

SENATE BILL 58

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Gerald Ortiz y Pino and Patricia Roybal Caballero

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; CREATING THE GEOTHERMAL ELECTRICITY  
GENERATION INCOME TAX CREDIT, THE GEOTHERMAL ELECTRICITY  
GENERATION CORPORATE INCOME TAX CREDIT AND GROSS RECEIPTS TAX  
AND COMPENSATING TAX DEDUCTIONS FOR GEOTHERMAL ELECTRICITY  
GENERATION FACILITY CONSTRUCTION COSTS STBTC →; ~~DISTRIBUTING THE  
LOSS OF LOCAL OPTION GROSS RECEIPTS TAX REVENUE ATTRIBUTABLE TO  
THE DEDUCTIONS TO LOCAL GOVERNMENTS~~ ← STBTC.

.226779.2AIC February 1, 2024 (10:24am)

underscored material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight ←  
delete = → bold, red, highlight, strikethrough ←

underscored material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight ←  
delete = → bold, red, highlight, strikethrough ←

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

STBTC → ~~SECTION 1. A new section of the Tax Administration Act is enacted to read:~~

~~"[NEW MATERIAL] DISTRIBUTION--OFFSET FOR GEOTHERMAL ELECTRICITY GENERATION-RELATED GROSS RECEIPTS AND COMPENSATING TAX DEDUCTIONS.--"~~

~~A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of the deductions claimed pursuant to Section 4 of this 2024 act for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2025 plus one and two hundred twenty-five thousandths percent.~~

~~B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of the total deductions claimed pursuant to Section 4 of this 2024 act for the month by taxpayers from business locations:~~

~~(1) within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2025 that are~~

underscored material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

~~imposed in the county; and~~

~~(2) in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2025 that are imposed in the county area not within a municipality.~~

~~G. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act.~~

~~D. For the purposes of this section, "business locations attributable to the municipality" means business locations:~~

~~(1) within the municipality;~~

~~(2) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of the municipality;~~

~~(3) outside the boundaries of the municipality on land owned by the municipality; and~~

~~(4) on an Indian reservation or pueblo grant in an area that is contiguous to the municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:~~

underscoring material = new  
[bracketed material] = delete  
Amendments: new = bold, blue, highlight  
delete = bold, red, highlight, strikethrough

~~(a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and~~

~~(b) the governing body of the municipality has submitted a copy of the contract to the secretary."~~ ←STBTC

SECTION STBTC → 2. ←STBTC STBTC → 1. ←STBTC. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] GEOTHERMAL ELECTRICITY GENERATION INCOME TAX CREDIT.--

A. For taxable years prior to January 1, 2032, a taxpayer who is not a dependent of another individual and who holds an interest in a geothermal electricity generation facility may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "geothermal electricity generation income tax credit".

B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents (\$0.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility in which the taxpayer holds an interest.

.226779.2AIC February 1, 2024 (10:24am)

underscored material = new

[bracketed material] = delete

Amendments: new = →bold, blue, highlight←

delete = →bold, red, highlight, strikethrough←

C. A taxpayer shall apply for certification of eligibility for the credit provided by this section from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. The aggregate amount of credits that may be certified pursuant to this section and STBTC→~~Section 3~~←STBTC STBTC→Section 2←STBTC of this 2024 act in any calendar year is five million dollars (\$5,000,000). Completed applications shall be considered in the order received. Applications for certification received after this limitation has been met in a calendar year shall not be approved for that calendar year, but shall be considered for certification in the following calendar year. The application shall include proof that the taxpayer is eligible for certification, including that the geothermal electricity generation facility that produced the energy for which the taxpayer is claiming credit, the geothermal resources used by the geothermal electricity generation facility and the taxpayer's interest in the geothermal electricity generation facility are in accordance with the definitions set forth in this section. For taxpayers approved to receive the credit, the energy, minerals and natural resources department shall issue a certificate of eligibility stating the amount of credit to which the taxpayer is entitled for the taxable year. The certificate of eligibility shall be numbered for identification and declare the date of issuance and the amount of the tax

.226779.2AIC February 1, 2024 (10:24am)

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

credit allowed.

D. A taxpayer may claim a geothermal electricity generation income tax credit for the taxable year in which electricity was generated in New Mexico by a geothermal electricity generation facility in which the taxpayer holds an interest. To receive the credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification made pursuant to Subsection C of this section.

E. That portion of a credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be carried forward for up to three consecutive years.

F. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the credit that would have been claimed on a joint return.

G. A taxpayer may be allocated the right to claim a credit provided by this section in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

partnership or limited liability company shall not exceed the maximum amount of the credit allowed pursuant to this section.

H. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

I. The department shall compile an annual report on the credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

J. As used in this section:

(1) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for new facilities, begins construction on or after January 1, 2025; or

(b) for existing facilities, on or after January 1, 2025, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(2) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geexchange heat pump or similar on-site system; and

(3) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility."

SECTION STBTC→3.←STBTC STBTC→2.←STBTC. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

.226779.2AIC February 1, 2024 (10:24am)

"[NEW MATERIAL] GEOTHERMAL ELECTRICITY GENERATION

CORPORATE INCOME TAX CREDIT.--

A. For taxable years prior to January 1, 2032, a taxpayer that holds an interest in a geothermal electricity generation facility may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act. The tax credit provided by this section may be referred to as the "geothermal electricity generation corporate income tax credit".

B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents (\$0.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility in which the taxpayer holds an interest.

C. A taxpayer shall apply for certification of eligibility for the credit provided by this section from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. The aggregate amount of credits that may be certified pursuant to this section and STBTC→~~Section 2~~←STBTC STBTC→Section 1←STBTC of this 2024 act in any calendar year is five million dollars (\$5,000,000). Completed applications shall be considered in the order received. Applications for certification received after this limitation has been met in a calendar year shall not

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

be approved for that calendar year, but shall be considered for certification in the following calendar year. The application shall include proof that the taxpayer is eligible for certification, including that the geothermal electricity generation facility that produced the energy for which the taxpayer is claiming credit, the geothermal resources used by the geothermal electricity generation facility and the taxpayer's interest in the geothermal electricity generation facility are in accordance with the definitions set forth in this section. For taxpayers approved to receive the credit, the energy, minerals and natural resources department shall issue a certificate of eligibility stating the amount of credit to which the taxpayer is entitled for the taxable year. The certificate of eligibility shall be numbered for identification and declare the date of issuance and the amount of the tax credit allowed.

D. A taxpayer may claim a geothermal electricity generation corporate income tax credit for the taxable year in which electricity was generated in New Mexico by a geothermal electricity generation facility in which the taxpayer holds an interest. To receive the credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification made pursuant to Subsection C of this section.

underscored material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

E. That portion of a credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be carried forward for up to three consecutive years.

F. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by that department.

G. The department shall compile an annual report on the credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit.

H. As used in this section:

(1) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for new facilities, begins construction on or after January 1, 2025; or

(b) for existing facilities, on or after January 1, 2025, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight↔  
delete = →bold, red, highlight, strikethrough↔

(2) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geexchange heat pump or similar on-site system; and

(3) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility."

SECTION STBTC→4.←STBTC STBTC→3.←STBTC. A new section of

the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTIONS--GROSS RECEIPTS TAX--  
COMPENSATING TAX--GEOTHERMAL ELECTRICITY GENERATION-RELATED  
SALES AND USE.--

A. Prior to July 1, 2032, receipts from:

(1) selling tangible personal property installed as part of, or services rendered in connection with, constructing and equipping a geothermal electricity generation facility may be deducted from gross receipts;

(2) selling tangible personal property installed as part of a system used for the distribution of electricity generated from a geothermal electricity generation facility may be deducted from gross receipts; and

(3) selling or leasing tangible personal property or selling services that are construction plant costs to a person who holds an interest in a geothermal electricity generation facility may be deducted from gross receipts if the holder of the interest delivers an appropriate nontaxable transaction certificate to the seller or lessor or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978.

B. Prior to July 1, 2032, the value of:

(1) tangible personal property installed as part of, or services rendered in connection with, constructing and equipping a geothermal electricity generation facility may

.226779.2AIC February 1, 2024 (10:24am)

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

be deducted in computing compensating tax due;

(2) tangible personal property installed as part of a system used for the distribution of electricity generated from a geothermal electricity generation facility may be deducted in computing compensating tax due; and

(3) construction plant costs purchased by a person who holds an interest in a geothermal electricity generation facility may be deducted in computing compensating tax due.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers that claimed the deductions, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. The department shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions.

E. As used in this section:

(1) "construction plant costs" means actual expenditures for the development and construction of a geothermal electricity generation facility, including the

underscored material = new  
[bracketed material] = delete  
Amendments: new = →bold, blue, highlight←  
delete = →bold, red, highlight, strikethrough←

drilling of wells to at least twelve thousand feet; permitting; site characterization and assessment; engineering; design; site and equipment acquisition; raw materials; and fuel supply development used directly and exclusively in the facility;

(2) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for a new facility, begins construction on or after January 1, 2025; or

(b) for an existing facility, on or after January 1, 2025, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(3) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees

underscored material = new  
[bracketed material] = delete  
Amendments: new = → bold, blue, highlight  
delete = → bold, red, highlight, strikethrough

Fahrenheit as may be used for the heating and cooling of buildings through an on-site geexchange heat pump or similar on-site system; and

(4) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility."

SECTION STBTC→5.←STBTC STBTC→4.←STBTC. APPLICABILITY.--  
The provisions of STBTC→Sections 2 and 3←STBTC STBTC→Sections 1 and 2←STBTC of this act apply to taxable years beginning on or after January 1, 2025.

SECTION STBTC→6.←STBTC STBTC→5.←STBTC. EFFECTIVE DATE.-  
-The effective date of the provisions of this act is January 1, 2025.