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SENATE BILL 233

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

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO TAXATION; AMENDING THE ALTERNATIVE ENERGY PRODUCT  
MANUFACTURERS TAX CREDIT ACT TO INCLUDE PLANT PHOTOSYNTHESIS AS  
AN ELIGIBLE ALTERNATIVE ENERGY SOURCE.

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

**SECTION 1.** Section 7-9J-2 NMSA 1978 (being Laws 2007,  
Chapter 204, Section 12) is amended to read:

"7-9J-2. DEFINITIONS.--As used in the Alternative Energy  
Product Manufacturers Tax Credit Act:

A. "alternative energy product" means an  
alternative energy vehicle, fuel cell system, renewable energy  
system or any component of an alternative 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

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1 integrated gasification combined cycle plants; or a product  
2 directly secreted by a single cell photosynthetic organism;

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

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

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

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

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

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

25 (a) electrolyzers that use renewable

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1 energy; and

2 (b) reformers that use natural gas as  
3 the feedstock;

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

9 G. "manufacturing equipment" means an essential  
10 machine, mechanism or tool or a component of an essential  
11 machine, mechanism or tool used directly and exclusively in a  
12 taxpayer's manufacturing operation and that is subject to  
13 depreciation pursuant to the Internal Revenue Code of 1986 by  
14 the taxpayer carrying on the manufacturing; provided that  
15 "manufacturing equipment" does not include a vehicle that  
16 leaves the site of a manufacturing operation for the purpose of  
17 transporting persons or property, including property for which  
18 the taxpayer claims a credit pursuant to Section 7-9-79 NMSA  
19 1978;

20 H. "manufacturing operation" means a plant  
21 employing personnel to perform production tasks, in conjunction  
22 with manufacturing equipment not previously existing at the  
23 site, to produce alternative energy products;

24 I. "modified combined tax liability" means the  
25 total liability for the reporting period for the gross receipts

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

12 J. "pass-through entity" means a business  
13 association other than:

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

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

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1 L. "renewable energy" means energy from solar heat,  
2 solar light, wind, geothermal energy, landfill gas or biomass  
3 either singly or in combination that produces low or zero  
4 emissions and has substantial long-term production potential;

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

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

17 N. "taxpayer" means a person that files a New  
18 Mexico corporate income tax return, including a shareholder,  
19 member, partner or other owner of a pass-through entity, [~~who~~]  
20 that is liable for payment of a tax or to whom an assessment  
21 has been made if the assessment remains unabated or the amount  
22 thereof has not been paid."