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SENATE BILL 142

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO TAXATION; CREATING THE SUSTAINABLE ENERGY  
TECHNOLOGY INVESTMENT TAX CREDIT.

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

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

"~~[NEW MATERIAL]~~ SUSTAINABLE ENERGY TECHNOLOGY INVESTMENT  
TAX CREDIT.--

A. A taxpayer who files an individual New Mexico  
income tax return, who is not a dependent of another taxpayer  
and who makes a qualified investment may claim a tax credit in  
an amount not to exceed twenty-five percent of not more than  
one hundred thousand dollars (\$100,000) of the qualified  
investment. The tax credit provided in this section shall be  
known as the "sustainable energy technology investment tax

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1 credit".

2 B. The purpose of the sustainable energy technology  
3 investment tax credit is to encourage investment in sustainable  
4 energy technology research, development, commercialization and  
5 production.

6 C. A taxpayer may claim the sustainable energy  
7 technology investment tax credit for not more than two  
8 qualified investments in a taxable year; provided that each  
9 investment is in a different qualified business. A taxpayer  
10 may not claim the sustainable energy technology investment tax  
11 credit for qualified investments made in the same qualified  
12 business or successor of that business for more than three  
13 taxable years. The sustainable energy technology investment  
14 tax credit shall not exceed twenty-five thousand dollars  
15 (\$25,000) for each qualified investment by the taxpayer.

16 D. A taxpayer may claim the sustainable energy  
17 technology investment tax credit no later than one year  
18 following the end of the calendar year in which the qualified  
19 investment was made. The sustainable energy technology  
20 investment tax credit may only be deducted from the taxpayer's  
21 income tax liability. That portion of a sustainable energy  
22 technology investment tax credit that is approved by the  
23 department and that exceeds a taxpayer's income tax liability  
24 shall not be refunded to the taxpayer. The sustainable energy  
25 technology investment tax credit shall not be transferred to

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1 another taxpayer. Any portion of the tax credit provided by  
2 this section that remains unused at the end of the taxpayer's  
3 taxable year may be carried forward for three consecutive  
4 years.

5 E. A husband and wife who file separate returns for  
6 a taxable year in which they could have filed a joint return  
7 may each claim one-half of the tax credit that would have been  
8 allowed on a joint return.

9 F. A taxpayer who otherwise qualifies and claims a  
10 sustainable energy technology investment tax credit that may be  
11 claimed by a partnership, business association or limited  
12 liability company of which the taxpayer is a member may claim a  
13 credit only in proportion to the taxpayer's interest in the  
14 partnership or limited liability company. The total credit  
15 claimed in the aggregate by all members of the partnership,  
16 business association or limited liability company in a taxable  
17 year shall not exceed twenty-five thousand dollars (\$25,000)  
18 for each qualified investment by the partnership, business  
19 association or limited liability company.

20 G. A taxpayer shall apply for certification of  
21 eligibility for the sustainable energy technology investment  
22 tax credit from the economic development department. The  
23 economic development department may issue rules governing the  
24 procedures to certify qualified investments for the purposes of  
25 claiming a sustainable energy technology investment tax credit.

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1 Applications shall be considered in the order received. If the  
2 economic development department determines that the investment  
3 is a qualified investment, it shall issue a certificate of  
4 eligibility to the taxpayer. The certificate shall be dated  
5 and shall include a calculation of the amount of the  
6 sustainable energy technology investment tax credit for which  
7 the taxpayer is eligible and the name of the qualified business  
8 and amount of qualified investment by the taxpayer. All  
9 certificates of eligibility issued pursuant to this subsection  
10 shall be sequentially numbered, and an account of all  
11 certificates issued or destroyed shall be maintained by the  
12 economic development department. The taxation and revenue  
13 department shall audit the records of the sustainable energy  
14 technology investment tax credit maintained by the economic  
15 development department on a periodic basis to ensure effective  
16 administration of the sustainable energy technology investment  
17 tax credit and compliance with the Tax Administration Act and  
18 this section.

19 H. To claim the sustainable energy technology  
20 investment tax credit, the taxpayer shall provide to the  
21 taxation and revenue department a certificate of eligibility  
22 issued by the economic development department pursuant to this  
23 section and any other information that the taxation and revenue  
24 department or the economic development department may require  
25 to determine eligibility for and the amount of the tax credit.

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1           I. The taxation and revenue department may allow a  
2 maximum annual aggregate of two million dollars (\$2,000,000) in  
3 sustainable energy technology investment tax credits allowed  
4 pursuant to this section and the Corporate Income and Franchise  
5 Tax Act. Applications for the sustainable energy technology  
6 investment tax credit shall be considered in the order received  
7 by the taxation and revenue department.

8           J. The taxation and revenue department in  
9 conjunction with the economic development department shall  
10 compile an annual report that includes the number of taxpayers  
11 to whom certificates of eligibility were issued in the previous  
12 year, the names of those taxpayers and the amount of tax credit  
13 for which each taxpayer was certified eligible; the number and  
14 names of the businesses that are qualified businesses for  
15 purposes of a qualified investment by a taxpayer; and the  
16 number of taxpayers approved to receive a tax credit.

17 Notwithstanding any other section of law to the contrary, the  
18 taxation and revenue department and the economic development  
19 department may disclose the number of applications for the  
20 sustainable energy technology investment tax credit, the amount  
21 of each tax credit approved, the number of qualified businesses  
22 that received qualified investments and any other information  
23 required by the legislature or the taxation and revenue  
24 department to aid in evaluating the effectiveness of the  
25 sustainable energy technology investment tax credit.

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1 K. As used in this section:

2 (1) "business" means a corporation, general  
3 partnership, limited partnership, limited liability company or  
4 other similar entity, but excludes an entity that is a  
5 government or a nonprofit organization designated as such by  
6 the federal government or any state;

7 (2) "equity" means common or preferred stock  
8 of a corporation, a partnership interest in a limited  
9 partnership or a membership interest in a limited liability  
10 company, including debt subject to an option in favor of the  
11 creditor to convert the debt into common or preferred stock, a  
12 partnership interest or a membership interest;

13 (3) "qualified business" means a business  
14 that:

15 (a) maintains its principal place of  
16 business in New Mexico;

17 (b) engages in qualified research for  
18 sustainable energy technology or manufactures existing  
19 sustainable energy technology in New Mexico;

20 (c) has not issued securities registered  
21 pursuant to Section 6 of the federal Securities Act of 1933, as  
22 amended; has not issued securities traded on a national  
23 securities exchange; is not subject to reporting requirements  
24 of the federal Securities Exchange Act of 1934, as amended; and  
25 is not registered pursuant to the federal Investment Company

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1 Act of 1940, as amended, at the time of the investment;

2 (d) has one hundred or fewer employees  
3 calculated on a full-time-equivalent basis at the time of the  
4 investment; and

5 (e) has not had gross revenues in excess  
6 of five million dollars (\$5,000,000) in any fiscal year ending  
7 on or before the date of the investment;

8 (4) "qualified investment" means a cash  
9 investment in a qualified business for equity, but does not  
10 include an investment by a taxpayer if the taxpayer, a member  
11 of the taxpayer's immediate family or an entity affiliated with  
12 the taxpayer receives compensation from the qualified business  
13 in exchange for services provided to the qualified business  
14 within one year of investment in the qualified business;

15 (5) "qualified research" means research:

16 (a) that is undertaken for the purpose  
17 of discovering information that is technological in nature and  
18 the application of which is intended to be useful in the  
19 development of a new or improved business component; and

20 (b) in which substantially all  
21 activities constitute elements of a process of experimentation  
22 related to new or improved function, performance, reliability,  
23 efficiency or quality, but not related to style, taste,  
24 cosmetic or seasonal design factors; and

25 (6) "sustainable energy technology" means

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1 electrical energy generation technology that:

2 (a) produces minimal or zero carbon  
3 emissions;

4 (b) uses primarily solar light, solar  
5 heat, wind or geothermal energy as energy sources; and

6 (c) has a long-term production and  
7 commercialization potential."

8 SECTION 2. A new section of the Corporate Income and  
9 Franchise Tax Act is enacted to read:

10 "[NEW MATERIAL] SUSTAINABLE ENERGY TECHNOLOGY INVESTMENT  
11 TAX CREDIT.--

12 A. A taxpayer that is a New Mexico corporation,  
13 that files a corporate income tax return and that makes a  
14 qualified investment may claim a tax credit in an amount not to  
15 exceed twenty-five percent of not more than one hundred  
16 thousand dollars (\$100,000) of the qualified investment. The  
17 tax credit provided in this section shall be known as the  
18 "sustainable energy technology investment tax credit".

19 B. The purpose of the sustainable energy technology  
20 investment tax credit is to encourage investment in sustainable  
21 energy technology research, development, commercialization and  
22 production.

23 C. A taxpayer may claim the sustainable energy  
24 technology investment tax credit for not more than two  
25 qualified investments in a taxable year; provided that each

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1 qualified investment is in a different qualified business. A  
2 taxpayer may not claim the sustainable energy technology  
3 investment tax credit for qualified investments made in the  
4 same qualified business or successor of that business for more  
5 than three taxable years. The sustainable energy technology  
6 investment tax credit shall not exceed twenty-five thousand  
7 dollars (\$25,000) for each qualified investment by the  
8 taxpayer.

9 D. A taxpayer may claim the sustainable energy  
10 technology investment tax credit no later than one year  
11 following the end of the calendar year in which the qualified  
12 investment was made. The sustainable energy technology  
13 investment tax credit may only be deducted from the taxpayer's  
14 corporate income tax liability. That portion of a sustainable  
15 energy technology investment tax credit that is approved by the  
16 department and that exceeds a taxpayer's corporate income tax  
17 liability shall not be refunded to the taxpayer. The  
18 sustainable energy technology investment tax credit shall not  
19 be transferred to another taxpayer. Any portion of the tax  
20 credit provided by this section that remains unused at the end  
21 of the taxpayer's taxable year may be carried forward for three  
22 consecutive years.

23 E. A taxpayer shall apply for certification of  
24 eligibility for the sustainable energy technology investment  
25 tax credit from the economic development department. The

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1 economic development department may issue rules governing the  
2 procedures to certify qualified investments for the purposes of  
3 claiming a sustainable energy technology investment tax credit.  
4 Applications shall be considered in the order received. If the  
5 economic development department determines that the investment  
6 is a qualified investment, it shall issue a certificate of  
7 eligibility to the taxpayer. The certificate shall be dated  
8 and shall include a calculation of the amount of the  
9 sustainable energy technology investment tax credit for which  
10 the taxpayer is eligible and the name of the qualified business  
11 and amount of qualified investment by the taxpayer. All  
12 certificates of eligibility issued pursuant to this subsection  
13 shall be sequentially numbered, and an account of all  
14 certificates issued or destroyed shall be maintained by the  
15 economic development department. The taxation and revenue  
16 department shall audit the records of the sustainable energy  
17 technology investment tax credit maintained by the economic  
18 development department on a periodic basis to ensure effective  
19 administration of the sustainable energy technology investment  
20 tax credit and compliance with the Tax Administration Act and  
21 this section.

22 F. To claim the sustainable energy technology  
23 investment tax credit, the taxpayer shall provide to the  
24 taxation and revenue department a certificate of eligibility  
25 issued by the economic development department pursuant to this

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1 section and any other information that the taxation and revenue  
2 department or the economic development department may require  
3 to determine eligibility for and the amount of the tax credit.

4 G. The taxation and revenue department may allow a  
5 maximum annual aggregate of two million dollars (\$2,000,000) in  
6 sustainable energy technology investment tax credits allowed  
7 pursuant to this section and the Income Tax Act. Applications  
8 for the sustainable energy technology investment tax credit  
9 shall be considered in the order received by the taxation and  
10 revenue department.

11 H. The taxation and revenue department in  
12 conjunction with the economic development department shall  
13 compile an annual report that includes the number of taxpayers  
14 to whom certificates of eligibility were issued in the previous  
15 year, the names of those taxpayers and the amount of tax credit  
16 for which each taxpayer was certified eligible; the number and  
17 names of the businesses that are qualified businesses for  
18 purposes of an investment by a taxpayer; and the number of  
19 taxpayers approved to receive a credit. Notwithstanding any  
20 other section of law to the contrary, the taxation and revenue  
21 department and the economic development department may disclose  
22 the number of applications for the sustainable energy  
23 technology investment tax credit, the amount of each tax credit  
24 approved, the number of qualified businesses that received  
25 qualified investments and any other information required by the

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1 legislature or the taxation and revenue department to aid in  
2 evaluating the effectiveness of the sustainable energy  
3 technology investment tax credit.

4 I. As used in this section:

5 (1) "business" means a corporation, general  
6 partnership, limited partnership, limited liability company or  
7 other similar entity, but excludes an entity that is a  
8 government or a nonprofit organization designated as such by  
9 the federal government or any state;

10 (2) "equity" means common or preferred stock  
11 of a corporation, a partnership interest in a limited  
12 partnership or a membership interest in a limited liability  
13 company, including debt subject to an option in favor of the  
14 creditor to convert the debt into common or preferred stock, a  
15 partnership interest or a membership interest;

16 (3) "qualified business" means a business  
17 that:

18 (a) maintains its principal place of  
19 business in New Mexico;

20 (b) engages in qualified research for  
21 sustainable energy technology or manufactures existing  
22 sustainable energy technology in New Mexico;

23 (c) has not issued securities registered  
24 pursuant to Section 6 of the federal Securities Act of 1933, as  
25 amended; has not issued securities traded on a national

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1 securities exchange; is not subject to reporting requirements  
2 of the federal Securities Exchange Act of 1934, as amended; and  
3 is not registered pursuant to the federal Investment Company  
4 Act of 1940, as amended, at the time of the qualified  
5 investment;

6 (d) has one hundred or fewer employees  
7 calculated on a full-time-equivalent basis at the time of the  
8 qualified investment; and

9 (e) has not had gross revenues in excess  
10 of five million dollars (\$5,000,000) in any fiscal year ending  
11 on or before the date of the qualified investment;

12 (4) "qualified investment" means a cash  
13 investment in a qualified business for equity, but does not  
14 include an investment by a taxpayer if the taxpayer, a member  
15 of the taxpayer's immediate family or an entity affiliated with  
16 the taxpayer receives compensation from the qualified business  
17 in exchange for services provided to the qualified business  
18 within one year of investment in the qualified business;

19 (5) "qualified research" means research:

20 (a) that is undertaken for the purpose  
21 of discovering information that is technological in nature and  
22 the application of which is intended to be useful in the  
23 development of a new or improved business component; and

24 (b) in which substantially all  
25 activities constitute elements of a process of experimentation

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1 related to new or improved function, performance, reliability,  
2 efficiency or quality, but not related to style, taste,  
3 cosmetic or seasonal design factors; and

4 (6) "sustainable energy technology" means  
5 electrical energy generation technology that:

6 (a) produces minimal or zero carbon  
7 emissions;

8 (b) uses primarily solar light, solar  
9 heat, wind or geothermal energy as energy sources; and

10 (c) has a long-term production and  
11 commercialization potential."

12 SECTION 3. APPLICABILITY.--The provisions of this act  
13 apply to taxable years beginning on or after January 1, 2012.