

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 950

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO TAXATION; EXPANDING CRITERIA FOR ELIGIBILITY FOR
THE RENEWABLE ENERGY PRODUCTION TAX CREDIT.

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

Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002,
Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. The tax credit provided in this section may be
referred to as the "renewable energy production tax credit".

~~[A taxpayer that owns a qualified energy generator certified by
the energy, minerals and natural resources department is
eligible for a tax credit in an amount equal to one cent (\$.01)
per kilowatt-hour for the first four hundred thousand megawatt-
hours of electricity produced by the qualified energy generator~~

1 ~~using a qualified energy resource in the taxable year.]~~

2 B. A person is eligible for the renewable energy
3 production tax credit if the person:

4 (1) holds title to a qualified energy
5 generator; or

6 (2) leases property upon which a qualified
7 energy generator operates from a county or municipality under
8 authority of an industrial revenue bond.

9 C. The amount of the tax credit shall equal one
10 cent (\$.01) per kilowatt-hour of the first four hundred
11 thousand megawatt-hours of electricity produced by the
12 qualified energy generator in the taxable year, provided that
13 the total amount of tax credits claimed by all taxpayers for a
14 single qualified energy generator in a taxable year shall not
15 exceed one cent (\$.01) per kilowatt-hour of the first four
16 hundred thousand megawatt-hours of electricity produced by the
17 qualified energy generator.

18 D. A taxpayer eligible for a renewable energy
19 production tax credit pursuant to Subsection B of this section
20 shall be eligible for the renewable energy production tax
21 credit for ten consecutive years, beginning on the date the
22 qualified energy generator begins producing electricity. [The
23 tax credit provided in this section may be referred to as the
24 "renewable energy production tax credit".

25 ~~B.]~~ E. As used in this section:

1 (1) "biomass" means agricultural or animal
2 waste; thinnings from trees less than fifteen inches in
3 diameter, slash and brush; lumbermill or sawmill residues; and
4 salt cedar and other phreatophytes removed from watersheds or
5 river basins;

6 (2) "qualified energy generator" means a
7 facility with at least ten megawatts generating capacity
8 located in New Mexico that produces electricity using a
9 qualified energy resource and that sells that electricity to an
10 unrelated person; and

11 (3) "qualified energy resource" means a
12 resource that generates electrical energy by means of a
13 fluidized bed technology or similar low-emissions technology or
14 a zero-emissions generation technology that has substantial
15 long-term production potential and that uses only the following
16 energy sources:

- 17 (a) solar light;
- 18 (b) solar heat;
- 19 (c) wind; or
- 20 (d) biomass.

21 ~~[G. A taxpayer]~~ F. A person that holds title to a
22 facility generating electricity from a qualified energy
23 resource or one that leases such a facility from a county or
24 municipality pursuant to an industrial revenue bond may request
25 certification of eligibility for the renewable energy

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1 production tax credit from the energy, minerals and natural
2 resources department, which shall determine if the [applicant]
3 facility is a qualified energy generator; provided that the
4 department may certify the eligibility of an energy generator
5 only if the total amount of electricity that may be produced
6 annually by all qualified energy generators that are certified
7 will not exceed two million megawatt-hours. Applications shall
8 be considered in the order received. The energy, minerals and
9 natural resources department may estimate the annual power-
10 generating potential of a generating facility for the purposes
11 of this section. The energy, minerals and natural resources
12 department shall issue a certificate to the applicant stating
13 whether the [applicant] facility is an eligible qualified
14 energy generator and the estimated annual production potential
15 of the generating facility, which shall be the limit of that
16 facility's energy production eligible for the tax credit for
17 the taxable year. The energy, minerals and natural resources
18 department may issue rules governing the procedure for
19 administering the provisions of this subsection.

20 ~~[D. To claim a renewable energy production tax~~
21 ~~credit, a taxpayer that has been certified as eligible pursuant~~
22 ~~to Subsection C of this section shall submit]~~

23 G. A taxpayer may be allocated all or a portion of
24 the right to claim a renewable energy production tax credit
25 without regard to proportional ownership interest if:

1 (1) the taxpayer owns an interest in a
2 business entity that is taxed for federal income tax purposes
3 as a partnership;

4 (2) the business entity:

5 (a) would qualify for the renewable
6 energy production tax credit pursuant to Paragraph (1) or (2)
7 of Subsection B of this section;

8 (b) owns an interest in a business
9 entity that is also taxed for federal income tax purposes as a
10 partnership and that would qualify for the renewable energy
11 production tax credit pursuant to Paragraph (1) or (2) of
12 Subsection B of this section; or

13 (c) owns, through one or more
14 intermediate business entities that are each taxed for federal
15 income tax purposes as a partnership, an interest in the
16 business entity described in Subparagraph (b) of Paragraph (2)
17 of this subsection;

18 (3) the taxpayer and all other taxpayers
19 allocated a right to claim the renewable energy production tax
20 credit pursuant to this subsection own collectively at least a
21 five percent interest in a qualified energy generator;

22 (4) the business entity provides notice of the
23 allocation and the taxpayer's interest to the energy, minerals
24 and natural resources department on forms prescribed by that
25 department; and

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1 (5) the energy, minerals and natural resources
2 department certifies the allocation in writing to the taxpayer.

3 H. Upon receipt of notice of an allocation of the
4 right to claim all or a portion of the renewable energy
5 production tax credit, the energy, minerals and natural
6 resources department shall promptly certify the allocation in
7 writing to the recipient of the allocation.

8 I. A taxpayer may claim the renewable energy
9 production tax credit by submitting to the taxation and revenue
10 department the certificate issued by the energy, minerals and
11 natural resources department, pursuant to Subsection F or G of
12 this section, documentation showing the taxpayer's interest in
13 the facility, documentation of the amount of electricity
14 produced by the [taxpayer's] facility in the taxable year and
15 any other information the taxation and revenue department may
16 require to determine the amount of the tax credit due the
17 taxpayer.

18 ~~[E.]~~ J. Once a taxpayer has been granted a
19 renewable energy production tax credit for a given facility,
20 that taxpayer shall be allowed to retain ~~[its]~~ the facility's
21 original date of application for tax credits for that facility
22 until either the facility goes out of production for more than
23 six consecutive months in a year or until the facility's ten-
24 year eligibility has expired.

25 ~~[F.]~~ K. The renewable energy production tax credit

1 may be deducted from the taxpayer's New Mexico corporate income
2 tax liability for ~~[the]~~ a taxable year. If the amount of the
3 tax credit claimed exceeds the taxpayer's corporate income tax
4 liability, the excess may be carried forward for up to five
5 consecutive taxable years."

6 Section 2. APPLICABILITY.--The provisions of this act
7 apply to taxable years beginning on or after January 1, 2005.

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