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HOUSE BILL 430

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Nick L. Salazar

AN ACT

RELATING TO TAXATION; ENACTING THE ADVANCED ENERGY PRODUCT
MANUFACTURERS TAX CREDIT ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Advanced Energy Product Manufacturers Tax Credit Act".

Section 2. DEFINITIONS.--As used in the Advanced Energy
Product Manufacturers Tax Credit Act:

A. "advanced energy product" means an advanced
energy vehicle, fuel cell system, renewable energy system or
any component of an advanced energy vehicle, fuel cell system
or renewable energy system or components for integrated
gasification combined cycle coal facilities and equipment
related to the sequestration of carbon from integrated
gasification combined cycle plants;

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1 B. "advanced energy vehicle" means a motor vehicle
2 manufactured by an original equipment manufacturer that fully
3 warrants and certifies that the motor vehicle meets the federal
4 motor vehicle safety standards and is designed to be propelled
5 in whole or in part by electricity; "advanced energy vehicle"
6 includes a gasoline-electric hybrid motor vehicle exempt from
7 the motor vehicle excise tax pursuant to Subsection F of
8 Section 7-14-6 NMSA 1978;

9 C. "component" means a part, assembly of parts,
10 material, ingredient or supply that is incorporated directly
11 into an end product;

12 D. "department" means the taxation and revenue
13 department, the secretary of taxation and revenue or an
14 employee of the department exercising authority lawfully
15 delegated to that employee by the secretary;

16 E. "fuel cell system" means a system that converts
17 hydrogen, natural gas or waste gas to electricity without
18 combustion, including:

19 (1) a fuel cell or a system used to generate
20 or reform hydrogen for use in a fuel cell; or

21 (2) a system used to generate or reform
22 hydrogen for use in a fuel cell, including:

23 (a) electrolyzers that use renewable
24 energy; and

25 (b) reformers that use natural gas as

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1 the feedstock;

2 F. "manufacturing" means combining or processing
3 components or materials to increase their value for sale in the
4 ordinary course of business, but does not include construction,
5 farming, power generation or processing natural resources;

6 G. "manufacturing equipment" means an essential
7 machine, mechanism or tool or a component of an essential
8 machine, mechanism or tool used directly and exclusively in a
9 taxpayer's manufacturing operation and that is subject to
10 depreciation pursuant to the Internal Revenue Code of 1986 by
11 the taxpayer carrying on the manufacturing; provided that
12 "manufacturing equipment" does not include a vehicle that
13 leaves the site of a manufacturing operation for the purpose of
14 transporting persons or property, including property for which
15 the taxpayer claims a credit pursuant to Section 7-9-79 NMSA
16 1978;

17 H. "manufacturing operation" means a plant
18 employing personnel to perform production tasks, in conjunction
19 with manufacturing equipment not previously existing at the
20 site, to produce advanced energy products;

21 I. "modified combined tax liability" means the
22 total liability for the reporting period for the gross receipts
23 tax imposed by Section 7-9-4 NMSA 1978 together with any tax
24 collected at the same time and in the same manner as that gross
25 receipts tax, such as the compensating tax, the withholding

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1 tax, the interstate telecommunications gross receipts tax, the
2 surcharge imposed by Section 63-9D-5 NMSA 1978 and the
3 surcharge imposed by Section 63-9F-11 NMSA 1978, minus the
4 amount of any credit other than the advanced energy product
5 manufacturers tax credit applied against any or all of those
6 taxes or surcharges; provided that "modified combined tax
7 liability" excludes all amounts collected with respect to local
8 option gross receipts taxes;

9 J. "pass-through entity" means a business
10 association other than:

- 11 (1) a sole proprietorship;
- 12 (2) an estate or trust;
- 13 (3) a corporation, limited liability company,
14 partnership or other entity that is not a sole proprietorship
15 taxed as a corporation for federal income tax purposes for the
16 taxable year; or
- 17 (4) a partnership that is organized as an
18 investment partnership in which the partner's income is derived
19 solely from interest, dividends and sales of securities;

20 K. "qualified expenditure" means an expenditure for
21 the purchase of manufacturing equipment made after July 1, 2006
22 by a taxpayer approved by the department;

23 L. "renewable energy" means energy from solar heat,
24 solar light, wind, geothermal energy, landfill gas or biomass
25 either singly or in combination that produces low or zero

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1 emissions and has substantial long-term production potential;

2 M. "renewable energy system" means a system using
3 only renewable energy to produce hydrogen or to generate
4 electricity, including related cogeneration systems that create
5 mechanical energy or that produce heat or steam for space or
6 water heating and agricultural or small industrial processes
7 and includes a:

- 8 (1) photovoltaic energy system;
- 9 (2) solar-thermal energy system;
- 10 (3) biomass energy system;
- 11 (4) wind energy system;
- 12 (5) hydrogen production system; or
- 13 (6) battery cell energy system; and

14 N. "taxpayer" means a person, including a
15 shareholder, member, partner or other owner of a pass-through
16 entity, who is liable for payment of a tax or to whom an
17 assessment has been made, if the assessment remains unabated or
18 the amount thereof has not been paid.

19 Section 3. ADMINISTRATION.--The department shall
20 administer the Advanced Energy Product Manufacturers Tax Credit
21 Act pursuant to the Tax Administration Act.

22 Section 4. ADVANCED ENERGY PRODUCT MANUFACTURERS TAX
23 CREDIT.--

24 A. A tax credit to be known as the "advanced energy
25 product manufacturers tax credit" may be claimed by a taxpayer

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1 in an amount:

2 (1) for which the taxpayer has been granted
3 approval by the department pursuant to the Advanced Energy
4 Product Manufacturers Tax Credit Act; and

5 (2) not to exceed five percent of the
6 taxpayer's qualified expenditures.

7 B. The advanced energy product manufacturers tax
8 credit may only be deducted from the taxpayer's modified
9 combined tax liability. Any portion of the advanced energy
10 product manufacturers tax credit that remains unused at the end
11 of the taxpayer's reporting period may be carried forward for
12 five years.

13 Section 5. ELIGIBILITY REQUIREMENTS--EMPLOYMENT.--To be
14 eligible to claim a credit pursuant to the Advanced Energy
15 Product Manufacturers Tax Credit Act, the taxpayer shall employ
16 a number of full-time employees equal to one full-time employee
17 in addition to the number of full-time employees employed one
18 year prior to the day on which the taxpayer applies for the
19 credit for every:

20 A. five hundred thousand dollars (\$500,000), or a
21 portion of that amount, of qualified expenditures claimed by
22 the taxpayer in a taxable year in the same claim, up to a value
23 of thirty million dollars (\$30,000,000); and

24 B. one million dollars (\$1,000,000), or a portion
25 of that amount, in value of qualified expenditures over thirty

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1 million dollars (\$30,000,000) claimed by the taxpayer in a
2 taxable year in the same claim.

3 Section 6. APPROVAL OF CREDIT--ISSUANCE AND DENIAL--
4 APPLICATION--DEADLINES.--

5 A. The department shall issue or deny approval for
6 an advanced energy product manufacturers tax credit in response
7 to a taxpayer's application for approval for the credit. The
8 department shall issue approval for a credit claimed by a
9 taxpayer who satisfies the requirements of the Advanced Energy
10 Product Manufacturers Tax Credit Act.

11 B. The department may require a taxpayer who claims
12 an advanced energy product manufacturers tax credit to produce
13 evidence of the taxpayer's compliance with the Advanced Energy
14 Product Manufacturers Tax Credit Act.

15 C. A taxpayer may apply for approval of an advanced
16 energy product manufacturers tax credit on or before the last
17 day of the year following the end of the calendar year in which
18 the qualified expenditure is made. The department shall not
19 issue approval for the advanced energy product manufacturers
20 tax credit if the taxpayer applies for approval after the last
21 day of the year following the end of the calendar year in which
22 the qualified expenditure is made.

23 Section 7. RECAPTURE.--If the taxpayer or a successor in
24 the business of the taxpayer ceases operations at a facility in
25 New Mexico for at least one hundred eighty consecutive days

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1 within a two-year period after the taxpayer has claimed an
2 advanced energy product manufacturers tax credit, the
3 department shall not grant additional advanced energy product
4 manufacturers tax credits with respect to that facility. Any
5 amount of the approved credit with respect to that facility
6 that is not claimed against the taxpayer's modified combined
7 tax liability shall be extinguished, and within thirty days
8 after the one hundred eightieth day of cessation of operations,
9 the taxpayer shall pay the modified income tax liability
10 against which an approved credit was taken. For the purposes
11 of this section, a taxpayer shall not be deemed to have ceased
12 operations during reasonable periods for maintenance or
13 retooling, for the repair or replacement of facilities damaged
14 or destroyed or during labor disputes.

15 Section 8. CREDIT CLAIM FORMS.--The department shall
16 provide credit claim forms and instructions. A credit claim
17 form shall accompany any return in which the taxpayer claims a
18 credit, and the claim shall specify the amount of credit
19 intended to apply to each return.

20 Section 9. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2007.

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