AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS AND COMPENSATING TAX DEDUCTIONS FOR QUALIFIED GENERATING FACILITIES; CLARIFYING THE MEANING OF TERMS FOR THE DEDUCTION FROM GROSS RECEIPTS FOR RECEIPTS FOR SELLING SOLAR AND WIND GENERATION EQUIPMENT TO GOVERNMENTS; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND COMPENSATING TAXES.--

A. Receipts from selling tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility may be deducted from gross receipts if the holder of
the interest delivers an appropriate nontaxable transaction certificate to the seller. The department shall issue nontaxable transaction certificates to a person that holds an interest in a qualified generating facility upon presentation to the department of a certificate of eligibility obtained from the department of environment pursuant to Subsection F of this section for the deduction created in this section or a certificate of eligibility pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978. The deduction created in this section may be referred to as the "advanced energy deduction".

B. The value of eligible generation plant costs from the sale of tangible personal property to a person that holds an interest in a qualified generating facility for which the department of environment has issued a certificate of eligibility pursuant to Subsection F of this section may be deducted in computing the compensating tax due.

C. The maximum tax benefit allowed for all eligible generation plant costs from a qualified generating facility shall be sixty million dollars ($60,000,000) total for eligible generation plant costs deducted or claimed pursuant to this section or Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

D. Deductions taken pursuant to this section shall be reported separately on a form approved by the department. The nontaxable transaction certificates used to obtain tax-deductible tangible personal property or services shall display .181812.1
clearly a notice to the taxpayer that the deduction shall be  
reported separately from any other deductions claimed from  
gross receipts. A taxpayer deducting eligible generation plant  
costs from the costs on which compensating tax is imposed shall  
report those eligible generation plant costs that are being  
deducted.

E. The deductions allowed for a qualified  
generating facility pursuant to this section shall be available  
for a ten-year period from the year development of the  
qualified generating facility begins and expenditures are made  
for which nontaxable transaction certificates authorized  
pursuant to this section are submitted to sellers for eligible  
generation plant costs or deductions from the costs on which  
compensating tax are calculated are first taken for eligible  
generation plant costs.

F. An entity that holds an interest in a qualified  
generating facility may request a certificate of eligibility  
from the department of environment to enable the requester to  
obtain a nontaxable transaction certificate for the advanced  
energy deduction. The department of environment shall:

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

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

(3) issue a certificate from sequentially numbered certificates to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) issue:

(a) rules governing the procedures for administering the provisions of this subsection; and

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

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

(6) report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy deduction, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

G. If the department of environment issues a certificate of eligibility to a taxpayer stating that the
taxpayer holds an interest in a qualified generating facility
and the taxpayer does not sequester or control carbon dioxide
emissions to the extent required by this section by the later
of January 1, 2017 or eighteen months after the commercial
operation date of the qualified generating facility, the
taxpayer's certification as a qualified generating facility
shall be revoked by the department of environment and the
taxpayer shall repay to the state tax deductions granted
pursuant to this section; provided that if the taxpayer
demonstrates to the department of environment that the taxpayer
made every effort to sequester or control carbon dioxide
emissions to the extent feasible and the facility's inability
to meet the sequestration requirements of a qualified
generating facility was beyond the facility's control, in which
case the department of environment shall determine, after a
public hearing, the amount of tax deduction that should be
repaid to the state. The department of environment, in its
determination, shall consider the environmental performance of
the facility and the extent to which the inability to meet the
sequestration requirements of a qualified generating facility
was in the control of the taxpayer. The repayment as
determined by the department of environment shall be paid
within one hundred eighty days following a final order by the
department of environment.

H. The advanced energy deduction allowed pursuant
to this section shall not be claimed for the same qualified
expenses for which a taxpayer claims a credit pursuant to
Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction
pursuant to Section 7-9-54.3 NMSA 1978.

I. As used in this section:

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

   (a) emits the lesser of: 1) what is
achievable with the best available control technology; or 2)
thirty-five thousandths pound per million British thermal units of
sulfur dioxide, twenty-five thousandths pound per million British
thermal units of oxides of nitrogen and one hundredth pound per
million British thermal units of total particulate in the flue gas;
   
   (b) removes the greater of: 1) what is
achievable with the best available control technology; or 2) ninety
percent of the mercury from the input fuel;

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

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

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

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

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

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

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

(5) "interest in a qualified generating facility" means title to a qualified generating facility; a lessee's interest in a qualified generating facility; and a county or municipality's interest in a qualified generating facility when the county or municipality issues an industrial revenue bond for construction of the qualified generating facility;

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

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

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2010 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2010 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2010;

(d) a recycled energy project if that facility begins construction on or after July 1, 2010; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;
(8) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

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

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

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

Section 2. Section 7-9-54.3 NMSA 1978 (being Laws 2002, Chapter 37, Section 8) is amended to read:

"7-9-54.3. DEDUCTION--GROSS RECEIPTS TAX--WIND [ENERGY] AND SOLAR GENERATION EQUIPMENT--SALES TO [GOVERNMENT AGENCIES] GOVERNMENTS.--

A. Receipts from selling wind generation [nacelles,
rotors or related equipment to the United States or New Mexico or
any governmental unit or subdivision, agency, department or
instrumentality thereof, if such equipment is installed on a
supporting structure] equipment or solar generation equipment to a
government for the purpose of installing a wind or solar electric
generation facility may be deducted from gross receipts.

B. The deduction allowed pursuant to this section shall
not be claimed for receipts from an expenditure for which a
taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or

C. As used in this section:

(1) "government" means the United States or the
state or a governmental unit or a subdivision, agency, department
or instrumentality of the federal government or the state;

(2) "related equipment" means transformers,
circuit breakers and switching and metering equipment used to
connect a wind or solar electric generation plant to the electric
grid;

(3) "solar generation equipment" means solar
thermal energy collection, concentration and heat transfer and
conversion equipment; solar tracking hardware and software;
photovoltaic panels and inverters; support structures; turbines and
associated electrical generating equipment used to generate
electricity from solar thermal energy; and related equipment; and

(4) "wind generation equipment" means wind
generation turbines, blades, nacelles, rotors and supporting structures used to generate electricity from wind and related equipment."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.