

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 237

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO TAXATION; PROVIDING INCOME TAX CREDITS FOR
INTERESTS IN GEOTHERMAL, SOLAR THERMAL AND SOLAR PHOTOVOLTAIC
ELECTRIC GENERATING FACILITIES; CLARIFYING APPLICATION OF THE
ADVANCED ENERGY TAX CREDITS TO PERSONS WITH LEASEHOLD OR
PARTIAL INTERESTS IN CERTAIN ADVANCED ENERGY GENERATING
FACILITIES.

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

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

"[NEW MATERIAL] ADVANCED ENERGY INCOME TAX CREDIT.--

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

B. A taxpayer who holds an interest in a qualified

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1 generating facility and who files an individual New Mexico
2 income tax return may claim an advanced energy income tax
3 credit in an amount equal to no more than six percent of the
4 eligible generation plant costs of a qualified generating
5 facility, subject to the limitations imposed in this section.

6 C. To claim the advanced energy income tax credit,
7 a taxpayer shall submit with the taxpayer's New Mexico income
8 tax return a certificate of eligibility from the department of
9 environment stating that the facility in which the taxpayer
10 holds a proportionate interest in a qualified generating
11 facility and the taxpayer may be eligible for advanced energy
12 tax credits. The taxation and revenue department shall
13 determine the amount of advanced energy income tax credit for
14 which the taxpayer may apply.

15 D. A husband and wife who file separate returns for
16 a taxable year in which they could have filed a joint return
17 may each claim only one-half of the advanced energy income tax
18 credit that would have been allowed on a joint return.

19 E. A taxpayer who otherwise qualifies and claims an
20 advanced energy income tax credit and who is a member of a
21 partnership or owns interest in an entity that is a qualified
22 generating facility may claim the advanced energy income tax
23 credit only in relation to the taxpayer's interest in the
24 partnership or entity. The total advanced energy income tax
25 credit claimed by all members of the partnership or all of the

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1 owners of the entity shall not exceed the proportionate
2 interest allowed by the department for that partnership or
3 entity. The total amount of all advanced energy tax credits
4 claimed shall not exceed the total amount determined by the
5 department to be allowable pursuant to this section, the
6 Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA
7 1978.

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

18 G. A taxpayer claiming the advanced energy income
19 tax credit pursuant to this section is ineligible for credits
20 pursuant to the Investment Credit Act or any other credit that
21 may be taken pursuant to the Income Tax Act or credits that may
22 be taken against the gross receipts tax, compensating tax or
23 withholding tax for the same expenditures.

24 H. The aggregate amount of all advanced energy tax
25 credits that may be claimed with respect to a qualified

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1 generating facility shall not exceed sixty million dollars
2 (\$60,000,000).

3 I. As used in this section:

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

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

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

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

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1 energy to a preexisting electric generating facility using
2 other fuels in part;

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

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

16 (7) "proportionate interest" means a
17 taxpayer's direct and indirect ownership in the leasehold or
18 any other interest in a qualified generating facility, provided
19 that:

20 (a) the total of all interests of
21 taxpayers claiming advanced energy tax credits for the same
22 qualified generating facility shall not exceed one hundred
23 percent; and

24 (b) in the case where a leasehold
25 interest in a qualified generating facility is less than one

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1 hundred percent of the interests claimed, the taxpayers holding
2 leasehold and nonleasehold interests shall apportion the
3 interests for purposes of applying for an advanced energy tax
4 credit so that all proportionate interests when totaled equal
5 one hundred percent;

6 (8) "qualified generating facility" means a
7 new solar electric generating facility that begins construction
8 on or after July 1, 2007 and that may include an associated
9 renewable energy storage facility; a new geothermal electric
10 generating facility that begins construction on or after July
11 1, 2009; or a recycled energy project if that facility or
12 project begins construction no later than December 31, 2015;
13 "qualified generating facility" also includes a new or
14 repowered coal-based electric generating unit and an associated
15 coal gasification facility, if any, that begins construction no
16 later than December 31, 2015 that meets the following
17 specifications:

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

25 (b) removes the greater of: 1) what is

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1 achievable with the best available control technology; or 2)
2 ninety percent of the mercury from the input fuel;

3 (c) captures and sequesters or controls
4 carbon dioxide emissions so that by the later of January 1,
5 2017 or eighteen months after the commercial operation date of
6 the qualified generating facility, no more than one thousand
7 one hundred pounds per megawatt-hour of carbon dioxide is
8 emitted into the atmosphere;

9 (d) all infrastructure required for
10 sequestration is in place by the later of January 1, 2017 or
11 eighteen months after the commercial operation date of the
12 qualified generating facility;

13 (e) includes methods and procedures to
14 monitor the disposition of the carbon dioxide captured and
15 sequestered from the facility; and

16 (f) does not exceed seven hundred net
17 megawatts name-plate capacity;

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

23 (10) "sequester" means to store, or
24 chemically convert, carbon dioxide in a manner that prevents
25 its release into the atmosphere and may include the use of

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1 geologic formations and enhanced oil, coalbed methane or
2 natural gas recovery techniques; and

3 (11) "solar electric generating facility"
4 means a solar thermal or solar photovoltaic electric generating
5 facility with a name-plate capacity of one megawatt or more
6 that uses solar energy to generate electricity, including a
7 facility that captures and provides solar energy to a
8 preexisting electric generating facility using other fuels in
9 part."

10 Section 2. A new section of the Corporate Income and
11 Franchise Tax Act is enacted to read:

12 "[NEW MATERIAL] ADVANCED ENERGY CORPORATE INCOME TAX
13 CREDIT.--

14 A. The tax credit that may be claimed pursuant to
15 this section may be referred to as the "advanced energy
16 corporate income tax credit".

17 B. A taxpayer that holds an interest in a qualified
18 generating facility and that files a New Mexico corporate
19 income tax return may claim an advanced energy corporate income
20 tax credit in an amount equal to no more than six percent of
21 the eligible generation plant costs of a qualified generating
22 facility, subject to the limitations imposed in this section.

23 C. To claim the advanced energy corporate income
24 tax credit, a taxpayer shall submit with the taxpayer's New
25 Mexico corporate income tax return a certificate of eligibility

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1 from the department of environment stating that the taxpayer
2 holds a proportionate interest in a qualified generating
3 facility and the taxpayer may be eligible for advanced energy
4 tax credits. The taxation and revenue department shall
5 determine the amount of advanced energy corporate income tax
6 credit for which the taxpayer may apply.

7 D. A taxpayer that otherwise qualifies and claims
8 an advanced energy corporate income tax credit and that is a
9 member of a partnership or owns interest in an entity that is a
10 qualified generating facility may claim the advanced energy
11 corporate income tax credit only in relation to the taxpayer's
12 interest in the partnership or entity. The total advanced
13 energy corporate income tax credit claimed by all members of
14 the partnership or all of the owners of the entity shall not
15 exceed the proportionate interest allowed by the department for
16 that partnership or entity. The total amount of all advanced
17 energy tax credits claimed shall not exceed the total amount
18 determined by the department to be allowable pursuant to this
19 section, the Income Tax Act and Section 7-9G-2 NMSA 1978.

20 E. Any balance of the advanced energy corporate
21 income tax credit that the taxpayer is approved to claim may be
22 claimed by the taxpayer as an advanced energy combined
23 reporting tax credit allowed pursuant to Section 7-9G-2 NMSA
24 1978. If the advanced energy corporate income tax credit
25 exceeds the amount of the taxpayer's tax liabilities pursuant

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1 to the Corporate Income and Franchise Tax Act and Section
2 7-9G-2 NMSA 1978 in the taxable year in which it is claimed,
3 the balance of the unpaid credit may be carried forward for ten
4 years. The advanced energy corporate income tax credit is not
5 refundable.

6 F. A taxpayer claiming the advanced energy
7 corporate income tax credit pursuant to this section is
8 ineligible for credits pursuant to the Investment Credit Act or
9 any other credit that may be taken pursuant to the Corporate
10 Income and Franchise Tax Act or credits that may be taken
11 against the gross receipts tax, compensating tax or withholding
12 tax for the same expenditures.

13 G. The aggregate amount of all advanced energy tax
14 credits that may be claimed with respect to a qualified
15 generating facility shall not exceed sixty million dollars
16 (\$60,000,000).

17 H. As used in this section:

18 (1) "advanced energy tax credit" means the
19 advanced energy income tax credit, the advanced energy
20 corporate income tax credit and the advanced energy combined
21 reporting tax credit;

22 (2) "eligible generation plant costs" means
23 expenditures for the development and construction of a
24 qualified generating facility, including permitting; site
25 characterization and assessment; engineering; design; carbon

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1 dioxide capture, treatment, compression, transportation and
2 sequestration; site and equipment acquisition; and fuel supply
3 development used directly and exclusively in a qualified
4 generating facility;

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

11 (4) "geothermal electric generating facility"
12 means a facility with a name-plate capacity of one megawatt or
13 more that uses geothermal energy to generate electricity,
14 including a facility that captures and provides geothermal
15 energy to a preexisting electric generating facility using
16 other fuels in part;

17 (5) "interest in a qualified generating
18 facility" means title to a qualified generating facility; a
19 leasehold interest in a qualified generating facility; an
20 ownership interest in a business or entity that is taxed for
21 federal income tax purposes as a partnership that holds title
22 to or a leasehold interest in a qualified generating facility;
23 or an ownership interest, through one or more intermediate
24 entities that are each taxed for federal income tax purposes as
25 a partnership, in a business that holds title to or a leasehold

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1 interest in a qualified generating facility;

2 (6) "name-plate capacity" means the maximum
3 rated output of the facility measured as alternating current or
4 the equivalent direct current measurement;

5 (7) "proportionate interest" means a
6 taxpayer's direct and indirect ownership in a leasehold or any
7 other interest in a qualified generating facility, provided
8 that:

9 (a) the total of all interests of
10 taxpayers claiming advanced energy tax credits for the same
11 qualified generating facility shall not exceed one hundred
12 percent; and

13 (b) in the case where a leasehold
14 interest in a qualified generating facility is less than one
15 hundred percent of the interests claimed, the taxpayers holding
16 leasehold and nonleasehold interests shall apportion the
17 interests for purposes of applying for an advanced energy tax
18 credit so that all proportionate interests when totaled equal
19 one hundred percent;

20 (8) "qualified generating facility" means a
21 new solar electric generating facility that begins construction
22 on or after July 1, 2007 and that may include an associated
23 renewable energy storage facility; a new geothermal electric
24 generating facility that begins construction on or after July
25 1, 2009; or a recycled energy project if that facility or

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1 project begins construction no later than December 31, 2015;
2 "qualified generating facility" also includes a new or
3 repowered coal-based electric generating unit and an associated
4 coal gasification facility, if any, that begins construction no
5 later than December 31, 2015 that meets the following
6 specifications:

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

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

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

23 (d) all infrastructure required for
24 sequestration is in place by the later of January 1, 2017 or
25 eighteen months after the commercial operation date of the

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1 qualified generating facility;

2 (e) includes methods and procedures to
3 monitor the disposition of the carbon dioxide captured and
4 sequestered from the facility; and

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

7 (9) "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 (10) "sequester" means to store, or
13 chemically convert, carbon dioxide in a manner that prevents
14 its release into the atmosphere and may include the use of
15 geologic formations and enhanced oil, coalbed methane or
16 natural gas recovery techniques; and

17 (11) "solar electric generating facility"
18 means a solar thermal or solar photovoltaic electric generating
19 facility with a name-plate capacity of one megawatt or more
20 that uses solar energy to generate electricity, including a
21 facility that captures and provides solar energy to a
22 preexisting electric generating facility using other fuels in
23 part."

24 Section 3. Section 7-9G-2 NMSA 1978 (being Laws 2007,
25 Chapter 229, Section 1) is amended to read:

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1 "7-9G-2. ADVANCED ENERGY COMBINED REPORTING TAX CREDIT--
2 GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--

3 A. Except as otherwise provided in this section, a
4 taxpayer that holds an interest in a qualified generating
5 facility located in New Mexico may claim a credit to be
6 computed pursuant to the provisions of this section. The
7 credit provided by this section may be referred to as the
8 "advanced energy combined reporting tax credit".

9 B. As used in this section:

10 (1) "advanced energy tax credit" means the
11 advanced energy income tax credit, the advanced energy
12 corporate income tax credit and the advanced energy combined
13 reporting tax credit;

14 [~~(1)~~] (2) "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 [~~(2)~~] (3) "eligible generation plant costs"
19 means 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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1 (4) "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 (5) "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 (6) "gross receipts tax due to the state"
14 means the taxpayer's taxable gross receipts for the reporting
15 period multiplied by an amount equal to the difference between
16 the gross receipts tax rate specified in Section 7-9-4 NMSA
17 1978 for the period and;

18 (a) if the taxpayer's business location
19 is described in Subsection A of Section 7-1-6.4 NMSA 1978, one
20 and two hundred twenty-five thousandths percent; and

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

25 (7) "interest in a qualified generating

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

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

13 (9) "proportionate interest" means a
14 taxpayer's direct and indirect ownership in the leasehold or
15 any other interest in a qualified generating facility, provided
16 that:

17 (a) the total of all interests of
18 taxpayers claiming advanced energy combined reporting tax
19 credits for the same qualified generating facility shall not
20 exceed one hundred percent; and

21 (b) in the case where a leasehold
22 interest in a qualified generating facility is less than one
23 hundred percent of the interests claimed, the taxpayers holding
24 leasehold and nonleasehold interests shall apportion the
25 interests for purposes of applying for an advanced energy

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1 combined reporting tax credit so that all proportionate
2 interests when totaled equal one hundred percent;

3 ~~[(3)]~~ (10) "qualified generating facility"
4 means a new solar ~~[thermal]~~ electric generating facility that
5 begins construction on or after July 1, 2007 and that may
6 include an associated renewable energy storage facility; a new
7 geothermal electric generating facility that begins
8 construction on or after July 1, 2009; or a recycled energy
9 ~~[projects that]~~ project if that facility or project begins
10 construction no later than December 31, 2015 ~~[or]~~. "Qualified
11 generating facility" also includes a new or re-powered coal-
12 based electric generating unit and an associated coal
13 gasification facility, if any, that begins construction no
14 later than December 31, 2015 that meets the following
15 specifications:

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

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

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1 (c) captures and sequesters or controls
2 carbon dioxide emissions so that by the later of January 1,
3 2017 or eighteen months after the commercial operation date of
4 the qualified generating facility, no more than one thousand
5 one hundred pounds per megawatt-hour of carbon dioxide is
6 emitted into the atmosphere;

7 (d) all infrastructure required for
8 sequestration is in place by the later of January 1, 2017 or
9 eighteen months after the commercial operation date of the
10 qualified generating facility;

11 (e) includes methods and procedures to
12 monitor the disposition of the carbon dioxide captured and
13 sequestered from the facility; and

14 (f) does not exceed seven hundred net
15 megawatts name-plate capacity;

16 ~~[(4)]~~ (11) "recycled energy" means energy
17 produced by a generation unit with a name-plate capacity of not
18 more than fifteen megawatts that converts the otherwise lost
19 energy from the exhaust stacks or pipes to electricity without
20 combustion of additional fossil fuel; ~~[and~~

21 ~~(5)]~~ (12) "sequester" means to store, or
22 chemically convert, carbon dioxide in a manner that prevents
23 its release into the atmosphere and may include the use of
24 geologic formations and enhanced oil, coalbed methane or
25 natural gas recovery techniques; and

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1 (13) "solar electric generating facility"

2 means a solar thermal or solar photovoltaic electric generating
3 facility with a name-plate capacity of one megawatt or more
4 that uses solar energy to generate electricity, including a
5 facility that captures and provides solar energy to a
6 preexisting electric generating facility using other fuels in
7 part.

8 C. Subject to the limit imposed in Subsection H of
9 this section, the advanced energy combined reporting tax credit
10 with respect to a qualified generating facility shall equal no
11 more than six percent of the eligible generation plant costs of
12 [a] the qualified generating facility. Taxpayers eligible to
13 claim an advanced energy combined reporting tax credit holding
14 proportionate interests in the qualified generating facility
15 shall designate an individual to report annually to the
16 department. That designated individual shall report the
17 eligible generation plant costs incurred during the calendar
18 year and the proportionate interest of those costs attributed
19 to each eligible interest holder. The taxpayers shall submit a
20 copy of the proportionate interests attributed to each interest
21 holder to the department, and any change to the apportioned
22 proportionate interests shall be submitted to the department.
23 The designated person and the department may identify a
24 mutually acceptable reporting schedule.

25 D. A taxpayer may apply for the advanced energy

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1 combined reporting tax credit by submitting to the taxation and
2 revenue department a certificate issued by the department of
3 environment pursuant to Subsection I of this section,
4 documentation showing the taxpayer's proportionate interest [~~in~~
5 ~~the qualified generating facility~~] identified in the
6 certificate, documentation of all eligible generation plant
7 costs incurred by the taxpayer prior to the date of the
8 application by the taxpayer for the advanced energy combined
9 reporting tax credit and any other information the taxation and
10 revenue department requests to determine the amount of tax
11 credit due to the taxpayer.

12 E. A taxpayer having applied for and been granted
13 approval [~~for a~~] to claim an advanced energy combined reporting
14 tax credit by the department pursuant to this section may claim
15 an amount of available credit against the taxpayer's gross
16 receipts tax, compensating tax or withholding tax due to the
17 state. Any balance of the advanced energy combined reporting
18 tax credit that the taxpayer is approved to claim after
19 applying that tax credit against the taxpayer's gross receipts
20 tax, compensating tax or withholding tax liabilities may be
21 claimed by the taxpayer against the taxpayer's tax liability
22 pursuant to the Income Tax Act by claiming an advanced energy
23 income tax credit or pursuant to the Corporate Income and
24 Franchise Tax Act by claiming an advanced energy corporate
25 income tax credit. The advanced energy combined reporting tax

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1 credit is not refundable. The total amount of tax credit
2 claimed pursuant to this section, when combined with the tax
3 credits claimed pursuant to the Income Tax Act and the
4 Corporate Income and Franchise Tax Act, shall not exceed the
5 amount approved by the department for the taxpayer's interest
6 in the qualified generating facility.

7 F. A taxpayer that is liable for the payment of
8 gross receipts or compensating tax with respect to the
9 ownership, development, construction, maintenance or operation
10 of a new coal-based electric generating facility that does not
11 meet the criteria for a qualified generating facility and that
12 begins construction after January 1, 2007 shall not claim an
13 advanced energy tax combined reporting credit pursuant to this
14 section or a gross receipts tax credit, a compensating tax
15 credit or a withholding tax credit pursuant to any other state
16 law.

17 G. If the amount of the tax credit claimed exceeds
18 the taxpayer's liability, the excess may be carried forward for
19 up to [~~five~~] ten years.

20 H. The aggregate amount of tax credit that may be
21 claimed with respect to each qualified generating facility
22 shall not exceed sixty million dollars (\$60,000,000).

23 I. An entity that holds [~~title to~~] an interest in
24 a qualified generating facility may request a certificate of
25 eligibility from the department of environment to enable the

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1 requester to apply for the advanced energy combined reporting
 2 tax credit. The department of environment:

3 (1) shall determine if the facility is a
 4 qualified generating facility;

5 (2) shall require that the requester provide
 6 the department of environment with the information necessary to
 7 assess whether the requester's facility meets the criteria to
 8 be a qualified generating facility;

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

13 (4) shall:

14 (a) issue rules governing the procedure
 15 for administering the provisions of this subsection and
 16 Subsection J of this section;

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

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

22 (5) shall report annually to the appropriate
 23 interim legislative committee information that will allow the
 24 legislative committee to analyze the effectiveness of the
 25 advanced energy tax [~~credit~~] credits, including the identity of

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1 qualified generating facilities, the energy production means
2 used, the amount of emissions identified in this section
3 reduced and removed by those qualified generating facilities
4 and whether any requests for certificates of eligibility could
5 not be approved due to program limits.

6 J. If the department of environment issues a
7 certificate of eligibility to a taxpayer stating that the
8 taxpayer [~~is~~] holds an interest in a qualified generating
9 facility and the taxpayer does not sequester or control carbon
10 dioxide emissions to the extent required by this section by
11 the later of January 1, 2017 or eighteen months after the
12 commercial operation date of the qualified generating
13 facility, the taxpayer's certification as a qualified
14 generating facility shall be revoked by the department of
15 environment and the taxpayer shall [~~refund~~] repay to the state
16 tax credits granted pursuant to this section; provided that if
17 the taxpayer demonstrates to the department of environment
18 that the taxpayer made every effort to sequester or control
19 carbon dioxide emissions to the extent feasible and the
20 facility's inability to meet the sequestration requirements of
21 a qualified generating facility was beyond the facility's
22 control, in which case the department of environment shall
23 determine, after a public hearing, the amount of the tax
24 credit that should be [~~refunded~~] repaid to the state. The
25 department of environment, in its determination, shall

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underscored material = new
[bracketed material] = delete

1 consider the environmental performance of the facility and the
 2 extent to which the inability to meet the sequestration
 3 requirements of a qualified generating facility was in the
 4 control of the taxpayer. The [~~refund~~] repayment as determined
 5 by the department of environment shall be paid within one
 6 hundred eighty days following a final order by the department
 7 of environment.

8 K. Expenditures for which a taxpayer claims [~~a~~] an
 9 advanced energy combined reporting tax credit pursuant to this
 10 section are ineligible for credits pursuant to the provisions
 11 of the Investment Credit Act or any other credit against
 12 personal income tax, corporate income tax, compensating tax,
 13 gross receipts tax or withholding tax.

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

underscored material = new
 [bracketed material] = delete