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SENATE BILL 241

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

George K. Munoz and Nate Gentry

AN ACT

RELATING TO TAXATION; ENACTING A NEW SECTION OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT TO ALLOW A DEDUCTION FOR THE SALE OF NATURAL GAS TO POWER PLANTS; ENACTING A NEW SECTION OF THE CORPORATE INCOME AND FRANCHISE TAX ACT; CREATING THE NATURAL GAS-FIRED POWER PLANT TAX CREDIT.

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] DEDUCTION--GROSS RECEIPTS TAX--SALES OF NATURAL GAS TO POWER PLANTS.--

A. Receipts from the sale of natural gas may be deducted from gross receipts if the sale is made to an owner or operator of a power plant or other electric generation facility that uses the natural gas as fuel to generate electric power

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1 for resale and that delivers a nontaxable transaction
2 certificate to the seller.

3 B. The purposes of the deduction provided in this
4 section are to:

5 (1) reduce the impact of fluctuating natural
6 gas prices on taxpayers that own or operate an electric
7 generation facility that uses natural gas as fuel to generate
8 electric power;

9 (2) reduce the cost of operating a natural
10 gas-fired power plant or other electric generation facility
11 that uses natural gas to generate electric power so that it is
12 more competitive with coal-fired electric generation
13 facilities; and

14 (3) stimulate electric generation facilities
15 to use more natural gas and develop more electric generation
16 facilities in areas of New Mexico that produce natural gas.

17 C. The department shall annually report to the
18 interim revenue stabilization and tax policy committee and the
19 legislative finance committee the aggregate amounts of
20 deductions taken pursuant to this section, the number of
21 taxpayers claiming the deduction and any other information that
22 is necessary to determine that the deduction is performing the
23 purpose for which it is enacted.

24 D. A taxpayer deducting gross receipts pursuant to
25 this section shall report the amount deducted separately and

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1 attribute the deduction to the authorization provided in this
2 section in a manner required by the department."

3 SECTION 2. A new section of the Corporate Income and
4 Franchise Tax Act is enacted to read:

5 "[NEW MATERIAL] NATURAL GAS-FIRED POWER PLANT TAX CREDIT.--

6 A. The owner or operator of a power plant or other
7 electric generation facility that uses natural gas as fuel to
8 generate electric power for resale is eligible for a credit
9 against the taxpayer's tax liability imposed pursuant to the
10 Corporate Income and Franchise Tax Act in an amount equal to
11 the taxpayer's investment in constructing a new natural gas-
12 fired power plant or other electric generation facility that
13 uses natural gas as fuel to generate electric power for resale
14 or retrofitting an existing power plant or other electric
15 generation facility to use natural gas as fuel to generate
16 electric power for resale. The tax credit provided by this
17 section may be referred to as the "natural gas-fired power
18 plant tax credit".

19 B. The purposes of the natural gas-fired power
20 plant tax credit are to:

21 (1) reduce the impact of fluctuating natural
22 gas prices on taxpayers that own or operate an electric
23 generation facility that uses natural gas as fuel to generate
24 electric power;

25 (2) reduce the cost of operating a natural

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1 gas-fired power plant or other electric generation facility
2 that uses natural gas to generate electric power so that it is
3 more competitive with coal-fired electric generation
4 facilities; and

5 (3) stimulate electric generation facilities
6 to use more natural gas and develop more electrical generation
7 facilities in areas of New Mexico that produce natural gas.

8 C. A taxpayer may claim the natural gas-fired power
9 plant tax credit provided in this section for each taxable year
10 in which the taxpayer invests in constructing a new natural
11 gas-fired power plant or other electric generation facility
12 that uses natural gas as fuel to generate electric power for
13 resale or retrofitting an existing power plant or other
14 electric generation facility to use natural gas as fuel to
15 generate electric power for resale.

16 D. That portion of a natural gas-fired power plant
17 tax credit approved by the department that exceeds a taxpayer's
18 corporate income tax liability in the taxable year in which the
19 credit is claimed shall not be refunded to the taxpayer but may
20 be carried forward for up to five years; provided that the
21 total amount of credits claimed pursuant to this section shall
22 not exceed the maximum allowable pursuant to Subsection F of
23 this section. The natural gas-fired power plant tax credit
24 shall not be transferred to another taxpayer.

25 E. The department shall adopt rules establishing

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1 procedures to determine the eligibility of a taxpayer to claim
2 a natural gas-fired power plant tax credit for the purposes of
3 this section.

4 F. The department may allow a maximum aggregate of
5 five hundred million dollars (\$500,000,000) in natural gas-
6 fired power plant tax credits. Applications for the natural
7 gas-fired power plant tax credit shall be considered in the
8 order received by the department.

9 G. The department shall compile an annual report
10 for the interim revenue stabilization and tax policy committee
11 and the legislative finance committee that sets forth the
12 number of taxpayers approved to receive the natural gas-fired
13 power plant tax credit, the aggregate amount of credits
14 approved and the average and median amounts of credits
15 approved. The department shall advise the committees at least
16 every four years beginning in 2016 whether the natural gas-
17 fired power plant tax credit is performing the purposes for
18 which it was enacted.

19 H. Acceptance of the natural gas-fired power plant
20 tax credit is authorization to the department to reveal the
21 amount of the tax credit claimed by the taxpayer and other
22 information from the taxpayer's tax reports as needed to report
23 to the interim revenue stabilization and tax policy committee
24 and the legislative finance committee as required by this
25 section."

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SECTION 3. APPLICABILITY.--The provisions of Section 2 of this act apply to taxable years beginning on or after January 1, 2012.

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of Section 1 of this act is July 1, 2012.