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HOUSE BILL 128

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Nick L. Salazar

FOR THE SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF THE GROSS RECEIPTS
AND COMPENSATING TAX ACT TO CHANGE THE DEFINITIONS OF
"QUALIFYING SOLAR PHOTOVOLTAIC ELECTRIC GENERATING FACILITY"
AND "SOLAR THERMAL ELECTRIC GENERATING FACILITY" TO EXPAND THE
ELIGIBILITY FOR THE ADVANCED ENERGY DEDUCTION.

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

SECTION 1. Section 7-9-114 NMSA 1978 (being Laws 2010,
Chapter 77, Section 1 and Laws 2010, Chapter 78, Section 1, as
amended) is amended to read:

"7-9-114. ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND
COMPENSATING TAXES.--

A. Receipts from selling or leasing tangible
personal property or services that are eligible generation
plant costs to a person that holds an interest in a qualified

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1 generating facility may be deducted from gross receipts if the
2 holder of the interest delivers an appropriate nontaxable
3 transaction certificate to the seller or lessor. The
4 department shall issue nontaxable transaction certificates to a
5 person that holds an interest in a qualified generating
6 facility upon presentation to the department of a certificate
7 of eligibility obtained from the department of environment
8 pursuant to Subsection G of this section for the deduction
9 created in this section or a certificate of eligibility
10 pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.
11 The deduction created in this section may be referred to as the
12 "advanced energy deduction".

13 B. The purpose of the advanced energy deduction is
14 to encourage the construction and development of qualified
15 generating facilities in New Mexico and to sequester or control
16 carbon dioxide emissions.

17 C. The value of eligible generation plant costs
18 from the sale or lease of tangible personal property to a
19 person that holds an interest in a qualified generating
20 facility for which the department of environment has issued a
21 certificate of eligibility pursuant to Subsection G of this
22 section may be deducted in computing the compensating tax due.

23 D. The maximum tax benefit allowed for all eligible
24 generation plant costs from a qualified generating facility
25 shall be sixty million dollars (\$60,000,000) total for eligible

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1 generation plant costs deducted or claimed pursuant to this
2 section or Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

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

13 F. The deductions allowed for a qualified
14 generating facility pursuant to this section shall be available
15 for a ten-year period for purchases and a twenty-five-year
16 period for leases from the year development of the qualified
17 generating facility begins and expenditures are made for which
18 nontaxable transaction certificates authorized pursuant to this
19 section are submitted to sellers or lessors for eligible
20 generation plant costs or deductions from the costs on which
21 compensating tax are calculated are first taken for eligible
22 generation plant costs.

23 G. An entity that holds an interest in a qualified
24 generating facility may request a certificate of eligibility
25 from the department of environment to enable the requester to

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1 obtain a nontaxable transaction certificate for the advanced
2 energy deduction. The department of environment shall:

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

5 (2) require that the requester provide the
6 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) issue a certificate from sequentially
10 numbered certificates to the requester stating that the
11 facility is or is not a qualified generating facility within
12 one hundred eighty days after receiving all information
13 necessary to make a determination;

14 (4) issue:

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

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

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

22 (6) report annually to the appropriate interim
23 legislative committee information that will allow the
24 legislative committee to analyze the effectiveness of the
25 advanced energy deduction, including the identity of qualified

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

6 H. The economic development department shall keep a
7 record of temporary and permanent jobs at all qualified
8 generating facilities in New Mexico. The economic development
9 department and the taxation and revenue department shall
10 measure the amount of state revenue that is attributable to
11 activity at each qualified generating facility in New Mexico.
12 The economic development department shall coordinate with the
13 department of environment to report annually to the appropriate
14 interim legislative committee on the effectiveness of the
15 advanced energy deduction. A taxpayer who claims an advanced
16 energy deduction shall provide the economic development
17 department, the department of environment and the taxation and
18 revenue department with the information required to compile the
19 report required by this section. Notwithstanding any other
20 section of law to the contrary, the economic development
21 department, the department of environment and the taxation and
22 revenue department may disclose the number of applicants for
23 the advanced energy deduction, the amount of the deduction
24 approved, the number of employees of the taxpayer and any other
25 information required by the legislature or the taxation and

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1 revenue department to aid in evaluating the effectiveness of
2 that deduction.

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

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1 determined by the department of environment shall be paid
2 within one hundred eighty days following a final order by the
3 department of environment.

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

9 K. An appropriate legislative committee shall
10 review the effectiveness of the advanced energy deduction every
11 four years beginning in 2015.

12 L. As used in this section:

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

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

24 (b) removes the greater of: 1) what is
25 achievable with the best available control technology; or 2)

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1 ninety percent of the mercury from the input fuel;

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

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

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

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

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

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1 (3) "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 (4) "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 (5) "interest in a qualified generating
14 facility" means title to a qualified generating facility; a
15 lessee's interest in a qualified generating facility; and a
16 county or municipality's interest in a qualified generating
17 facility when the county or municipality issues an industrial
18 revenue bond for construction of the qualified generating
19 facility;

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

23 (7) "qualified generating facility" means a
24 facility that begins construction not later than December 31,
25 2015 and is:

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

5 (b) a solar photovoltaic electric
6 generating facility that begins construction on or after July
7 1, 2010 and that may include an associated renewable energy
8 storage facility;

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

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

13 (e) a new or repowered coal-based
14 electric generating facility and an associated coal
15 gasification facility;

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

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

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

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