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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; EXPANDING A GROSS RECEIPTS TAX DEDUCTION FOR MANUFACTURERS TO INCLUDE RECEIPTS FROM SELLING OR LEASING CERTAIN EQUIPMENT TO A MANUFACTURER; ADDING REPORTING REQUIREMENTS TO THE ADVANCED ENERGY INCOME TAX CREDIT, ADVANCED ENERGY CORPORATE INCOME TAX CREDIT AND ADVANCED ENERGY COMBINED REPORTING TAX CREDIT; REPEALING THE INVESTMENT CREDIT ACT.

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

SECTION 1. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended by Laws 2019, Chapter 47, Section 1 and by Laws 2019, Chapter 53, Section 10 and also by Laws 2019, Chapter 270, Section 1) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the

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1 following taxes or tax acts as they now exist or may hereafter
2 be amended:

- 3 (1) Income Tax Act;
- 4 (2) Withholding Tax Act;
- 5 (3) Oil and Gas Proceeds and Pass-Through
6 Entity Withholding Tax Act;
- 7 (4) Gross Receipts and Compensating Tax Act,
8 Interstate Telecommunications Gross Receipts Tax Act and Leased
9 Vehicle Gross Receipts Tax Act;
- 10 (5) Liquor Excise Tax Act;
- 11 (6) Local Liquor Excise Tax Act;
- 12 (7) any municipal local option gross receipts
13 tax or municipal compensating tax;
- 14 (8) any county local option gross receipts tax
15 or county compensating tax;
- 16 (9) Special Fuels Supplier Tax Act;
- 17 (10) Gasoline Tax Act;
- 18 (11) petroleum products loading fee, which fee
19 shall be considered a tax for the purpose of the Tax
20 Administration Act;
- 21 (12) Alternative Fuel Tax Act;
- 22 (13) Cigarette Tax Act;
- 23 (14) Estate Tax Act;
- 24 (15) Railroad Car Company Tax Act;
- 25 (16) [~~Investment Credit Act~~] rural job tax

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1 credit, Laboratory Partnership with Small Business Tax Credit
2 Act, Technology Jobs and Research and Development Tax Credit
3 Act, Film Production Tax Credit Act, Affordable Housing Tax
4 Credit Act and high-wage jobs tax credit;

5 (17) Corporate Income and Franchise Tax Act;

6 (18) Uniform Division of Income for Tax
7 Purposes Act;

8 (19) Multistate Tax Compact;

9 (20) Tobacco Products Tax Act;

10 (21) the telecommunications relay service
11 surcharge imposed by Section 63-9F-11 NMSA 1978, which
12 surcharge shall be considered a tax for the purposes of the Tax
13 Administration Act; ~~and~~

14 (22) the Insurance Premium Tax Act; and

15 (23) the Health Care Quality Surcharge Act;

16 B. the administration and enforcement of the
17 following taxes, surtaxes, advanced payments or tax acts as
18 they now exist or may hereafter be amended:

19 (1) Resources Excise Tax Act;

20 (2) Severance Tax Act;

21 (3) any severance surtax;

22 (4) Oil and Gas Severance Tax Act;

23 (5) Oil and Gas Conservation Tax Act;

24 (6) Oil and Gas Emergency School Tax Act;

25 (7) Oil and Gas Ad Valorem Production Tax Act;

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- 1 (8) Natural Gas Processors Tax Act;
2 (9) Oil and Gas Production Equipment Ad
3 Valorem Tax Act;
4 (10) Copper Production Ad Valorem Tax Act;
5 (11) any advance payment required to be made
6 by any act specified in this subsection, which advance payment
7 shall be considered a tax for the purposes of the Tax
8 Administration Act;
9 (12) Enhanced Oil Recovery Act;
10 (13) Natural Gas and Crude Oil Production
11 Incentive Act; and
12 (14) intergovernmental production tax credit
13 and intergovernmental production equipment tax credit;
14 C. the administration and enforcement of the
15 following taxes, surcharges, fees or acts as they now exist or
16 may hereafter be amended:
17 (1) Weight Distance Tax Act;
18 (2) the workers' compensation fee authorized
19 by Section 52-5-19 NMSA 1978, which fee shall be considered a
20 tax for purposes of the Tax Administration Act;
21 (3) Uniform Unclaimed Property Act (1995);
22 (4) 911 emergency surcharge and the network
23 and database surcharge, which surcharges shall be considered
24 taxes for purposes of the Tax Administration Act;
25 (5) the solid waste assessment fee authorized

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1 by the Solid Waste Act, which fee shall be considered a tax for
2 purposes of the Tax Administration Act;

3 (6) the water conservation fee imposed by
4 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
5 for the purposes of the Tax Administration Act; and

6 (7) the gaming tax imposed pursuant to the
7 Gaming Control Act; and

8 D. the administration and enforcement of all other
9 laws, with respect to which the department is charged with
10 responsibilities pursuant to the Tax Administration Act, but
11 only to the extent that the other laws do not conflict with the
12 Tax Administration Act."

13 SECTION 2. Section 7-1-26 NMSA 1978 (being Laws 1965,
14 Chapter 248, Section 28, as amended) is amended to read:

15 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE
16 OR REFUND.--

17 A. A person who believes that an amount of tax has
18 been paid by or withheld from that person in excess of that for
19 which the person was liable, who has been denied a credit or
20 rebate claimed or who claims a prior right to property in the
21 possession of the department pursuant to a levy made under
22 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim
23 a refund by directing to the secretary, within the time
24 limitations provided by Subsections F and G of this section, a
25 written claim for refund that, except as provided in Subsection

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1 K of this section, includes:

2 (1) the taxpayer's name, address and
3 identification number;

4 (2) the type of tax for which a refund is
5 being claimed, the credit or rebate denied or the property
6 levied upon;

7 (3) the sum of money or other property being
8 claimed;

9 (4) with respect to a refund, the period for
10 which overpayment was made;

11 (5) a brief statement of the facts and the law
12 on which the claim is based, which may be referred to as the
13 "basis for the refund", which may include documentation that
14 substantiates the written claim and supports the taxpayer's
15 basis for the refund; and

16 (6) if applicable, a copy of an amended return
17 for each tax period for which the refund is claimed.

18 B. A claim for refund that meets the requirements
19 of Subsection A of this section and that is filed within the
20 time limitations provided by Subsections F and G of this
21 section is deemed to be properly before the department for
22 consideration, regardless of whether the department requests
23 additional documentation after receipt of the claim for refund.

24 C. If the department requests additional relevant
25 documentation from a taxpayer who has submitted a claim for

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1 refund, the claim for refund shall not be considered incomplete
2 provided the taxpayer submits sufficient information for the
3 department to make a determination.

4 D. The secretary or the secretary's delegate may
5 allow the claim in whole or in part or may deny the claim. If
6 the:

7 (1) claim is denied in whole or in part in
8 writing, the person shall not refile the denied claim, but the
9 person, within ninety days after either the mailing or delivery
10 of the denial of all or any part of the claim, may elect to
11 pursue only one of the remedies provided in Subsection E of
12 this section; and

13 (2) department has neither granted nor denied
14 any portion of a complete claim for refund within one hundred
15 eighty days after the claim was mailed or otherwise delivered
16 to the department, the person may elect to treat the claim as
17 denied and elect to pursue only one of the remedies provided in
18 Subsection E of this section.

19 E. A person may elect to pursue only one of the
20 remedies provided in this subsection. A person who timely
21 pursues more than one remedy is deemed to have elected the
22 first. The person may:

23 (1) direct to the secretary, pursuant to the
24 provisions of Section 7-1-24 NMSA 1978, a written protest that
25 sets forth:

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1 (a) the circumstances of: 1) an alleged
2 overpayment; 2) a denied credit; 3) a denied rebate; or 4) a
3 denial of a prior right to property levied upon by the
4 department;

5 (b) an allegation that, because of that
6 overpayment or denial, the state is indebted to the taxpayer
7 for a specified amount, including any allowed interest, or for
8 the property;

9 (c) a demand for the refund to the
10 taxpayer of that amount or that property; and

11 (d) a recitation of the facts of the
12 claim for refund; or

13 (2) commence a civil action in the district
14 court for Santa Fe county by filing a complaint setting forth
15 the circumstance of the claimed overpayment, denied credit or
16 rebate or denial of a prior right to property levied upon by
17 the department alleging that on account thereof the state is
18 indebted to the plaintiff in the amount or property stated,
19 together with any interest allowable, demanding the refund to
20 the plaintiff of that amount or property and reciting the facts
21 of the claim for refund. The plaintiff or the secretary may
22 appeal from any final decision or order of the district court
23 to the court of appeals.

24 F. Except as otherwise provided in Subsection G of
25 this section, a credit or refund of any amount may be allowed

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1 or made to a person:

2 (1) only within three years after the end of
3 the calendar year in which:

4 (a) the payment was originally due or
5 the overpayment resulted from an assessment by the department
6 as provided in Section 7-1-17 NMSA 1978, whichever is later;

7 (b) the final determination of value
8 occurs with respect to any overpayment that resulted from a
9 disapproval by any agency of the United States or the state of
10 New Mexico or any court of increase in value of a product
11 subject to taxation under the Oil and Gas Severance Tax Act,
12 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
13 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
14 or the Natural Gas Processors Tax Act;

15 (c) property was levied upon as provided
16 in the Tax Administration Act; or

17 (d) an overpayment of New Mexico tax
18 resulted from: 1) an internal revenue service audit adjustment
19 or a federal refund paid due to an adjustment of an audit by
20 the internal revenue service or an amended federal return; or
21 2) the amendment to a federal return for which federal approval
22 is required by the Internal Revenue Code;

23 (2) in the case of a denial of a claim for
24 credit under the [~~Investment Credit Act~~] Laboratory Partnership
25 with Small Business Tax Credit Act or Technology Jobs and

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1 Research and Development Tax Credit Act or for the rural job
2 tax credit provided by Section 7-2E-1.1 NMSA 1978 or similar
3 credit, only within one year after the date of the denial;

4 (3) in the case of a taxpayer under audit by
5 the department who has signed a waiver of the limitation on
6 assessments on or after July 1, 1993 pursuant to Subsection F
7 of Section 7-1-18 NMSA 1978, only for a refund of the same tax
8 paid for the same period for which the waiver was given, and
9 only until a date one year after the later of the date of the
10 mailing of an assessment issued pursuant to the audit, the date
11 of the mailing of final audit findings to the taxpayer or the
12 date a proceeding is begun in court by the department with
13 respect to the same tax and the same period;

14 (4) in the case of a payment of an amount of
15 tax not made within three years of the end of the calendar year
16 in which the original due date of the tax or date of the
17 assessment of the department occurred, only for a claim for
18 refund of that amount of tax and only within one year of the
19 date on which the tax was paid; or

20 (5) in the case of a taxpayer who has been
21 assessed a tax on or after July 1, 1993 under Subsection B, C
22 or D of Section 7-1-18 NMSA 1978 and an assessment that applies
23 to a period ending at least three years prior to the beginning
24 of the year in which the assessment was made, only for a refund
25 for the same tax for the period of the assessment or for any

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1 period following that period within one year of the date of the
2 assessment unless a longer period for claiming a refund is
3 provided in this section.

4 G. No credit or refund shall be allowed or made to
5 a person claiming a refund of gasoline tax under Section
6 7-13-11 NMSA 1978 unless notice of the destruction of the
7 gasoline was given to the department within thirty days of the
8 actual destruction and the claim for refund is made within six
9 months of the date of destruction. No credit or refund shall
10 be allowed or made to a person claiming a refund of gasoline
11 tax under Section 7-13-17 NMSA 1978 unless the refund is
12 claimed within six months of the date of purchase of the
13 gasoline and the gasoline has been used at the time the claim
14 for refund is made.

15 H. If, as a result of an audit by the department or
16 a managed audit covering multiple periods, an overpayment of
17 tax is found in any period under the audit and if the taxpayer
18 files a claim for refund for the overpayments identified in the
19 audit, that overpayment may be credited against an underpayment
20 of the same tax found in another period under audit pursuant to
21 Section 7-1-29 NMSA 1978.

22 I. A refund of tax paid under any tax or tax act
23 administered under Subsection B of Section 7-1-2 NMSA 1978 may
24 be made, at the discretion of the department, in the form of
25 credit against future tax payments if future tax liabilities in

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1 an amount at least equal to the credit amount reasonably may be
2 expected to become due.

3 J. For the purposes of this section, "oil and gas
4 tax return" means a return reporting tax due with respect to
5 oil, natural gas, liquid hydrocarbons, carbon dioxide, helium
6 or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax
7 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas
8 Emergency School Tax Act, the Oil and Gas Ad Valorem Production
9 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas
10 Production Equipment Ad Valorem Tax Act.

11 K. The filing of a fully completed original income
12 tax return, corporate income tax return, corporate income and
13 franchise tax return, estate tax return or special fuel excise
14 tax return that shows a balance due the taxpayer or a fully
15 completed amended income tax return, an amended corporate
16 income tax return, an amended corporate income and franchise
17 tax return, an amended estate tax return, an amended special
18 fuel excise tax return or an amended oil and gas tax return
19 that shows a lesser tax liability than the original return
20 constitutes the filing of a claim for refund for the difference
21 in tax due shown on the original and amended returns."

22 SECTION 3. Section 7-1-68 NMSA 1978 (being Laws 1965,
23 Chapter 248, Section 69, as amended) is amended to read:

24 "7-1-68. INTEREST ON OVERPAYMENTS.--

25 A. As provided in this section, interest shall be

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1 allowed and paid on the amount of tax overpaid by a person that
2 is subsequently refunded or credited to that person.

3 B. Interest on overpayments of tax shall accrue and
4 be paid at the underpayment rate established pursuant to
5 Section 6621 of the Internal Revenue Code, computed on a daily
6 basis; provided that if a different rate is specified by a
7 compact or other interstate agreement to which New Mexico is a
8 party, that rate shall apply to amounts due under the compact
9 or other agreement.

10 C. Unless otherwise provided by this section,
11 interest on an overpayment not arising from an assessment by
12 the department shall be paid from the date of the claim for
13 refund until a date preceding by not more than thirty days the
14 date of the credit or refund to any person; and interest on an
15 overpayment arising from an assessment by the department shall
16 be paid from the date of overpayment until a date preceding by
17 not more than thirty days the date of the credit or refund to
18 any person.

19 D. No interest shall be allowed or paid with
20 respect to an amount credited or refunded if:

21 (1) the amount of interest due is less than
22 one dollar (\$1.00);

23 (2) the credit or refund is made within:

24 (a) fifty-five days of the date of the
25 complete claim for refund of income tax, pursuant to either the

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1 Income Tax Act or the Corporate Income and Franchise Tax Act
2 for the tax year immediately preceding the tax year in which
3 the claim is made;

4 (b) sixty days of the date of the
5 complete claim for refund of any tax not provided for in this
6 paragraph;

7 (c) seventy-five days of the date of the
8 complete claim for refund of gasoline tax to users of gasoline
9 off the highways;

10 (d) one hundred twenty days of the date
11 of the complete claim for refund of tax imposed pursuant to the
12 Resources Excise Tax Act, the Severance Tax Act, the Oil and
13 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
14 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
15 Valorem Production Tax Act, the Natural Gas Processors Tax Act
16 or the Oil and Gas Production Equipment Ad Valorem Tax Act; or

17 (e) one hundred twenty days of the date
18 of the complete claim for refund of income tax, pursuant to the
19 Income Tax Act or the Corporate Income and Franchise Tax Act,
20 for any tax year more than one year prior to the year in which
21 the claim is made;

22 (3) Sections 6611(f) and 6611(g) of the
23 Internal Revenue Code, as those sections may be amended or
24 renumbered, prohibit payment of interest for federal income tax
25 purposes;

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1 (4) the credit results from overpayments found
2 in an audit of multiple reporting periods and applied to
3 underpayments found in that audit or refunded as a net
4 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
5 1978;

6 (5) the department applies the credit or
7 refund to an intercept program, to the taxpayer's estimated
8 payment prior to the due date for the estimated payment or to
9 offset prior liabilities of the taxpayer pursuant to Subsection
10 E of Section 7-1-29 NMSA 1978;

11 (6) the credit or refund results from
12 overpayments the department finds pursuant to Subsection F of
13 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
14 taxpayer on the return; or

15 (7) the refund results from a tax credit
16 pursuant to the [~~Investment Credit Act~~] Laboratory Partnership
17 with Small Business Tax Credit Act, Technology Jobs and
18 Research and Development Tax Credit Act, Film Production Tax
19 Credit Act, Affordable Housing Tax Credit Act or a rural job
20 tax credit or high-wage jobs tax credit.

21 E. Nothing in this section shall be construed to
22 require the payment of interest upon interest."

23 SECTION 4. Section 7-2-18.25 NMSA 1978 (being Laws 2009,
24 Chapter 279, Section 1) is amended to read:

25 "7-2-18.25. ADVANCED ENERGY INCOME TAX CREDIT.--

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1 A. The tax credit that may be claimed pursuant to
2 this section may be referred to as the "advanced energy income
3 tax credit".

4 B. A taxpayer who holds an interest in a qualified
5 generating facility located in New Mexico and who files an
6 individual New Mexico income tax return may claim an advanced
7 energy income tax credit in an amount equal to six percent of
8 the eligible generation plant costs of a qualified generating
9 facility, subject to the limitations imposed in this section.
10 The tax credit claimed shall be verified and approved by the
11 department.

12 C. An entity that holds an interest in a qualified
13 generating facility may request a certificate of eligibility
14 from the department of environment to enable the requester to
15 apply for an advanced energy income tax credit. The department
16 of environment:

17 (1) shall determine if the facility is a
18 qualified generating facility;

19 (2) shall require that the requester provide
20 the department of environment with the information necessary to
21 assess whether the requester's facility meets the criteria to
22 be a qualified generating facility;

23 (3) shall issue a certificate to the requester
24 stating that the facility is or is not a qualified generating
25 facility within one hundred eighty days after receiving all

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1 information necessary to make a determination;

2 (4) shall:

3 (a) issue a schedule of fees in which no
4 fee exceeds one hundred fifty thousand dollars (\$150,000); and

5 (b) deposit fees collected pursuant to
6 this paragraph in the state air quality permit fund created
7 pursuant to Section 74-2-15 NMSA 1978; and

8 (5) shall report annually to the appropriate
9 interim legislative committee information that will allow the
10 legislative committee to analyze the effectiveness of the
11 advanced energy tax credits, including the identity of
12 qualified generating facilities, the energy production means
13 used, the amount of emissions identified in this section
14 reduced and removed by those qualified generating facilities
15 and whether any requests for certificates of eligibility could
16 not be approved due to program limits.

17 D. A taxpayer who holds an interest in a qualified
18 generating facility may be allocated the right to claim the
19 advanced energy income tax credit without regard to the
20 taxpayer's relative interest in the qualified generating
21 facility if:

22 (1) the business entity making the allocation
23 provides notice of the allocation and the taxpayer's interest
24 in the qualified generating facility to the department on forms
25 prescribed by the department;

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1 (2) allocations to the taxpayer and all other
2 taxpayers allocated a right to claim the advanced energy tax
3 credit shall not exceed one hundred percent of the advanced
4 energy tax credit allowed for the qualified generating
5 facility; and

6 (3) the taxpayer and all other taxpayers
7 allocated a right to claim the advanced energy tax credits
8 collectively own at least a five percent interest in the
9 qualified generating facility.

10 E. To claim the advanced energy income tax credit,
11 a taxpayer shall submit with the taxpayer's New Mexico income
12 tax return a certificate of eligibility from the department of
13 environment stating that the taxpayer may be eligible for
14 advanced energy tax credits. The taxation and revenue
15 department shall provide credit claims forms. A credit claim
16 form shall accompany any return in which the taxpayer wishes to
17 apply for an approved credit, and the claim shall specify the
18 amount of credit intended to apply to each return. The
19 taxation and revenue department shall determine the amount of
20 advanced energy income tax credit for which the taxpayer may
21 apply.

22 F. Upon receipt of the notice of an allocation of
23 the right to claim all or a portion of the advanced energy
24 income tax credit, the department shall verify the allocation
25 due to the recipient.

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1 G. ~~[A husband and wife]~~ Married individuals who
2 file separate returns for a taxable year in which they could
3 have filed a joint return may each claim only one-half of the
4 advanced energy income tax credit that would have been allowed
5 on a joint return.

6 H. The total amount of all advanced energy tax
7 credits claimed shall not exceed the total amount determined by
8 the department to be allowable pursuant to this section, the
9 Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA
10 1978.

11 I. Any balance of the advanced energy income tax
12 credit that the taxpayer is approved to claim may be claimed by
13 the taxpayer as an advanced energy combined reporting tax
14 credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the
15 advanced energy income tax credit exceeds the amount of the
16 taxpayer's tax liabilities pursuant to the Income Tax Act and
17 Section 7-9G-2 NMSA 1978 in the taxable year in which it is
18 claimed, the balance of the unpaid credit may be carried
19 forward for ten years and claimed as an advanced energy income
20 tax credit or an advanced energy combined reporting tax credit.
21 The advanced energy income tax credit is not refundable.

22 J. A taxpayer ~~[claiming the advanced energy income~~
23 ~~tax credit pursuant to this section is ineligible for credits~~
24 ~~pursuant to the Investment Credit Act or any other]~~ that has
25 claimed a credit ~~[that may be taken]~~ pursuant to the Income Tax

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1 Act or credits or deductions that may be taken against the
2 gross receipts tax, compensating tax or withholding tax for the
3 same expenditures is ineligible to claim an advanced energy
4 income tax credit.

5 K. The aggregate amount of all advanced energy tax
6 credits that may be claimed with respect to a qualified
7 generating facility shall not exceed sixty million dollars
8 (\$60,000,000).

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

12 M. The department shall compile an annual report on
13 the advanced energy income tax credit that shall include the
14 number of taxpayers approved by the department to receive the
15 credit, the aggregate amount of credits approved and any other
16 information necessary to evaluate the tax credit. The
17 department shall present the report to the revenue
18 stabilization and tax policy committee and the legislative
19 finance committee with an analysis of the cost of the tax
20 credit.

21 [~~L.~~] N. As used in this section:

22 (1) "advanced energy tax credit" means the
23 advanced energy income tax credit, the advanced energy
24 corporate income tax credit and the advanced energy combined
25 reporting tax credit;

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1 (2) "coal-based electric generating facility"
2 means a new or repowered generating facility and an associated
3 coal gasification facility, if any, that uses coal to generate
4 electricity and that meets the following specifications:

5 (a) emits the lesser of: 1) what is
6 achievable with the best available control technology; or 2)
7 thirty-five thousandths pound per million British thermal units
8 of sulfur dioxide, twenty-five thousandths pound per million
9 British thermal units of oxides of nitrogen and one hundredth
10 pound per million British thermal units of total particulates
11 in the flue gas;

12 (b) removes the greater of: 1) what is
13 achievable with the best available control technology; or 2)
14 ninety percent of the mercury from the input fuel;

15 (c) captures and sequesters or controls
16 carbon dioxide emissions so that by the later of January 1,
17 2017 or eighteen months after the commercial operation date of
18 the coal-based electric generating facility, no more than one
19 thousand one hundred pounds per megawatt-hour of carbon dioxide
20 is emitted into the atmosphere;

21 (d) all infrastructure required for
22 sequestration is in place by the later of January 1, 2017 or
23 eighteen months after the commercial operation date of the
24 coal-based electric generating facility;

25 (e) includes methods and procedures to

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1 monitor the disposition of the carbon dioxide captured and
2 sequestered from the coal-based electric generating facility;
3 and

4 (f) does not exceed a name-plate
5 capacity of seven hundred net megawatts;

6 (3) "eligible generation plant costs" means
7 expenditures for the development and construction of a
8 qualified generating facility, including permitting; site
9 characterization and assessment; engineering; design; carbon
10 dioxide capture, treatment, compression, transportation and
11 sequestration; site and equipment acquisition; and fuel supply
12 development used directly and exclusively in a qualified
13 generating facility;

14 (4) "entity" means an individual, estate,
15 trust, receiver, cooperative association, club, corporation,
16 company, firm, partnership, limited liability company, limited
17 liability partnership, joint venture, syndicate or other
18 association or a gas, water or electric utility owned or
19 operated by a county or municipality;

20 (5) "geothermal electric generating facility"
21 means a facility with a name-plate capacity of one megawatt or
22 more that uses geothermal energy to generate electricity,
23 including a facility that captures and provides geothermal
24 energy to a preexisting electric generating facility using
25 other fuels in part;

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1 (6) "interest in a qualified generating
2 facility" means title to a qualified generating facility; a
3 leasehold interest in a qualified generating facility; an
4 ownership interest in a business or entity that is taxed for
5 federal income tax purposes as a partnership that holds title
6 to or a leasehold interest in a qualified generating facility;
7 or an ownership interest, through one or more intermediate
8 entities that are each taxed for federal income tax purposes as
9 a partnership, in a business that holds title to or a leasehold
10 interest in a qualified generating facility;

11 (7) "name-plate capacity" means the maximum
12 rated output of the facility measured as alternating current or
13 the equivalent direct current measurement;

14 (8) "qualified generating facility" means a
15 facility that begins construction not later than December 31,
16 2015 and is:

17 (a) a solar thermal electric generating
18 facility that begins construction on or after July 1, 2007 and
19 that may include an associated renewable energy storage
20 facility;

21 (b) a solar photovoltaic electric
22 generating facility that begins construction on or after July
23 1, 2009 and that may include an associated renewable energy
24 storage facility;

25 (c) a geothermal electric generating

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1 facility that begins construction on or after July 1, 2009;

2 (d) a recycled energy project if that
3 facility begins construction on or after July 1, 2007; or

4 (e) a new or repowered coal-based
5 electric generating facility and an associated coal
6 gasification facility;

7 (9) "recycled energy" means energy produced by
8 a generation unit with a name-plate capacity of not more than
9 fifteen megawatts that converts the otherwise lost energy from
10 the exhaust stacks or pipes to electricity without combustion
11 of additional fossil fuel;

12 (10) "sequester" means to store, or chemically
13 convert, carbon dioxide in a manner that prevents its release
14 into the atmosphere and may include the use of geologic
15 formations and enhanced oil, coalbed methane or natural gas
16 recovery techniques;

17 (11) "solar photovoltaic electric generating
18 facility" means an electric generating facility with a name-
19 plate capacity of one megawatt or more that uses solar
20 photovoltaic energy to generate electricity; and

21 (12) "solar thermal generating facility" means
22 an electric generating facility with a name-plate capacity of
23 one megawatt or more that uses solar thermal energy to generate
24 electricity, including a facility that captures and provides
25 solar energy to a preexisting electric generating facility

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1 using other fuels in part."

2 SECTION 5. Section 7-2A-25 NMSA 1978 (being Laws 2009,
3 Chapter 279, Section 2) is amended to read:

4 "7-2A-25. ADVANCED ENERGY CORPORATE INCOME TAX CREDIT.--

5 A. The tax credit that may be claimed pursuant to
6 this section may be referred to as the "advanced energy
7 corporate income tax credit".

8 B. A taxpayer that holds an interest in a qualified
9 generating facility located in New Mexico and that files a New
10 Mexico corporate income tax return may claim an advanced energy
11 corporate income tax credit in an amount equal to six percent
12 of the eligible generation plant costs of a qualified
13 generating facility, subject to the limitations imposed in this
14 section. The tax credit claimed shall be verified and approved
15 by the department.

16 C. An entity that holds an interest in a qualified
17 generating facility may request a certificate of eligibility
18 from the department of environment to enable the requester to
19 apply for an advanced energy corporate income tax credit. The
20 department of environment:

21 (1) shall determine if the facility is a
22 qualified generating facility;

23 (2) shall require that the requester provide
24 the department of environment with the information necessary to
25 assess whether the requester's facility meets the criteria to

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1 be a qualified generating facility;

2 (3) shall issue a certificate to the requester
3 stating that the facility is or is not a qualified generating
4 facility within one hundred eighty days after receiving all
5 information necessary to make a determination;

6 (4) shall:

7 (a) issue a schedule of fees in which no
8 fee exceeds one hundred fifty thousand dollars (\$150,000); and

9 (b) deposit fees collected pursuant to
10 this paragraph in the state air quality permit fund created
11 pursuant to Section 74-2-15 NMSA 1978; and

12 (5) shall report annually to the appropriate
13 interim legislative committee information that will allow the
14 legislative committee to analyze the effectiveness of the
15 advanced energy tax credits, including the identity of
16 qualified generating facilities, the energy production means
17 used, the amount of emissions identified in this section
18 reduced and removed by those qualified generating facilities
19 and whether any requests for certificates of eligibility could
20 not be approved due to program limits.

21 D. A taxpayer that holds an interest in a qualified
22 generating facility may be allocated the right to claim the
23 advanced energy corporate income tax credit without regard to
24 the taxpayer's relative interest in the qualified generating
25 facility if:

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1 (1) the business entity making the allocation
2 provides notice of the allocation and the taxpayer's interest
3 in the qualified generating facility to the department on forms
4 prescribed by the department;

5 (2) allocations to the taxpayer and all other
6 taxpayers allocated a right to claim the advanced energy tax
7 credit shall not exceed one hundred percent of the advanced
8 energy tax credit allowed for the qualified generating
9 facility; and

10 (3) the taxpayer and all other taxpayers
11 allocated a right to claim the advanced energy tax credits
12 collectively own at least a five percent interest in the
13 qualified generating facility.

14 E. Upon receipt of the notice of an allocation of
15 the right to claim all or a portion of the advanced energy
16 corporate income tax credit, the department shall verify the
17 allocation due to the recipient.

18 F. To claim the advanced energy corporate income
19 tax credit, a taxpayer shall submit with the taxpayer's New
20 Mexico corporate income tax return a certificate of eligibility
21 from the department of environment stating that the taxpayer
22 may be eligible for advanced energy tax credits. The taxation
23 and revenue department shall provide credit claim forms. A
24 credit claim form shall accompany any return in which the
25 taxpayer wishes to apply for an approved credit, and the claim

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1 shall specify the amount of credit intended to apply to each
2 return. The taxation and revenue department shall determine
3 the amount of advanced energy corporate income tax credit for
4 which the taxpayer may apply.

5 G. The total amount of all advanced energy tax
6 credits claimed shall not exceed the total amount determined by
7 the department to be allowable pursuant to this section, the
8 Income Tax Act and Section 7-9G-2 NMSA 1978.

9 H. Any balance of the advanced energy corporate
10 income tax credit that the taxpayer is approved to claim may be
11 claimed by the taxpayer as an advanced energy combined
12 reporting tax credit allowed pursuant to Section 7-9G-2 NMSA
13 1978. If the advanced energy corporate income tax credit
14 exceeds the amount of the taxpayer's tax liabilities pursuant
15 to the Corporate Income and Franchise Tax Act and Section
16 7-9G-2 NMSA 1978 in the taxable year in which it is claimed,
17 the balance of the unpaid credit may be carried forward for ten
18 years and claimed as an advanced energy corporate income tax
19 credit or an advanced energy combined reporting tax credit.
20 The advanced energy corporate income tax credit is not
21 refundable.

22 I. A taxpayer ~~[claiming the advanced energy~~
23 ~~corporate income tax credit pursuant to this section is~~
24 ~~ineligible for credits pursuant to the Investment Credit Act or~~
25 ~~any other] that has claimed a credit ~~[that may be taken]~~~~

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1 pursuant to the Corporate Income and Franchise Tax Act or
2 credits or deductions that may be taken against the gross
3 receipts tax, compensating tax or withholding tax for the same
4 expenditures is ineligible to claim an advanced energy
5 corporate income tax credit.

6 J. The aggregate amount of all advanced energy tax
7 credits that may be claimed with respect to a qualified
8 generating facility shall not exceed sixty million dollars
9 (\$60,000,000).

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

13 L. The department shall compile an annual report on
14 the advanced energy corporate income tax credit that shall
15 include the number of taxpayers approved by the department to
16 receive the credit, the aggregate amount of credits approved
17 and any other information necessary to evaluate the tax credit.
18 The department shall present the report to the revenue
19 stabilization and tax policy committee and the legislative
20 finance committee with an analysis of the cost of the tax
21 credit.

22 [~~K-~~] M. As used in this section:

23 (1) "advanced energy tax credit" means the
24 advanced energy income tax credit, the advanced energy
25 corporate income tax credit and the advanced energy combined

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1 reporting tax credit;

2 (2) "coal-based electric generating facility"
3 means a new or repowered generating facility and an associated
4 coal gasification facility, if any, that uses coal to generate
5 electricity and that meets the following specifications:

6 (a) emits the lesser of: 1) what is
7 achievable with the best available control technology; or 2)
8 thirty-five thousandths pound per million British thermal units
9 of sulfur dioxide, twenty-five thousandths pound per million
10 British thermal units of oxides of nitrogen and one hundredth
11 pound per million British thermal units of total particulates
12 in the flue gas;

13 (b) removes the greater of: 1) what is
14 achievable with the best available control technology; or 2)
15 ninety percent of the mercury from the input fuel;

16 (c) captures and sequesters or controls
17 carbon dioxide emissions so that by the later of January 1,
18 2017 or eighteen months after the commercial operation date of
19 the coal-based electric generating facility, no more than one
20 thousand one hundred pounds per megawatt-hour of carbon dioxide
21 is emitted into the atmosphere;

22 (d) all infrastructure required for
23 sequestration is in place by the later of January 1, 2017 or
24 eighteen months after the commercial operation date of the
25 coal-based electric generating facility;

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1 (e) includes methods and procedures to
2 monitor the disposition of the carbon dioxide captured and
3 sequestered from the coal-based electric generating facility;
4 and

5 (f) does not exceed a name-plate
6 capacity of seven hundred net megawatts;

7 (3) "eligible generation plant costs" means
8 expenditures for the development and construction of a
9 qualified generating facility, including permitting; site
10 characterization and assessment; engineering; design; carbon
11 dioxide capture, treatment, compression, transportation and
12 sequestration; site and equipment acquisition; and fuel supply
13 development used directly and exclusively in a qualified
14 generating facility;

15 (4) "entity" means an individual, estate,
16 trust, receiver, cooperative association, club, corporation,
17 company, firm, partnership, limited liability company, limited
18 liability partnership, joint venture, syndicate or other
19 association or a gas, water or electric utility owned or
20 operated by a county or municipality;

21 (5) "geothermal electric generating facility"
22 means a facility with a name-plate capacity of one megawatt or
23 more that uses geothermal energy to generate electricity,
24 including a facility that captures and provides geothermal
25 energy to a preexisting electric generating facility using

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1 other fuels in part;

2 (6) "interest in a qualified generating
3 facility" means title to a qualified generating facility; a
4 leasehold interest in a qualified generating facility; an
5 ownership interest in a business or entity that is taxed for
6 federal income tax purposes as a partnership that holds title
7 to or a leasehold interest in a qualified generating facility;
8 or an ownership interest, through one or more intermediate
9 entities that are each taxed for federal income tax purposes as
10 a partnership, in a business that holds title to or a leasehold
11 interest in a qualified generating facility;

12 (7) "name-plate capacity" means the maximum
13 rated output of the facility measured as alternating current or
14 the equivalent direct current measurement;

15 (8) "qualified generating facility" means a
16 facility that begins construction not later than December 31,
17 2015 and is:

18 (a) a solar thermal electric generating
19 facility that begins construction on or after July 1, 2007 and
20 that may include an associated renewable energy storage
21 facility;

22 (b) a solar photovoltaic electric
23 generating facility that begins construction on or after July
24 1, 2009 and that may include an associated renewable energy
25 storage facility;

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1 (c) a geothermal electric generating
2 facility that begins construction on or after July 1, 2009;

3 (d) a recycled energy project if that
4 facility begins construction on or after July 1, 2007; or

5 (e) a new or repowered coal-based
6 electric generating facility and an associated coal
7 gasification facility;

8 (9) "recycled energy" means energy produced by
9 a generation unit with a name-plate capacity of not more than
10 fifteen megawatts that converts the otherwise lost energy from
11 the exhaust stacks or pipes to electricity without combustion
12 of additional fossil fuel;

13 (10) "sequester" means to store, or chemically
14 convert, carbon dioxide in a manner that prevents its release
15 into the atmosphere and may include the use of geologic
16 formations and enhanced oil, coalbed methane or natural gas
17 recovery techniques;

18 (11) "solar photovoltaic electric generating
19 facility" means an electric generating facility with a name-
20 plate capacity of one megawatt or more that uses solar
21 photovoltaic energy to generate electricity; and

22 (12) "solar thermal electric generating
23 facility" means an electric generating facility with a name-
24 plate capacity of one megawatt or more that uses solar thermal
25 energy to generate electricity, including a facility that

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1 captures and provides solar energy to a preexisting electric
2 generating facility using other fuels in part."

3 SECTION 6. Section 7-9-46 NMSA 1978 (being Laws 1969,
4 Chapter 144, Section 36, as amended) is amended to read:

5 "7-9-46. DEDUCTION--GROSS RECEIPTS [~~TAX~~]--GOVERNMENTAL
6 GROSS RECEIPTS--SALES TO MANUFACTURERS.--

7 A. Receipts from selling tangible personal property
8 may be deducted from gross receipts or from governmental gross
9 receipts if the sale is made to a [~~person engaged in the~~
10 ~~business of manufacturing~~] manufacturer who delivers a
11 nontaxable transaction certificate to the seller. The buyer
12 delivering the nontaxable transaction certificate must
13 incorporate the tangible personal property as an ingredient or
14 component part of the product that the buyer is in the business
15 of manufacturing.

16 B. Receipts from selling [~~tangible personal~~
17 ~~property that is~~] a manufacturing consumable [~~and used in such~~
18 ~~a way that it is consumed in the manufacturing process of a~~
19 ~~product, provided that the tangible personal property is not a~~
20 ~~tool or equipment used to create the manufactured product, to a~~
21 ~~person engaged in the business of manufacturing that product~~
22 ~~and who delivers a nontaxable transaction certificate to the~~
23 ~~seller~~] to a manufacturer may be deducted [~~in the following~~
24 ~~percentages~~] from gross receipts or from governmental gross
25 receipts

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1 ~~[(1) twenty percent of receipts received prior~~
2 ~~to January 1, 2014;~~

3 ~~(2) forty percent of receipts received in~~
4 ~~calendar year 2014;~~

5 ~~(3) sixty percent of receipts received in~~
6 ~~calendar year 2015;~~

7 ~~(4) eighty percent of receipts received in~~
8 ~~calendar year 2016; and~~

9 ~~(5) one hundred percent of receipts received~~
10 ~~on or after January 1, 2017] if the buyer delivers a nontaxable~~
11 ~~transaction certificate to the seller.~~

12 C. Receipts from selling or leasing qualified
13 equipment may be deducted from gross receipts if the sale is
14 made to, or the lease is entered into with, a manufacturer who
15 delivers a nontaxable transaction certificate to the seller.

16 ~~[G.]~~ D. The purpose of the deductions provided in
17 this section is to encourage manufacturing businesses to locate
18 in New Mexico and to reduce the tax burden, including reducing
19 pyramiding, on the tangible personal property that is consumed
20 in the manufacturing process and that is purchased by
21 manufacturing businesses in New Mexico.

22 ~~[D.]~~ E. The department shall annually report to the
23 revenue stabilization and tax policy committee the aggregate
24 amount of deductions taken pursuant to this section, the number
25 of taxpayers claiming each of the deductions and any other

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1 information that is necessary to determine that the deductions
2 are performing the purposes for which they are enacted.

3 ~~[E.]~~ F. A taxpayer deducting gross receipts
4 pursuant to this section shall report the amount deducted
5 separately for each deduction provided in this section and
6 attribute the amount of the deduction to the appropriate
7 authorization provided in this section in a manner required by
8 the department that facilitates the evaluation by the
9 legislature of the benefit to the state of these deductions.

10 ~~[F.]~~ G. As used in ~~[Subsection B of]~~ this section:

11 (1) "manufacturer" means a person engaged in
12 the business of:

13 (a) manufacturing; or

14 (b) providing the service of combining
15 or processing components or materials owned by another;

16 (2) "manufacturing consumable" means tangible
17 personal property, other than qualified equipment or an
18 ingredient or component part of a manufactured product, that is
19 incorporated into, destroyed, depleted or transformed in the
20 process of manufacturing a product, [~~(1)~~] including
21 electricity, fuels, water, manufacturing aids and supplies,
22 chemicals, gases, repair parts, spares and other tangibles used
23 to manufacture a product, but [~~(2)~~] excluding tangible personal
24 property used in [~~(a)~~] the generation of power; [~~(b)~~] the
25 processing of natural resources, including hydrocarbons; and

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1 [~~(e)~~] the processing and preparation of meals for immediate
2 consumption [~~on or off-premises~~];

3 (3) "manufacturing operation" means a plant
4 operated by a manufacturer that employs personnel to perform
5 production tasks to produce goods, in conjunction with
6 machinery and equipment; and

7 (4) "qualified equipment" means machinery,
8 equipment and tools, including component, repair, replacement
9 and spare parts thereof, that are used directly in the
10 manufacturing process of a manufacturing operation. "Qualified
11 equipment" includes computer hardware and software used
12 directly in the manufacturing process of a manufacturing
13 operation but excludes any motor vehicle that is required to be
14 registered in this state pursuant to the Motor Vehicle Code."

15 SECTION 7. Section 7-9F-3 NMSA 1978 (being Laws 2000 (2nd
16 S.S.), Chapter 22, Section 3, as amended by Laws 2019, Chapter
17 270, Section 38 and by Laws 2019, Chapter 274, Section 12) is
18 amended to read:

19 "7-9F-3. DEFINITIONS.--As used in the Technology Jobs and
20 Research and Development Tax Credit Act:

21 A. "affiliate" means a person who directly or
22 indirectly owns or controls, is owned or controlled by or is
23 under common ownership or control with another person through
24 ownership of voting securities or other ownership interests
25 representing a majority of the total voting power of the

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1 entity;

2 B. "annual payroll expense" means the wages paid or
3 payable to employees in the state by the taxpayer in the
4 taxable year for which the taxpayer applies for an additional
5 credit pursuant to the Technology Jobs and Research and
6 Development Tax Credit Act;

7 C. "base payroll expense" means the wages paid or
8 payable by the taxpayer in the taxable year prior to the
9 taxable year for which the taxpayer applies for an additional
10 credit pursuant to the Technology Jobs and Research and
11 Development Tax Credit Act, adjusted for any increase from the
12 preceding taxable year in the consumer price index for the
13 United States for all items as published by the United States
14 department of labor in the taxable year for which the
15 additional credit is claimed. In a taxable year during which a
16 taxpayer has been part of a business merger or acquisition or
17 other change in business organization, the taxpayer's base
18 payroll expense shall include the payroll expense of all
19 entities included in the reorganization for all positions that
20 are included in the business entity resulting from the
21 reorganization;

22 D. "department" means the taxation and revenue
23 department, the secretary of taxation and revenue or any
24 employee of the department exercising authority lawfully
25 delegated to that employee by the secretary;

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1 E. "facility" means a factory, mill, plant,
2 refinery, warehouse, dairy, feedlot, building or complex of
3 buildings located within the state, including the land on which
4 it is located and all machinery, equipment and other real and
5 tangible personal property located at or within it and used in
6 connection with its operation;

7 F. "local option gross receipts tax" means a tax
8 authorized to be imposed by a county or municipality upon a
9 taxpayer's gross receipts, as that term is defined in the Gross
10 Receipts and Compensating Tax Act, and required to be collected
11 by the department at the same time and in the same manner as
12 the gross receipts tax;

13 G. "qualified expenditure" means an expenditure or
14 an allocated portion of an expenditure by a taxpayer in
15 connection with qualified research at a qualified facility,
16 including expenditures for depletable land and rent paid or
17 incurred for land, improvements, the allowable amount paid or
18 incurred to operate or maintain a facility, buildings,
19 equipment, computer software, computer software upgrades,
20 consultants and contractors performing work in New Mexico,
21 payroll, technical books and manuals and test materials, but
22 not including any expenditure on property that is owned by a
23 municipality or county in connection with an industrial revenue
24 bond project, property for which the taxpayer has received any
25 credit pursuant to the Investment Credit Act, a manufacturing

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1 consumable for which the receipt of its sale may be deducted
2 pursuant to Section 7-9-46 NMSA 1978, property that was owned
3 by the taxpayer or an affiliate before July 3, 2000 or research
4 and development expenditures reimbursed by a person who is not
5 an affiliate of the taxpayer. If a "qualified expenditure" is
6 an allocation of an expenditure, the cost accounting
7 methodology used for the allocation of the expenditure shall be
8 the same cost accounting methodology used by the taxpayer in
9 its other business activities;

10 H. "qualified facility" means a facility in New
11 Mexico at which qualified research is conducted other than a
12 facility operated by a taxpayer for the United States or any
13 agency, department or instrumentality thereof;

14 I. "qualified research" means research:

15 (1) that is undertaken for the purpose of
16 discovering information:

17 (a) that is technological in nature; and
18 (b) the application of which is intended
19 to be useful in the development of a new or improved business
20 component of the taxpayer; and

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

underscoring material = new
~~[bracketed material] = delete~~

1 J. "qualified research and development small
2 business" means a taxpayer that:

3 (1) employed no more than fifty employees as
4 determined by the number of employees for which the taxpayer
5 was liable for unemployment insurance coverage in the taxable
6 year for which an additional credit is claimed;

7 (2) had total qualified expenditures of no
8 more than five million dollars (\$5,000,000) in the taxable year
9 for which an additional credit is claimed; and

10 (3) did not have more than fifty percent of
11 its voting securities or other equity interest with the right
12 to designate or elect the board of directors or other governing
13 body of the business owned directly or indirectly by another
14 business;

15 K. "rural area" means any area of the state other
16 than the state fairgrounds, an incorporated municipality with a
17 population of thirty thousand or more according to the most
18 recent federal decennial census and any area within three miles
19 of the external boundaries of an incorporated municipality with
20 a population of thirty thousand or more according to the most
21 recent federal decennial census;

22 L. "taxpayer" means any of the following persons,
23 other than a federal, state or other governmental unit or
24 subdivision or an agency, department, institution or
25 instrumentality thereof:

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1 (1) a person liable for payment of any tax;
2 (2) a person responsible for withholding and
3 payment or collection and payment of any tax;

4 (3) a person to whom an assessment has been
5 made if the assessment remains unabated or the assessed amount
6 has not been paid; or

7 (4) for purposes of the additional credit
8 against the taxpayer's income tax pursuant to the Technology
9 Jobs and Research and Development Tax Credit Act and to the
10 extent of their respective interest in that entity, the
11 shareholders, members, partners or other owners of:

12 (a) a small business corporation that
13 has elected to be treated as an S corporation for federal
14 income tax purposes; or

15 (b) an entity treated as a partnership
16 or disregarded entity for federal income tax purposes; and

17 M. "wages" means remuneration for services
18 performed by an employee in New Mexico for an employer."

19 **SECTION 8.** Section 7-9G-2 NMSA 1978 (being Laws 2007,
20 Chapter 229, Section 1, as amended) is amended to read:

21 "7-9G-2. **ADVANCED ENERGY COMBINED REPORTING TAX CREDIT--**
22 **GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--**

23 A. Except as otherwise provided in this section, a
24 taxpayer that holds an interest in a qualified generating
25 facility located in New Mexico may claim a credit to be

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1 computed pursuant to the provisions of this section. The
2 credit provided by this section may be referred to as the
3 "advanced energy combined reporting tax credit".

4 B. As used in this section:

5 (1) "advanced energy tax credit" means the
6 advanced energy income tax credit, the advanced energy
7 corporate income tax credit and the advanced energy combined
8 reporting tax credit;

9 (2) "coal-based electric generating facility"
10 means a new or repowered generating facility and an associated
11 coal gasification facility, if any, that uses coal to generate
12 electricity and that meets the following specifications:

13 (a) emits the lesser of: 1) what is
14 achievable with the best available control technology; or 2)
15 thirty-five thousandths pound per million British thermal units
16 of sulfur dioxide, twenty-five thousandths pound per million
17 British thermal units of oxides of nitrogen and one hundredth
18 pound per million British thermal units of total particulates
19 in the flue gas;

20 (b) removes the greater of: 1) what is
21 achievable with the best available control technology; or 2)
22 ninety percent of the mercury from the input fuel;

23 (c) captures and sequesters or controls
24 carbon dioxide emissions so that by the later of January 1,
25 2017 or eighteen months after the commercial operation date of

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1 the coal-based electric generating facility, no more than one
2 thousand one hundred pounds per megawatt-hour of carbon dioxide
3 is emitted into the atmosphere;

4 (d) all infrastructure required for
5 sequestration is in place by the later of January 1, 2017 or
6 eighteen months after the commercial operation date of the
7 coal-based electric generating facility;

8 (e) includes methods and procedures to
9 monitor the disposition of the carbon dioxide captured and
10 sequestered from the coal-based electric generating facility;
11 and

12 (f) does not exceed a name-plate
13 capacity of seven hundred net megawatts;

14 (3) "department" means the taxation and
15 revenue department, the secretary of taxation and revenue or
16 any employee of the department exercising authority lawfully
17 delegated to that employee by the secretary;

18 (4) "eligible generation plant costs" means
19 expenditures for the development and construction of a
20 qualified generating facility, including permitting; site
21 characterization and assessment; engineering; design; carbon
22 dioxide capture, treatment, compression, transportation and
23 sequestration; site and equipment acquisition; and fuel supply
24 development used directly and exclusively in a qualified
25 generating facility;

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underscoring material = new
~~[bracketed material]~~ = delete

1 (5) "entity" means an individual, estate,
2 trust, receiver, cooperative association, club, corporation,
3 company, firm, partnership, limited liability company, limited
4 liability partnership, joint venture, syndicate or other
5 association or a gas, water or electric utility owned or
6 operated by a county or municipality;

7 (6) "geothermal electric generating facility"
8 means a facility with a name-plate capacity of one megawatt or
9 more that uses geothermal energy to generate electricity,
10 including a facility that captures and provides geothermal
11 energy to a preexisting electric generating facility using
12 other fuels in part;

13 (7) "gross receipts tax due to the state"
14 means the taxpayer's gross receipts liability for the reporting
15 period that is:

16 (a) determined by, if the taxpayer's
17 business location is described in Subsection A of Section
18 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross
19 receipts for the reporting period by the difference between the
20 gross receipts tax rate specified in Section 7-9-4 NMSA 1978
21 and one and two hundred twenty-five thousandths percent; or

22 (b) equal to, if the taxpayer's business
23 location is not described in Subsection A of Section 7-1-6.4
24 NMSA 1978, the gross receipts tax rate specified in Section
25 7-9-4 NMSA 1978;

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1 (8) "interest in a qualified generating
2 facility" means title to a qualified generating facility; a
3 leasehold interest in a qualified generating facility; an
4 ownership interest in a business or entity that is taxed for
5 federal income tax purposes as a partnership that holds title
6 to or a leasehold interest in a qualified generating facility;
7 or an ownership interest, through one or more intermediate
8 entities that are each taxed for federal income tax purposes as
9 a partnership, in a business that holds title to or a leasehold
10 interest in a qualified generating facility;

11 (9) "name-plate capacity" means the maximum
12 rated output of the facility measured as alternating current or
13 the equivalent direct current measurement;

14 (10) "qualified generating facility" means a
15 facility that begins construction not later than December 31,
16 2015 and is:

17 (a) a solar thermal electric generating
18 facility that begins construction on or after July 1, 2007 and
19 that may include an associated renewable energy storage
20 facility;

21 (b) a solar photovoltaic electric
22 generating facility that begins construction on or after July
23 1, 2009 and that may include an associated renewable energy
24 storage facility;

25 (c) a geothermal electric generating

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1 facility that begins construction on or after July 1, 2009;

2 (d) a recycled energy project if that
3 facility begins construction on or after July 1, 2007; or

4 (e) a new or repowered coal-based
5 electric generating facility and an associated coal
6 gasification facility;

7 (11) "recycled energy" means energy produced
8 by a generation unit with a name-plate capacity of not more
9 than fifteen megawatts that converts the otherwise lost energy
10 from the exhaust stacks or pipes to electricity without
11 combustion of additional fossil fuel;

12 (12) "sequester" means to store, or chemically
13 convert, carbon dioxide in a manner that prevents its release
14 into the atmosphere and may include the use of geologic
15 formations and enhanced oil, coalbed methane or natural gas
16 recovery techniques;

17 (13) "solar photovoltaic electric generating
18 facility" means an electric generating facility with a name-
19 plate capacity of one megawatt or more that uses solar
20 photovoltaic energy to generate electricity; and

21 (14) "solar thermal electric generating
22 facility" means an electric generating facility with a name-
23 plate capacity of one megawatt or more that uses solar thermal
24 energy to generate electricity, including a facility that
25 captures and provides solar energy to a preexisting electric

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1 generating facility using other fuels in part.

2 C. A taxpayer that holds an interest in a qualified
3 generating facility may be allocated the right to claim the
4 advanced energy combined reporting tax credit without regard to
5 the taxpayer's relative interest in the qualified generating
6 facility if:

7 (1) the business entity making the allocation
8 provides notice of the allocation and the taxpayer's interest
9 in the qualified generating facility to the department on forms
10 prescribed by the department;

11 (2) allocations to the taxpayer and all other
12 taxpayers allocated a right to claim the advanced energy tax
13 credit shall not exceed one hundred percent of the advanced
14 energy tax credit allowed for the qualified generating
15 facility; and

16 (3) the taxpayer and all other taxpayers
17 allocated a right to claim the advanced energy tax credits
18 collectively own at least a five percent interest in the
19 qualified generating facility.

20 D. Upon receipt of the notice of an allocation of
21 the right to claim all or a portion of the advanced energy
22 combined reporting tax credit, the department shall verify the
23 allocation due to the recipient.

24 E. Subject to the limit imposed in Subsection [K] J
25 of this section, the advanced energy combined reporting tax

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1 credit with respect to a qualified generating facility shall
2 equal six percent of the eligible generation plant costs of the
3 qualified generating facility. Taxpayers eligible to claim an
4 advanced energy combined reporting tax credit holding less than
5 one hundred percent of the interest in the qualified generating
6 facility shall designate an individual to report annually to
7 the department. That designated individual shall report the
8 eligible generation plant costs incurred during the calendar
9 year and the relative interest of those costs attributed to
10 each eligible interest holder. The taxpayers shall submit a
11 copy of the relative interests attributed to each interest
12 holder to the department, and any change to the apportioned
13 interests shall be submitted to the department. The designated
14 person and the department may identify a mutually acceptable
15 reporting schedule.

16 F. A taxpayer may apply for the advanced energy
17 combined reporting tax credit by submitting to the taxation and
18 revenue department a certificate issued by the department of
19 environment pursuant to Subsection K of this section,
20 documentation showing the taxpayer's interest in the qualified
21 generating facility identified in the certificate,
22 documentation of all eligible generation plant costs incurred
23 by the taxpayer prior to the date of the application by the
24 taxpayer for the advanced energy combined reporting tax credit
25 and any other information the taxation and revenue department

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1 requests to determine the amount of tax credit due to the
2 taxpayer.

3 G. A taxpayer having applied for and been granted
4 approval to claim an advanced energy combined reporting tax
5 credit by the department pursuant to this section may claim an
6 amount of available credit against the taxpayer's gross
7 receipts tax, compensating tax or withholding tax due to the
8 state. Any balance of the advanced energy combined reporting
9 tax credit that the taxpayer is approved to claim after
10 applying that tax credit against the taxpayer's gross receipts
11 tax, compensating tax or withholding tax liabilities may be
12 claimed by the taxpayer against the taxpayer's tax liability
13 pursuant to the Income Tax Act by claiming an advanced energy
14 income tax credit or against the taxpayer's tax liability
15 pursuant to the Corporate Income and Franchise Tax Act by
16 claiming an advanced energy corporate income tax credit. The
17 advanced energy combined reporting tax credit is not
18 refundable. The total amount of tax credit claimed pursuant to
19 this section, when combined with the advanced energy tax
20 credits claimed pursuant to the Income Tax Act and the
21 Corporate Income and Franchise Tax Act, shall not exceed the
22 total amount of advanced energy tax credits approved by the
23 department for the qualified generating facility.

24 H. A taxpayer that is liable for the payment of
25 gross receipts or compensating tax with respect to the

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1 ownership, development, construction, maintenance or operation
2 of a new coal-based electric generating facility that does not
3 meet the criteria for a qualified generating facility and that
4 begins construction after January 1, 2007 shall not claim an
5 advanced energy tax combined reporting credit pursuant to this
6 section or a gross receipts tax credit, a compensating tax
7 credit or a withholding tax credit pursuant to any other state
8 law.

9 I. If the amount of the advanced energy tax credit
10 approved by the department exceeds the taxpayer's liability,
11 the excess may be carried forward for up to ten years.

12 J. The aggregate amount of advanced energy tax
13 credit that may be claimed with respect to each qualified
14 generating facility shall not exceed sixty million dollars
15 (\$60,000,000).

16 K. An entity that holds an interest in a qualified
17 generating facility may request a certificate of eligibility
18 from the department of environment to enable the requester to
19 apply for the advanced energy combined reporting tax credit.
20 The department of environment:

21 (1) shall determine if the facility is a
22 qualified generating facility;

23 (2) shall require that the requester provide
24 the department of environment with the information necessary to
25 assess whether the requester's facility meets the criteria to

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1 be a qualified generating facility;

2 (3) shall issue a certificate to the requester
3 stating that the facility is or is not a qualified generating
4 facility within one hundred eighty days after receiving all
5 information necessary to make a determination;

6 (4) shall:

7 (a) issue rules governing the procedure
8 for administering the provisions of this subsection and
9 Subsection L of this section and for providing certificates of
10 eligibility for advanced energy tax credits;

11 (b) issue a schedule of fees in which no
12 fee exceeds one hundred fifty thousand dollars (\$150,000); and

13 (c) deposit fees collected pursuant to
14 this paragraph in the state air quality permit fund created
15 pursuant to Section 74-2-15 NMSA 1978; and

16 (5) shall report annually to the appropriate
17 interim legislative committee information that will allow the
18 legislative committee to analyze the effectiveness of the
19 advanced energy tax credits, including the identity of
20 qualified generating facilities, the energy production means
21 used, the amount of emissions identified in this section
22 reduced and removed by those qualified generating facilities
23 and whether any requests for certificates of eligibility could
24 not be approved due to program limits.

25 L. If the department of environment issues a

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1 certificate of eligibility to a taxpayer stating that the
2 taxpayer holds an interest in a qualified generating facility
3 and the taxpayer does not sequester or control carbon dioxide
4 emissions to the extent required by this section by the later
5 of January 1, 2017 or eighteen months after the commercial
6 operation date of the qualified generating facility, the
7 taxpayer's certification as a qualified generating facility
8 shall be revoked by the department of environment and the
9 taxpayer shall repay to the state tax credits granted pursuant
10 to this section; provided that if the taxpayer demonstrates to
11 the department of environment that the taxpayer made every
12 effort to sequester or control carbon dioxide emissions to the
13 extent feasible and the facility's inability to meet the
14 sequestration requirements of a qualified generating facility
15 was beyond the facility's control, in which case the department
16 of environment shall determine, after a public hearing, the
17 amount of the tax credit that should be repaid to the state.
18 The department of environment, in its determination, shall
19 consider the environmental performance of the facility and the
20 extent to which the inability to meet the sequestration
21 requirements of a qualified generating facility was in the
22 control of the taxpayer. The repayment as determined by the
23 department of environment shall be paid within one hundred
24 eighty days following a final order by the department of
25 environment.

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1 ~~[M. Expenditures for which a taxpayer claims an~~
2 ~~advanced energy combined reporting tax credit pursuant to this~~
3 ~~section are ineligible for credits pursuant to the provisions~~
4 ~~of the Investment Credit Act or any other credit against~~
5 ~~personal income tax, corporate income tax, compensating tax,~~
6 ~~gross receipts tax or withholding tax.]~~

7 M. A taxpayer that has claimed a credit pursuant to
8 the Income Tax Act or Corporate Income and Franchise Tax Act or
9 credits or deductions that may be taken against the gross
10 receipts tax, compensating tax or withholding tax for the same
11 expenditures is ineligible to claim an advanced energy combined
12 reporting tax credit.

13 N. A taxpayer shall apply for approval for a credit
14 within one year following the end of the calendar year in which
15 the eligible generation plant costs are incurred.

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

19 P. The department shall compile an annual report on
20 the advanced energy combined reporting tax credit that shall
21 include the number of taxpayers approved by the department to
22 receive the credit, the aggregate amount of credits approved
23 and any other information necessary to evaluate the tax credit.
24 The department shall present the report to the revenue
25 stabilization and tax policy committee and the legislative

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1 finance committee with an analysis of the cost of the tax
2 credit."

3 SECTION 9. REPEAL.--Sections 7-9A-1 through 7-9A-11 NMSA
4 1978 (being Laws 1979, Chapter 347, Sections 1 and 2; Laws
5 2001, Chapter 57, Section 2 and Laws 2001, Chapter 337, Section
6 2; Laws 1979, Chapter 347, Sections 3 through 7; Laws 1983,
7 Chapter 206, Section 6; Laws 1979, Chapter 347, Sections 8 and
8 9; and Laws 1997, Chapter 62, Section 2, as amended) are
9 repealed.

10 SECTION 10. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2020.