa Fe, New Mexico 87505.

Annual Limits Established for Approving Applications: TRD shall limit the annual combined total of all agricultural biomass tax credits allowed to a maximum of \$5,000,000. Applications for the credit shall be considered in the order received by TRD.

Any portion of the agricultural biomass tax credit that remains unused in a taxable year may be carried forward for a maximum of four consecutive taxable years following the taxable year in which the credit originates until fully expended.

Requesting the Tax Credit Approval from TRD: Once the certificate of eligibility is issued by EMNRD, the owner of the facility must promptly complete Form RPD-41362, *Agricultural Biomass Tax Credit Approval*, and submit the form to TRD with a copy of the certificate of eligibility. If all requirements have been complied with, TRD will approve the credit and return the approved form to the owner or holder. The agricultural biomass tax credit allowed an eligible owner of a qualifying facility may be claimed against the owner's personal **or** corporate income tax liability or may be sold, exchanged, or otherwise transferred to another taxpayer. If the qualifying facility is owned by a partnership or other business association, the owner may pass the credit to its member(s), manager(s), partners(s), shareholder(s), or beneficiary(ies) by completing Section II and submitting a Form RPD-41362, *Agricultural Biomass Tax Credit*

Approval, for each member, partner, shareholder, or beneficiary. Members, managers, partners, and beneficiaries may claim a credit only in proportion to their interest in the partnership or association, and will be issued an approval for their portion of the credit. The total agricultural biomass tax credits claimed in the aggregate with respect to the same dairy or feedlot by all members of the partnership or business association shall not exceed the amount of the credit that could have been claimed by a single owner of the dairy or feedlot. If the approval request is denied by TRD, Form RPD-41362 will be returned to the facility owner with an explanation.

Line Instructions for Completing Form RPD-41362, *Agricultural Biomass Tax Credit Approval*: Complete the name block in Section I with the information for the qualifying facility owner.

Complete Section II only if the owner of the qualifying facility is a partnership or other business association passing all or a portion of the credit to a member, partner, shareholder, or beneficiary. If there is more than one member, partner, shareholder, or beneficiary, submit a Form RPD-41362 for each. The facility owner, and if applicable, the holder, if other than the eligible facility owner, must certify that the agricultural biomass tax credit pursuant to Section 7-2-18.26 NMSA 1978 and Section 7-2A-26 NMSA 1978, have not and will not be claimed for transportation of the same agricultural biomass on which the claim for that agricultural biomass tax credit is based. The owner's signature and date of signature are required.

TRD will complete Section III of the form, approving, partially approving or disapproving the agricultural biomass tax credit. The document(s) will be numbered for identification, declaring its date of issuance and the amount of the tax credit allowed.

Attach a copy of the certificate of eligibility issued by EMNRD to Form RPD-41362, *Agricultural Biomass Tax Credit Approval*, and mail to New Mexico Taxation and Revenue Department, Edit Error, P.O. Box 5418, Santa Fe, New Mexico 87502-5418. For assistance completing this form, call (505) 827-0792.

Sale, Exchange, or Transfer of the Credit: Once a holder (or owner) receives TRD approval, the credit may be sold, exchanged, or otherwise transferred. Form RPD-41363, *Notice of Transfer of Agricultural Biomass Tax Credit*, must be used to report to TRD a transfer of approved agricultural biomass tax credit to another taxpayer. Notice must be provided to TRD within 10 days of a sale, exchange, or transfer. TRD will issue the new holder an approval for the credit transfer, a new credit number, and instructions for applying the credit to personal or corporate income tax due.

Line Instructions for Completing RPD-41363, *Notice of Transfer of Agricultural Biomass Tax Credit*: Enter the credit number that TRD assigned to the holder authorizing the transfer of the credit and date of approval. The credit number and approval date are found in Section III of Form RPD-41362, *Agricultural Biomass Tax Credit Approval*, or Form RPD-41363,

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Notice of Transfer of Agricultural Biomass Tax Credit, which ever applies to the owner or holder transferring the credit. Enter the date of the transfer and the amount of the tax credit to be transferred.

“Transferred from” - Complete this section identifying the owner or holder who transferred the approved agricultural biomass tax credit.

“Transferred to” - Complete this section identifying the new holder.

The owner or holder transferring the credit and the new holder must both complete the statement and must sign and date the form. Mail Form RPD-41363, *Notice of Transfer of Agricultural Biomass Tax Credit*, to New Mexico Taxation and Revenue Department, Edit Error, P.O. Box 5418, Santa Fe, New Mexico 87502-5418. For assistance completing this form, call (505) 827-0792.

NOTE: Notice must be mailed to TRD within 10 days of a sale, exchange or other transfer.

Claiming the Credit: A holder of the credit may claim the credit against the holder's income tax liability by completing Form RPD-41361, *Agricultural Biomass Tax Credit Claim Form*, and submitting the claim form with the holder's personal or corporate income tax return.

Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the agricultural biomass tax credit that would have been allowed on a joint return.

Line Instructions for Completing Form RPD-41361, *Agricultural Biomass Tax Credit Claim Form*: Enter the holder's name and social security number or federal employer identification number. Complete Schedule A to compute total excess credit available for carryforward. Include in Schedule A, only credits that have been claimed in a prior tax year, and that have a balance available for carryforward. Credits approved for the tax year of this claim will be included on line 1 of this claim form.

Instructions for Schedule A - Worksheet to Compute the Total Excess Credit Available for Carryforward:

a. Credit number. Enter the credit number for each agricultural biomass tax credit approved by TRD for a previous tax year. If additional space is needed, attach a schedule in the same format on a separate page. Do not enter a credit if the credit was not approved by TRD or if the credit is no longer available for carryforward. Excess agricultural biomass tax credits may only be carried forward for four consecutive years following the tax year that the credit is approved to be claimed for.

b. Amount of credit approved. For each tax credit listed in

column a, enter the amount of credit approved.

c. Total credit claimed in previous report periods. For each credit amount listed in column b, enter the total amount of credit applied to personal or corporate income tax liabilities for prior year returns.

d. Excess credit available for carryforward. Subtract column c from column b and enter the difference.

Total excess credit available for carryforward. Enter the sum of all amounts in column (d). If supplemental pages are attached, enter the sum of all amounts in column (d) from all pages. Also enter this amount on Line 2 of this form.

Line 1. Tax credits approved. Enter the agricultural biomass tax credits approved for the tax year of the attached return.

Line 2. Total excess credit available for carryforward. Enter the portion of excess credit available for carryforward from Schedule A.

Line 3. Enter the sum of lines 1 and 2. This is the total agricultural biomass tax credit available to be claimed against the personal or corporate income tax liability due on the attached return.

Line 4. Enter the portion of available credit claimed on your attached personal or corporate income tax return. The credit applied to the attached return cannot exceed the amount of personal or corporate income tax liability otherwise due. You must apply credit approved to be claimed in the tax year first (Line 1). If the credit amount approved to be claimed in a tax year is less than the personal or corporate income tax liability for that year, you may apply excess credit available for carry forward (Line 2) next. When applying excess credits available for carryforward, apply the credit with the oldest approval date first.

Attach Form RPD-41361, *Agricultural Biomass Tax Credit Claim Form*, to your personal or corporate income tax return and mail to the address on the return. For assistance completing this form, call (505) 827-0792.

IMPORTANT DEFINITIONS

‘Agricultural biomass’ means wet manure meeting specifications established by EMNRD from either a dairy or feedlot commercial operation.

‘Biocrude’ means a non-fossil form of energy that can be transported and refined using existing petroleum refining facilities and that is made from biologically derived feedstocks and other agricultural biomass.

‘Feedlot’ means an operation that fattens livestock for market.

‘Dairy’ means a facility that raises livestock for milk production.