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HOUSE BILL 75

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO TAXATION; AMENDING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDITS TO PROVIDE FOR REFUNDABILITY OF THE TAX CREDITS; REQUIRING REPORTS.

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

SECTION 1. Section 7-2-18.24 NMSA 1978 (being Laws 2009, Chapter 271, Section 1) is amended to read:

"7-2-18.24. GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDIT.--

A. A ~~[taxpayer]~~ person who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, ~~[2010 and who]~~ 2011, who is not a dependent of another taxpayer and who purchases and installs, after January 1, ~~[2010]~~ 2011 but before December 31, ~~[2020]~~ 2021, a geothermal ground-coupled heat pump in a residence, business or

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1 agricultural enterprise in New Mexico owned by that ~~[taxpayer]~~
2 person may apply for, and the department may allow, a tax
3 credit of up to thirty percent of the purchase and installation
4 costs of the system. The credit provided in this section may
5 be referred to as the "geothermal ground-coupled heat pump tax
6 credit". The total geothermal ground-coupled heat pump tax
7 credit allowed to a ~~[taxpayer]~~ person for each building in
8 which a geothermal ground-coupled heat pump is installed and
9 functioning shall not exceed nine thousand dollars (\$9,000).
10 The department shall allow a geothermal ground-coupled heat
11 pump tax credit only for geothermal ground-coupled heat pumps
12 certified by the energy, minerals and natural resources
13 department.

14 B. The purposes of the geothermal ground-coupled
15 heat pump tax credit are to encourage the manufacture, sale,
16 purchase, installation and use of geothermal ground-coupled
17 heat pumps for residential, business or agricultural enterprise
18 uses and to increase the number of people employed to install
19 and maintain geothermal ground-coupled heat pump systems.

20 ~~[B.—A]~~ C. The portion of the geothermal ground-
21 coupled heat pump tax credit that is approved by the department
22 and that ~~[remains unused in a taxable year may be carried~~
23 ~~forward for a maximum of ten consecutive taxable years~~
24 ~~following the taxable year in which the credit originates until~~
25 ~~the credit is fully expended]~~ exceeds the tax liability in the

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1 taxable year of the person claiming the credit shall be
2 refunded to the person claiming the credit.

3 ~~[G. Prior to July 1, 2010]~~ D. The energy, minerals
4 and natural resources department shall adopt rules establishing
5 procedures to provide certification of geothermal ground-
6 coupled heat pumps for purposes of obtaining a geothermal
7 ground-coupled heat pump tax credit. The rules shall address
8 technical specifications and requirements relating to safety,
9 building code and standards compliance, minimum system sizes,
10 system applications and lists of eligible components. The
11 energy, minerals and natural resources department may modify
12 the specifications and requirements as necessary to maintain a
13 high level of system quality and performance. A person seeking
14 certification of a geothermal ground-coupled heat pump for
15 purposes of receiving a tax credit shall submit with the
16 application for a certificate from the energy, minerals and
17 natural resources department all receipts showing the purchase
18 price and installation price paid by the person for the
19 geothermal ground-coupled heat pump installed in a residence,
20 business or agricultural enterprise owned by that person. Upon
21 determining that the person's claim is qualified to receive a
22 geothermal ground-coupled heat pump tax credit, the energy,
23 minerals and natural resources department shall issue a dated
24 certificate of eligibility containing the cost of the purchase
25 and installation of each geothermal ground-coupled heat pump

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1 authorized to the person. All certificates of eligibility
2 issued pursuant to this subsection shall be sequentially
3 numbered, and an account of all certificates issued or
4 destroyed shall be maintained by the energy, minerals and
5 natural resources department. The taxation and revenue
6 department shall audit the records pertaining to the geothermal
7 ground-coupled heat pump tax credit on a periodic basis to
8 ensure effective administration of the geothermal ground-
9 coupled heat pump tax credit and compliance with the Tax
10 Administration Act and this section.

11 E. To claim the geothermal ground-coupled heat pump
12 tax credit, a person shall provide to the department a
13 certificate of eligibility issued to the person for each
14 geothermal ground-coupled heat pump for which a geothermal
15 ground-coupled heat pump tax credit is claimed.

16 ~~[D-]~~ F. The department may allow pursuant to the
17 Income Tax Act and the Corporate Income and Franchise Tax Act,
18 a maximum annual aggregate of two million dollars (\$2,000,000)
19 in geothermal ground-coupled heat pump tax credits.
20 Applications for the credit shall be considered in the order
21 received by the department. The geothermal ground-coupled heat
22 pump tax credit shall be applied against the person's income
23 tax liability for the taxable year before any other tax credit
24 is applied.

25 ~~[E-]~~ G. A ~~[taxpayer]~~ person who otherwise qualifies

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1 and claims a geothermal ground-coupled heat pump tax credit
2 with respect to [~~property~~] a residence, business or
3 agricultural enterprise owned by a partnership or other
4 business association of which the [~~taxpayer~~] person is a member
5 may claim a credit only in proportion to that [~~taxpayer's~~]
6 person's interest in the partnership or association. The total
7 credit claimed in the aggregate by all members of the
8 partnership or association with respect to the property shall
9 not exceed the amount of the credit that could have been
10 claimed by a sole owner of the [~~property~~] residence, business
11 or agricultural enterprise.

12 [~~F.~~] H. A husband and wife who file separate
13 returns for a taxable year in which they could have filed a
14 joint return may each claim only one-half of the credit that
15 would have been allowed on a joint return.

16 I. No later than October 30 of each year, the
17 department and the energy, minerals and natural resources
18 department shall compile a joint report in regard to the
19 geothermal ground-coupled heat pump tax credits provided
20 pursuant to the Income Tax Act and the Corporate Income and
21 Franchise Tax Act for the revenue stabilization and tax policy
22 committee that includes:

23 (1) the number of people applying for
24 geothermal ground-coupled heat pump tax credits;

25 (2) the number and amount of geothermal

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1 ground-coupled heat pump tax credits allowed;

2 (3) the amount of the geothermal ground-
3 coupled heat pump tax credits that was refunded to applicants;

4 (4) the number of new jobs created in New
5 Mexico in the taxable year to install and maintain geothermal
6 ground-coupled heat pump systems; and

7 (5) any other data or information deemed
8 necessary by the taxation and revenue department to aid the
9 committee in determining the effectiveness of the geothermal
10 ground-coupled heat pump tax credits.

11 J. Notwithstanding any other section of law to the
12 contrary, the department may reveal to the revenue
13 stabilization and tax policy committee the number of applicants
14 seeking geothermal ground-coupled heat pump tax credits
15 pursuant to this section and the amount of each credit
16 approved.

17 K. The revenue stabilization and tax policy
18 committee shall review the effectiveness of the geothermal
19 ground-coupled heat pump tax credit every five years beginning
20 in 2014.

21 L. Acceptance by a person of a geothermal ground-
22 coupled heat pump tax credit pursuant to this section is
23 authorization by the person receiving the credit for the
24 department to reveal information to the legislature necessary
25 to analyze the effectiveness of the geothermal ground-coupled

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1 heat pump tax credit.

2 [~~G-~~] M. As used in this section:

3 (1) "geothermal ground-coupled heat pump"
4 means a system that uses energy from the ground, water or,
5 ultimately, the sun for distribution of heating, cooling or
6 domestic hot water; that has either a minimum coefficient of
7 performance of three and four-tenths or an efficiency ratio of
8 sixteen or greater; and that is installed by an accredited
9 installer certified by the international ground source heat
10 pump association; and

11 (2) "person" includes a federally recognized
12 Indian nation, tribe or pueblo located wholly or partially in
13 New Mexico and an organization identified in Section 501(c) of
14 the Internal Revenue Code that is exempt from state income tax
15 pursuant to Section 7-2-4 NMSA 1978."

16 SECTION 2. Section 7-2A-24 NMSA 1978 (being Laws 2009,
17 Chapter 271, Section 2) is amended to read:

18 "7-2A-24. GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX
19 CREDIT.--

20 A. A [~~taxpayer~~] person that files a New Mexico
21 corporate income tax return for a taxable year beginning on or
22 after January 1, [~~2010 and that~~] 2011 and that purchases and
23 installs, after January 1, [~~2010~~] 2011 but before December 31,
24 [~~2020~~] 2021, a geothermal ground-coupled heat pump in a
25 property owned by the [~~taxpayer~~] person may claim against the

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1 ~~[taxpayer's]~~ person's corporate income tax liability, and the
2 department may allow, a tax credit of up to thirty percent of
3 the purchase and installation costs of the system. The credit
4 provided in this section may be referred to as the "geothermal
5 ground-coupled heat pump tax credit". The total geothermal
6 ground-coupled heat pump tax credit allowed to a ~~[taxpayer]~~
7 person shall not exceed nine thousand dollars (\$9,000) for each
8 building in which a geothermal ground-coupled heat pump is
9 installed and functioning. The department shall allow a
10 geothermal ground-coupled heat pump tax credit only for
11 geothermal ground-coupled heat pumps certified by the energy,
12 minerals and natural resources department.

13 B. The purposes of the geothermal ground-coupled
14 heat pump tax credit are to encourage the manufacture, sale,
15 purchase, installation and use of geothermal ground-coupled
16 heat pumps for residential, business or agricultural enterprise
17 uses and to increase the number of people employed to install
18 and maintain geothermal ground-coupled heat pump systems.

19 ~~[B.—A]~~ C. The portion of the geothermal ground-
20 coupled heat pump tax credit that ~~[remains unused in a taxable~~
21 ~~year may be carried forward for a maximum of ten consecutive~~
22 ~~taxable years following the taxable year in which the credit~~
23 ~~originates until the credit is fully expended]~~ exceeds the tax
24 liability in the taxable year of the person claiming the credit
25 shall be refunded to the person claiming the credit.

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1 ~~[G. Prior to July 1, 2010]~~ D. The energy, minerals
2 and natural resources department shall adopt rules establishing
3 procedures to provide certification of geothermal ground-
4 coupled heat pumps for purposes of obtaining a geothermal
5 ground-coupled heat pump tax credit. The rules shall address
6 technical specifications and requirements relating to safety,
7 building code and standards compliance, minimum system sizes,
8 system applications and lists of eligible components. The
9 energy, minerals and natural resources department may modify
10 the specifications and requirements as necessary to maintain a
11 high level of system quality and performance. A person seeking
12 certification of a geothermal ground-coupled heat pump for
13 purposes of receiving a tax credit shall submit with the
14 application for a certificate from the energy, minerals and
15 natural resources department all receipts showing the purchase
16 price and installation price paid by the person for the
17 geothermal ground-coupled heat pump installed in a residence,
18 business or agricultural enterprise owned by that person. Upon
19 determining that the person's claim is qualified to receive a
20 geothermal ground-coupled heat pump tax credit, the energy,
21 minerals and natural resources department shall issue a dated
22 certificate of eligibility containing the cost of the purchase
23 and installation of each geothermal ground-coupled heat pump
24 authorized to the person. All certificates of eligibility
25 issued pursuant to this subsection shall be sequentially

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1 numbered, and an account of all certificates issued or
2 destroyed shall be maintained by the energy, minerals and
3 natural resources department. The taxation and revenue
4 department shall audit the records pertaining to the geothermal
5 ground-coupled heat pump tax credit on a periodic basis to
6 ensure effective administration of the geothermal ground-
7 coupled heat pump tax credit and compliance with the Tax
8 Administration Act and this section.

9 E. To claim the geothermal ground-coupled heat pump
10 tax credit, a person shall provide to the department a
11 certificate of eligibility issued to the person for each
12 geothermal ground-coupled heat pump for which a geothermal
13 ground-coupled heat pump tax credit is claimed.

14 ~~[D-]~~ F. The department may allow, pursuant to the
15 Income Tax Act and the Corporate Income and Franchise Tax Act,
16 a maximum annual aggregate of two million dollars (\$2,000,000)
17 in geothermal ground-coupled heat pump tax credits.
18 Applications for the credit shall be considered in the order
19 received by the department. The geothermal ground-coupled heat
20 pump tax credit shall be applied against the person's corporate
21 income and franchise tax liabilities for the taxable year
22 before any other tax credit is applied.

23 G. No later than October 30 of each year, the
24 department and the energy, minerals and natural resources
25 department shall compile a joint report in regard to the

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1 geothermal ground-coupled heat pump tax credits provided
2 pursuant to the Income Tax Act and the Corporate Income and
3 Franchise Tax Act for the revenue stabilization and tax policy
4 committee that includes:

5 (1) the number of people applying for
6 geothermal ground-coupled heat pump tax credits;

7 (2) the number and amount of geothermal
8 ground-coupled heat pump tax credits allowed;

9 (3) the amount of the geothermal ground-
10 coupled heat pump tax credits that was refunded to applicants;

11 (4) the number of new jobs created in New
12 Mexico in the taxable year to install and maintain geothermal
13 ground-coupled heat pump systems; and

14 (5) any other data or information deemed
15 necessary by the taxation and revenue department to aid the
16 committee in determining the effectiveness of the geothermal
17 ground-coupled heat pump tax credits.

18 H. Notwithstanding any other section of law to the
19 contrary, the department may reveal to the revenue stabilizaton
20 and tax policy committee the number of applicants for the
21 geothermal ground-coupled heat pump tax credit, the amount of
22 each credit approved, the number of credits transferred and the
23 amount of a transferred credit claimed pursuant to this
24 section.

25 I. The revenue stabilization and tax policy

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1 committee shall review the effectiveness of the geothermal
2 ground-coupled heat pump tax credit every five years beginning
3 in 2014.

4 J. Acceptance by a person of a geothermal ground-
5 coupled heat pump tax credit pursuant to this section is
6 authorization by the person receiving the credit for the
7 department to reveal information to the legislature necessary
8 for analyzing the effectiveness of the geothermal ground-
9 coupled heat pump tax credit.

10 [~~E.~~] K. As used in this section, "geothermal
11 ground-coupled heat pump" means a reversible refrigerator
12 device that provides space heating, space cooling, domestic hot
13 water, processed hot water, processed chilled water or any
14 other application where hot air, cool air, hot water or chilled
15 water is required and that utilizes ground water or water
16 circulating through pipes buried in the ground as a condenser
17 in the cooling mode and an evaporator in the heating mode."

18 **SECTION 3. APPLICABILITY.**--The provisions of this act are
19 applicable to taxable years beginning on or after January 1,
20 2011.