

Name: **RENEWABLE ENERGY TAX INCENTIVES LAW**

Subject matter: **Tax Law** Category: **Tax Law**

Source: **LEGISLATIVE ASSEMBLY** Status: **CURRENT LEGISLATION**

Class: **Legislative Decree**

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Amendments: **Nonexistent to date**

Comments: **This law has the purpose to promote the execution of investments in projects based on the use of renewable energy sources, through the use of hydraulic, geothermal, wind power, as well as biomass, for electricity generation.**

Content

DECREE Number 462

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF EL SALVADOR,

WHEREAS:

- I. The Constitution of the Republic of El Salvador, establishes that the State shall promote the economic and social development of the country through an increase in production, productivity and the rational use of resources.
- II. Also establishing, that it will promote the various sectors of production and for that reason it is necessary to encourage the use of renewable energy sources, in order to reduce dependence on the purchase of fossil fuels.
- III. That at the same time the use of renewable energy sources for the generation of electricity will contribute to reduce environmental pollution in the country and significantly improve the national balance of payments.
- IV. That the country has ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which is intended to promote sustainable development, to protect and improve, among others, sinks and reservoirs of greenhouse gases.
- V. That it is necessary to pass a law that promotes the use of renewable energy sources for electricity generation, and at the same time fostering investments that allow the sustainable development of projects that use these kind of energy sources that are available in the country.
- VI. In light of what has been stated above, it is necessary to enact legal dispositions which allow the promotion of investments in power generation projects based on renewable energy available in the country, fostering research, exploration and development projects, and at the same time granting tax incentives, that make the investments in these areas of the economy more attractive.

THEREFORE:

in exercise of their constitutional powers, and by initiative of the President of the Republic, through the Ministers of Finance, Economy and Environment and Natural Resources, with the support of the Legislative Assembly Members: Julio Antonio Gamero Quintanilla, José Mauricio Quinteros Cubías, Juan Enrique Perla Ruiz, Mariella Peña Pinto, Manuel Orlando Quinteros Aguilar, Humberto Centeno Najarro, Calixto Mejía Hernández, José Salvador Arias Peñate, José Francisco Merino López, Alejandro Dagoberto Marroquín, Mario Antonio Ponce López, José Salvador Cardoza López, Douglas Alejandro Alas García, Ernesto Antonio Angulo Milla, Federico Guillermo Ávila Qüehl, Fernando Alberto José Ávila Quetglas, Ingrid Berta María Bendix de Barrera, Noel Abilio Bonilla Bonilla, Roberto José d'Aubuisson Munguía, María Patricia Vásquez de Amaya, Fernando Antonio Fuentes, Guillermo Antonio Gallegos Navarrete, César Humberto García Aguilera, Marco Aurelio González, José Nelson Guardado Menjívar, Fernando Gutiérrez Umanzor, Manuel de Jesús Gutiérrez Gutiérrez, Carlos Walter Guzmán Coto, Mario Marroquín Mejía, Manuel Vicente Menjívar Esquivel, Julio César Portillo Baquedano, Francisco Antonio Prudencio, Norman Noel Quijano González, Dolores Alberto Rivas Echeverría, Abilio Orestes Rodríguez Menjívar, Alberto Armando Romero Rodríguez, Herberth Nestor Menjívar Amaya, Irma Segunda Amaya Echeverría, Darío Alejandro Chicas Argueta, Carlos Cortez Hernández, Luis Alberto Corvera Rivas, Walter Eduardo Durán Martínez, Antonio Echeverría Veliz, Enma Julia Fabián Hernández, Luis Arturo Fernández Peña, Argentina García Ventura, Ricardo Bladimir González, Jorge Alberto Jiménez, Elio Valdemar Lemus Osorio, Vicenta Liliana Martínez Bernabé, Misael Mejía Mejía, Osmín Romeo Molina Ríos, Guillermo Antonio Olivo Méndez, Inmar Rolando Reyes, Othon Sigfrido Reyes Morales, Ana Daysi Villalobos de Cruz, José Antonio Almendáriz Rivas, Elizardo González Lovo, José Rafael Machuca Zelaya, Alexander Higinio Melchor López, Rodolfo Antonio Parker Soto, Valentín Aristides Corpeño, Carlos Rolando Herrarte Rivas, Julio Milton Parada Domínguez y Sandra Marlene Salgado García.

DECREES the following:

RENEWABLE ENERGY TAX INCENTIVES LAW

CHAPTER I

GENERAL PROVISIONS

Art. 1. This law aims to promote the execution of investments in projects that use renewable energy sources, through the use of hydraulic, geothermal, wind power, as well as biomass resources, for electricity generation.

Art. 2. Promotes the use of renewable energy sources, in order to contribute to the protection of the environment, the use of renewable energy sources in the country and quality electrical supply.

Art. 3. Natural or legal persons that, from the date of entry into force of this Law are owners of new investments in new projects of installation of plants for the generation of electricity by using renewable energy sources, established in Art. 1 of this Law, will be entitled to the following benefits and tax incentives:

- a) During the first ten years they will benefit from the exemption on tariff duties on machinery, equipment, materials and inputs intended exclusively for pre-investment and investment tasks in the construction of the electric power plants, including the construction of the required sub-transmission line needed to transfer the power from the electricity generation plant to the transmission and/or distribution network.

The exemption from payment of tariff duties referred to in the above paragraph is applicable to projects of up to 20 megawatts (MW) and shall be requested to the Ministry of Finance (*Ministerio de Hacienda*) 15 days prior to the importation of machinery, equipment, materials and inputs needed and destined exclusively to develop the renewable energy projects, in conformity with the project documentation that has been validated in the certification issued by the General Superintendence of Electricity and Telecommunications, which hereinafter may be referred to as "SIGET".

- b) Exemption from the payment of income tax for a period of five (5) years in the case of projects between 10 and 20 megawatts (MW) and exemption of ten (10) years in the case of projects of less than 10 megawatts (MW); in both cases, starting from the entry of commercial operations of the project, corresponding to the Fiscal Year in which income is perceived.
- c) Total exemption on all kind of taxes on income that is a direct result of the sale of "Certified Emission Reductions" (CER's), under the framework of the Clean Development Mechanism (CDM) or similar carbon markets, obtained by the qualified and benefited projects in accordance with this Law.

In order to enjoy the benefits referred to in the previous paragraph (paragraph c), the beneficiary shall comply with the following conditions:

- i. That the projects are duly registered and certified in accordance with the modalities and procedures of the Clean Development Mechanism (CDM) of the Kyoto Protocol.
- ii. That the holders of the qualified projects in accordance with this Law, attach to their income tax declaration forms, information of issued CER's, the income obtained from its sale, stating the name of the acquirers.

- iii. Submit a copy of the Emissions Reduction Purchase Agreement (ERPA), in which the amount of sold Reductions and their selling price is stated.
- iv. Submit certification issued by the Ministry of Environment and Natural Resources (*Ministerio de Medio Ambiente y Recursos Naturales*) on the amount of CER's issued.

Those projects of more than 20 megawatts (MW) of capacity, may deduct from income tax, for a maximum period of ten years or having concluded with such processes, if these took place in less time than such period, all expenditures or costs required for research, exploration and preparation of power-generating projects based on renewable energy sources, as well as total reinjection projects of the geothermal resource. For the deduction of these expenses, prior review and technical opinion will be required from SIGET (*Superintendencia General de Electricidad y Telecomunicaciones*) on: i) expenses incurred and ii) if the expenses are attributable to the activities of research, exploration and preparation of projects. It will also require approval from the Directorate-General for Internal Revenue. Such deduction must not exceed 20 % of the gross revenue generated in the previous year and will be carried out by means of annual fees that do not exceed 25 % of the income obtained in each financial year, until its total depreciation.

For the purpose of the deduction of the corresponding tax credits referred to in Art. 65 of the Value Added Tax Law (*"Impuesto a la Transferencia de Bienes Muebles y a la Prestación de Servicios"*), regarding projects of installation of plants for electricity generation, using renewable energy sources, such deduction may be applied in the case of pre-investment and investment tasks in the construction work that is needed and is part of the electricity generation process, including those performed in real estate property, either by adhesion or destination.

The tax benefits mentioned in this article will only be granted to activities related to projects of installation of electricity generation plants, benefiting from this law.

CHAPTER II

LEGAL COMPETENCE

Art. 4. It is SIGET's task to ensure the compliance of this law, for which it may issue the necessary norms in regard to technical specifications, to characterize projects that exploit renewable energy sources for the generation of electricity, in accordance with this Law.

Art. 5. SIGET shall certify the projects that comply with the requirements established under this Law and its Regulation; likewise, it will issue a technical opinion based on the norms on project characterization of goods, inputs and services that can benefit from tax incentives established under this Law; such technical opinion shall be attached to the issued certification. In order to obtain the certification, the interested party shall submit to SIGET in addition to the documentation required by the norms to characterize projects, a list of the machinery, equipment, materials and inputs, as well as the description

of the research, exploration and preparation activities. Both, the list and the description of the activities shall include its corresponding supporting documentation for costs that are subject of tax exemptions referred to in this Law.

Art. 6. The Ministry of Finance through its Directorate-General for Internal Revenue (*Dirección General de Impuestos Internos*) and Directorate-General for Customs (*Dirección General de Aduanas*), may issue the orientation guides related to the benefits and incentives referred to in this Law.

Art. 7. The Executive Branch through the Ministry of Finance, via the Directorate-General for Internal Revenue and Directorate-General for Customs, shall be the competent authority to bestow of the benefits and tax incentives contained in this Law, as well as to exercise vigilance, control and audit of the tax regime of activities being incentivized and the application of sanctions defined in this Law. The General Superintendence of Electricity and Telecommunications shall have legal competence under the terms specified in this Law.

CHAPTER III

OF OBLIGATIONS OF THE BENEFITED SUBJECTS

Art. 8. The natural or legal persons who benefit from tax incentives established under this Law, shall comply with the following obligations:

- a) Make use of the granted tax incentives, for the exclusive purpose of the incentivized activity.
- b) Communicate to SIGET and to the Directorate-General for Internal Revenue and Directorate-General for Customs, the modifications executed in plans and projects related to the company's line of business, within the period of ten business days after such modification, and report within ten business days of any sale or transfer of assets or shares, in order to pay the respective taxes.
- c) Allow and facilitate inspections or audits by the duly accredited delegates from SIGET, as well as from the Directorate-General for Internal Revenue and Directorate-General for Customs, providing access to documentation and information concerning the incentivized activity, that under the exercise of their duties are requested.
- d) Save in electronic and magnetic media, as well as on any other means demanded by SIGET or the Directorate-General for Internal Revenue or the Directorate-General for Customs, all the information concerning the operations that are performed and any other information deemed necessary for the corresponding fiscal control.

CHAPTER IV

INFRINGEMENTS AND PENALTIES

Art. 9. Under this law, infringements are divided into minor, serious and very serious infringements. The following are considered very serious infringements:

- a) To apply exemptions, tax incentives and benefits granted under this Law, to activities not corresponding to the projects benefitting from it.
- b) To use in a different manner than otherwise declared, the goods that have been imported under the incentives granted by this Law.
- c) Not having duly identified the goods imported under this Law.
- d) Provide false information to SIGET, to the Directorate-General for Internal Revenue or Directorate-General for Customs, in the corresponding procedures.
- e) Not sending the information required by SIGET, by the Directorate-General for Internal Revenue or Directorate-General for Customs.

Non-compliance to Art. 8 letters b), c) and d) of this Law, is considered as serious infringement.

Refusal to appear without justified cause to the summons that in legal manner are made by the institutions mentioned under this Law, is considered a minor infringement.

Recidivism of a minor infringement will be considered as serious, and recidivism of a serious infringement, will be considered as very serious.

Art. 10. Infringements under this law will be penalized in the following way:

- a) MINOR infringements will be penalized with a fine of twenty monthly minimum wages of greater amount.
- b) SERIOUS infringements will be penalized with a fine of thirty monthly minimum wages of greater amount.
- c) VERY SERIOUS infringements will be penalized with a fine of forty monthly minimum wages of greater amount. In case of recidivism of this infringement, the benefit conferred by this Law will be revoked.

CHAPTER V

PROCEDURES, RECOURSES AND ENTRY INTO FORCE

Art. 11. In order to make use of the benefits granted by this law, the interested party complying with the requirements established by this law, shall file its request to SIGET which will decide accordingly, within ten business days.

Art. 12. In case of obtaining a favorable resolution, the tax benefits will be requested by the interested party to the Directorate-General for Internal Revenue and Directorate-General for Customs, as it may apply, which based on the terms of the certification issued by SIGET that contains the technical opinion on the goods, inputs and services that enjoy tax incentives and, in the verification to determine that the investment-holders do not have outstanding tax obligations, will qualify for the benefits and tax incentives contained in this Law, through the respective Executive Resolution, which must be published in the Official Journal, or will issue a reasoned resolution denying the petition, which will be notified to the interested party. The aforementioned notification shall be served within a maximum period of 10 business days from the next business day on which the request has been filed.

Art. 13. If it were a legal person, the requests referred to in the above articles shall be filed by the legal representative or authorized agent for that matter, complying with the established legal and regulatory formalities.

Art. 14. It will be the legal duty of the Directorate-General for Customs, to penalize the infringements of letters b) and c) of Article 9 of this Law, and of SIGET, the Directorate-General for Internal Revenue or Directorate-General for Customs of the rest of the infringements as it may apply, when the corresponding infringement has been committed in the procedure filed at each institution.

Art. 15. When SIGET, the Directorates-General for Internal Revenue or Customs, as it may apply, have knowledge of the possible infringement of this Law, will order the start of the penalizing procedures by a resolution in which the alleged infringer, the circumstances of the performance of the infringement that is being attributed to him, as well as the corresponding legal dispositions that have been violated shall be identified. In this resolution, the interested party will be granted a period of three business days from the next day of notification of the resolution to answer to the alleged infringement.

When the notification of the above resolution is served, a copy of the initial resolution shall be delivered to the alleged infringer, as well as any other documents which the Tax Administration or SIGET may have, which may have been used as basis for determining the alleged infringement.

Art. 16. After the period mentioned in the article above has concluded, the procedure will be open for the admission of evidence for a period of eight business days. Concluded that period, the final resolution shall be issued within the next eight business days.

Art. 17. Of this final resolution, an appeal may be filed within three business days following the corresponding notification; such appeal shall be filed before the government official that issued such resolution.

The corresponding government official shall submit the appeal request, with the original respective file of the case on the next business day, to the Appeal Tribunal for Internal Revenue (*Tribunal de Apelaciones de los Impuestos Internos*), which will be competent to decide if the penalty was imposed by one of the Directorates-General of the Ministry of Finance; or to the Board of Directors of SIGET if the penalty was imposed by SIGET, which will decide on the admissibility of the Appeal within the period of

three days. After the Appeal has been admitted and if it has been requested by the interested party, the procedure will be open for admission of evidence for a period of five days.

The Appeal Tribunal for Internal Revenue or the Board of Directors of SIGET, will confirm, modify, or revoke as appropriate, the appealed resolution, within thirty days after the filing date of such appeal.

Art. 18. The President of the Republic shall issue the regulation for the application of this Law, within a period of 90 days from the date of entry into force of this Law.

Art. 19. This Law shall enter into force, eight days after its publication in the Official Journal.

ISSUED IN THE BLUE ROOM OF THE LEGISLATIVE PALACE. San Salvador, on this eight day of November, two thousand seven.

RUBÉN ORELLANA,

PRESIDENT.

ROLANDO ALVARENGA ARGUETA,

VICEPRESIDENT.

FRANCISCO ROBERTO LORENZANA DURÁN,

VICEPRESIDENT.

JOSÉ RAFAEL MACHUCA ZELAYA,

VICEPRESIDENT.

RODOLFO ANTONIO PARKER SOTO,

VICEPRESIDENT.

ENRIQUE ALBERTO LUIS VALDÉS SOTO,

SECRETARY.

MANUEL ORLANDO QUINTEROS AGUILAR,

SECRETARY.

JOSÉ ANTONIO ALMENDÁRIZ RIVAS,

SECRETARY.

NORMAN NOEL QUIJANO GONZÁLEZ,

SECRETARY.

ZOILA BEATRIZ QUIJADA SOLÍS,

SECRETARY.

ANNOTATION: In compliance with what has been mandated in Art. 97, 3rd paragraph of the Internal Regulations of this Branch of State, it is hereby noted that this Decree was returned with observations by the President of the Republic on the 27th day of November of this year. This Legislative Assembly has decided to accept such observations at Plenary Session of November 29th of the year 2007.

ZOILA BEATRIZ QUIJADA SOLÍS

SECRETARY.

PRESIDENTIAL HOUSE: San Salvador, on this eleventh day of December, two thousand seven.

IT SHALL BE PUBLISHED,

ELIAS ANTONIO SACA GONZÁLEZ,

PRESIDENT OF THE REPUBLIC.

WILLIAM JACOBO HÁNDAL HÁNDAL,
MINISTER OF FINANCE.

BLANCA IMELDA JACO DE MAGAÑA,
VICEMINISTER OF TRADE AND INDUSTRY,
CHARGE D'AFFAIRES.

CARLOS JOSÉ GUERRERO CONTRERAS,
MINISTER OF ENVIRONMENT AND NATURAL RESOURCES.