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HOUSE BILL 77

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Debra M. Sariñana

AN ACT

RELATING TO TAXATION; CREATING THE ENERGY STORAGE SYSTEM INCOME  
TAX CREDIT AND ENERGY STORAGE SYSTEM CORPORATE INCOME TAX  
CREDIT; PROVIDING A DELAYED REPEAL.

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]~~ ENERGY STORAGE SYSTEM INCOME TAX CREDIT.--

A. A taxpayer who is not a dependent of another  
individual and who installs an energy storage system on the  
taxpayer's property after January 1, 2018 and before January 1,  
2024 may apply for, and the department may allow, a credit  
against the taxpayer's tax liability imposed pursuant to the  
Income Tax Act subject to the provisions of this section. The  
tax credit provided by this section may be referred to as the

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1 "energy storage system income tax credit".

2 B. The purpose of the energy storage system income  
3 tax credit is to encourage research, development and  
4 installation of electricity storage facilities.

5 C. The taxation and revenue department shall allow  
6 an energy storage system income tax credit only for an  
7 installed system that is certified by the energy, minerals and  
8 natural resources department. The energy storage system income  
9 tax credit shall not exceed the lesser of:

10 (1) five thousand dollars (\$5,000) for an  
11 energy storage system installed on the taxpayer's residential  
12 property;

13 (2) seventy-five thousand dollars (\$75,000)  
14 for an energy storage system installed on the taxpayer's  
15 commercial property; or

16 (3) thirty percent of the total cost of  
17 installation of the energy storage system, regardless of the  
18 type of property.

19 D. The taxation and revenue department shall allow  
20 a maximum annual aggregate of seven hundred fifty thousand  
21 dollars (\$750,000) in energy storage system income tax credits  
22 and energy storage system corporate income tax credits,  
23 pursuant to Section 2 of this act, per fiscal year on a first-  
24 come, first-served basis. Completed applications for the  
25 credit shall be considered in the order received by the

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1     taxation and revenue department. If the maximum annual  
2     aggregate is met in a fiscal year, the taxation and revenue  
3     department shall notify the energy, minerals and natural  
4     resources department that no other energy storage systems may  
5     be certified for that fiscal year.

6             E. A taxpayer may claim an energy storage system  
7     income tax credit for the taxable year in which the taxpayer  
8     installs an energy storage system. The taxation and revenue  
9     department shall not allow more than one energy storage system  
10    income tax credit per year for each taxpayer. To receive the  
11    tax credit, a taxpayer shall apply to the taxation and revenue  
12    department on forms and in the manner prescribed by that  
13    department. The application shall include the certification  
14    made by the energy, minerals and natural resources department  
15    pursuant to Subsection I of this section.

16            F. That portion of an energy storage system income  
17    tax credit that exceeds a taxpayer's income tax liability for  
18    the taxable year in which the credit is claimed shall not be  
19    refundable and shall not be carried forward to any other  
20    taxable year.

21            G. Married individuals filing separate returns for  
22    a taxable year for which they could have filed a joint return  
23    may each claim only one-half of the energy storage system  
24    income tax credit that would have been claimed on a joint  
25    return.

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1           H. A taxpayer may be allocated the right to claim  
2 an energy storage system income tax credit in proportion to the  
3 taxpayer's ownership interest if the taxpayer owns an interest  
4 in a business entity that is taxed for federal income tax  
5 purposes as a partnership and that business entity has met all  
6 of the requirements to be eligible for the credit. The total  
7 credit claimed by all members of the partnership or a limited  
8 liability company shall not exceed the allowable credit  
9 pursuant to Subsection C of this section.

10           I. The energy, minerals and natural resources  
11 department shall adopt rules establishing procedures to provide  
12 certification of an energy storage system installed on a  
13 taxpayer's property for purposes of obtaining an energy storage  
14 system income tax credit, including a process for providing  
15 notice to taxpayers if the maximum annual aggregate amount  
16 pursuant to Subsection D of this section has been met.  
17 Completed applications for certification shall be considered in  
18 the order received by the energy, minerals and natural  
19 resources department.

20           J. A taxpayer allowed a tax credit pursuant to this  
21 section shall report the amount of the credit to the taxation  
22 and revenue department in a manner required by that department.

23           K. The taxation and revenue department shall  
24 compile an annual report on the energy storage system income  
25 tax credit that shall include the number of taxpayers approved

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1 by the energy, minerals and natural resources department to  
2 receive the credit, the number and aggregate amount of credits  
3 approved and applied against income tax liability and any other  
4 information necessary to evaluate the effectiveness of the  
5 credit. Each year that the credit is in effect, the taxation  
6 and revenue department shall compile and present the annual  
7 reports to the revenue stabilization and tax policy committee  
8 and the legislative finance committee with an analysis of the  
9 effectiveness and cost of the tax credit and whether the tax  
10 credit is performing the purpose for which it was created.

11 L. As used in this section, "energy storage system"  
12 means a system used to store electrical energy, or mechanical,  
13 chemical or thermal energy that was once electrical energy, for  
14 use as electrical energy at a later date or in a process that  
15 offsets electricity used at peak times."

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

18 "[NEW MATERIAL] ENERGY STORAGE SYSTEM CORPORATE INCOME TAX  
19 CREDIT.--

20 A. A taxpayer that files a New Mexico corporate  
21 income tax return and installs an energy storage system on the  
22 taxpayer's property after January 1, 2018 and before January 1,  
23 2024 may apply for, and the department may allow, a credit  
24 against the taxpayer's tax liability imposed pursuant to the  
25 Corporate Income and Franchise Tax Act subject to the

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1 provisions of this section. The tax credit provided by this  
2 section may be referred to as the "energy storage system  
3 corporate income tax credit".

4 B. The purpose of the energy storage system  
5 corporate income tax credit is to encourage research,  
6 development and installation of electricity storage facilities.

7 C. The taxation and revenue department shall allow  
8 an energy storage system corporate income tax credit only for  
9 an installed system that is certified by the energy, minerals  
10 and natural resources department. The energy storage system  
11 corporate income tax credit shall not exceed the lesser of:

12 (1) seventy-five thousand dollars (\$75,000)  
13 for an energy storage system installed on the taxpayer's  
14 property; or

15 (2) thirty percent of the total cost of  
16 installation of the energy storage system, regardless of the  
17 type of property.

18 D. The taxation and revenue department shall allow  
19 a maximum annual aggregate of seven hundred fifty thousand  
20 dollars (\$750,000) in energy storage system corporate income  
21 tax credits and energy storage system income tax credits,  
22 pursuant to Section 1 of this act, per fiscal year on a first-  
23 come, first-served basis. Completed applications for the  
24 credit shall be considered in the order received by the  
25 taxation and revenue department. If the maximum annual

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1 aggregate is met in a fiscal year, the taxation and revenue  
2 department shall notify the energy, minerals and natural  
3 resources department that no other energy storage systems may  
4 be certified for that fiscal year.

5 E. A taxpayer may claim an energy storage system  
6 corporate income tax credit for the taxable year in which the  
7 taxpayer installs an energy storage system. The taxation and  
8 revenue department shall not allow more than one energy storage  
9 system corporate income tax credit per year for each taxpayer.  
10 To receive the tax credit, a taxpayer shall apply to the  
11 taxation and revenue department on forms and in the manner  
12 prescribed by that department. The application shall include  
13 the certification made by the energy, minerals and natural  
14 resources department pursuant to Subsection G of this section.

15 F. That portion of an energy storage system  
16 corporate income tax credit that exceeds a taxpayer's corporate  
17 income tax liability for the taxable year in which the credit  
18 is claimed shall not be refundable and shall not be carried  
19 forward to any other taxable year.

20 G. The energy, minerals and natural resources  
21 department shall adopt rules establishing procedures to provide  
22 certification of an energy storage system installed on a  
23 taxpayer's property for purposes of obtaining an energy storage  
24 system corporate income tax credit, including a process for  
25 providing notice to taxpayers if the maximum annual aggregate

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1 amount pursuant to Subsection D of this section has been met.  
2 Completed applications for certification shall be considered in  
3 the order received by the energy, minerals and natural  
4 resources department.

5 H. A taxpayer allowed a tax credit pursuant to this  
6 section shall report the amount of the credit to the taxation  
7 and revenue department in a manner required by that department.

8 I. The taxation and revenue department shall  
9 compile an annual report on the energy storage system corporate  
10 income tax credit that shall include the number of taxpayers  
11 approved by the energy, minerals and natural resources  
12 department to receive the credit, the number and aggregate  
13 amount of credits approved and applied against corporate income  
14 tax liability and any other information necessary to evaluate  
15 the effectiveness of the credit. Each year that the credit is  
16 in effect, the taxation and revenue department shall compile  
17 and present the annual reports to the revenue stabilization and  
18 tax policy committee and the legislative finance committee with  
19 an analysis of the effectiveness and cost of the tax credit and  
20 whether the tax credit is performing the purpose for which it  
21 was created.

22 J. As used in this section, "energy storage system"  
23 means a system used to store electrical energy, or mechanical,  
24 chemical or thermal energy that was once electrical energy, for  
25 use as electrical energy at a later date or in a process that

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1 offsets electricity used at peak times."

2 SECTION 3. DELAYED REPEAL.--Sections 1 and 2 of this act  
3 are repealed effective January 1, 2025.

4 SECTION 4. APPLICABILITY.--The provisions of this act  
5 apply to taxable years beginning on or after January 1, 2018.