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SENATE BILL 191

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO UTILITIES; INCREASING THE AMOUNT OF ELECTRICITY THAT MAY BE PRODUCED BY QUALIFIED ENERGY GENERATORS THAT WILL BE ELIGIBLE FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; EXTENDING THE DATE THAT A QUALIFIED ENERGY GENERATOR MUST FIRST PRODUCE ELECTRICITY TO QUALIFY FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; CLARIFYING THE PERIOD FOR WHICH A TAXPAYER MAY CLAIM THE RENEWABLE ENERGY PRODUCTION TAX CREDIT.

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

SECTION 1. Section 7-2-18.18 NMSA 1978 (being Laws 2007, Chapter 204, Section 2) is amended to read:

"7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit".
The tax credit provided in this section may not be claimed with

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1 respect to the same electricity production for which a tax
2 credit pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

3 B. A taxpayer who files an individual New Mexico
4 income tax return and who is not a dependent of another
5 taxpayer is eligible for the renewable energy production tax
6 credit if the taxpayer:

7 (1) holds title to a qualified energy
8 generator that first produced electricity on or before January
9 1, [~~2018~~] 2021; or

10 (2) leases property upon which a qualified
11 energy generator operates from a county or municipality under
12 authority of an industrial revenue bond and if the qualified
13 energy generator first produced electricity on or before
14 January 1, [~~2018~~] 2021.

15 C. The amount of the tax credit shall equal one
16 cent (\$.01) per kilowatt-hour of the first four hundred
17 thousand megawatt-hours of electricity produced by the
18 qualified energy generator in the taxable year using a wind- or
19 biomass-derived qualified energy resource, provided that the
20 total amount of tax credits claimed by all taxpayers for a
21 single qualified energy generator in a taxable year using a
22 wind- or biomass-derived qualified energy resource shall not
23 exceed one cent (\$.01) per kilowatt-hour of the first four
24 hundred thousand megawatt-hours of electricity produced by the
25 qualified energy generator.

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1 D. The amount of the tax credit for electricity
2 produced by a qualified energy generator in the taxable year
3 using a solar-light-derived or solar-heat-derived qualified
4 energy resource shall be at the amounts specified in Paragraphs
5 (1) through (10) of this subsection; provided that the total
6 amount of tax credits claimed for a taxable year by all
7 taxpayers for a single qualified energy generator using a
8 solar-light-derived or solar-heat-derived qualified energy
9 resource shall be limited to the first two hundred thousand
10 megawatt-hours of electricity produced by the qualified energy
11 generator in the taxable year:

12 (1) one and one-half cents (\$.015) per
13 kilowatt-hour in the first taxable year in which the qualified
14 energy generator is certified eligible pursuant to Subsection G
15 of this section and produces electricity using a solar-light-
16 derived or solar-heat-derived qualified energy resource;

17 (2) two cents (\$.02) per kilowatt-hour in the
18 second taxable year in which the qualified energy generator is
19 certified eligible pursuant to Subsection G of this section and
20 produces electricity using a solar-light-derived or solar-heat-
21 derived qualified energy resource;

22 (3) two and one-half cents (\$.025) per
23 kilowatt-hour in the third taxable year in which the qualified
24 energy generator is certified eligible pursuant to Subsection G
25 of this section and produces electricity using a solar-light-

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1 derived or solar-heat-derived qualified energy resource;

2 (4) three cents (\$.03) per kilowatt-hour in the
3 fourth taxable year in which the qualified energy generator is
4 certified eligible pursuant to Subsection G of this section and
5 produces electricity using a solar-light-derived or solar-heat-
6 derived qualified energy resource;

7 (5) three and one-half cents (\$.035) per
8 kilowatt-hour in the fifth taxable year in which the qualified
9 energy generator is certified eligible pursuant to Subsection G
10 of this section and produces electricity using a solar-light-
11 derived or solar-heat-derived qualified energy resource;

12 (6) four cents (\$.04) per kilowatt-hour in the
13 sixth taxable year in which the qualified energy generator is
14 certified eligible pursuant to Subsection G of this section and
15 produces electricity using a solar-light-derived or solar-heat-
16 derived qualified energy resource;

17 (7) three and one-half cents (\$.035) per
18 kilowatt-hour in the seventh taxable year in which the qualified
19 energy generator is certified eligible pursuant to Subsection G
20 of this section and produces electricity using a solar-light-
21 derived or solar-heat-derived qualified energy resource;

22 (8) three cents (\$.03) per kilowatt-hour in the
23 eighth taxable year in which the qualified energy generator is
24 certified eligible pursuant to Subsection G of this section and
25 produces electricity using a solar-light-derived or solar-heat-

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1 derived qualified energy resource;

2 (9) two and one-half cents (\$.025) per
3 kilowatt-hour in the ninth taxable year in which the qualified
4 energy generator is certified eligible pursuant to Subsection G
5 of this section and produces electricity using a solar-light-
6 derived or solar-heat-derived qualified energy resource; and

7 (10) two cents (\$.02) per kilowatt-hour in the
8 tenth taxable year in which the qualified energy generator is
9 certified eligible pursuant to Subsection G of this section and
10 produces electricity using a solar-light-derived or solar-heat-
11 derived qualified energy resource.

12 E. A taxpayer eligible for a renewable energy
13 production tax credit pursuant to Subsection B of this section
14 shall be eligible for the renewable energy production tax credit
15 for ten consecutive years, beginning on the date the qualified
16 energy generator [~~begins producing electricity~~] is certified
17 eligible pursuant to Subsection G of this section.

18 F. As used in this section:

19 (1) "biomass" means organic material that is
20 available on a renewable or recurring basis, including:

21 (a) forest-related materials, including
22 mill residues, logging residues, forest thinnings, slash, brush,
23 low-commercial-value materials or undesirable species, salt
24 cedar and other phreatophyte or woody vegetation removed from
25 river basins or watersheds and woody material harvested for the

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1 purpose of forest fire fuel reduction or forest health and
2 watershed improvement;

3 (b) agricultural-related materials,
4 including orchard trees, vineyard, grain or crop residues,
5 including straws and stover, aquatic plants and agricultural
6 processed co-products and waste products, including fats, oils,
7 greases, whey and lactose;

8 (c) animal waste, including manure and
9 slaughterhouse and other processing waste;

10 (d) solid woody waste materials,
11 including landscape or right-of-way tree trimmings, rangeland
12 maintenance residues, waste pallets, crates and manufacturing,
13 construction and demolition wood wastes, excluding
14 pressure-treated, chemically treated or painted wood wastes and
15 wood contaminated with plastic;

16 (e) crops and trees planted for the
17 purpose of being used to produce energy;

18 (f) landfill gas, wastewater treatment
19 gas and biosolids, including organic waste byproducts generated
20 during the wastewater treatment process; and

21 (g) segregated municipal solid waste,
22 excluding tires and medical and hazardous waste;

23 (2) "qualified energy generator" means a
24 facility with at least one megawatt generating capacity located
25 in New Mexico that produces electricity using a qualified energy

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1 resource and that sells that electricity to an unrelated person;
2 and

3 (3) "qualified energy resource" means a
4 resource that generates electrical energy by means of a
5 fluidized bed technology or similar low-emissions technology or
6 a zero-emissions generation technology that has substantial
7 long-term production potential and that uses only the following
8 energy sources:

- 9 (a) solar light;
- 10 (b) solar heat;
- 11 (c) wind; or
- 12 (d) biomass.

13 G. A person that holds title to a facility
14 generating electricity from a qualified energy resource or a
15 person that leases such a facility from a county or municipality
16 pursuant to an industrial revenue bond may request certification
17 of eligibility for the renewable energy production tax credit
18 from the energy, minerals and natural resources department,
19 which shall determine if the facility is a qualified energy
20 generator. The energy, minerals and natural resources
21 department may certify the eligibility of an energy generator
22 only if the total amount of electricity that may be produced
23 annually by all qualified energy generators that are certified
24 pursuant to this section and pursuant to Section 7-2A-19 NMSA
25 1978 will not exceed a total of [~~two~~] four million megawatt-

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1 hours plus an additional [~~five hundred thousand~~] one million
2 megawatt-hours produced by qualified energy generators using a
3 solar-light-derived or solar-heat-derived qualified energy
4 resource. Applications shall be considered in the order
5 received. The energy, minerals and natural resources department
6 may estimate the annual power-generating potential of a
7 generating facility for the purposes of this section. The
8 energy, minerals and natural resources department shall issue a
9 certificate to the applicant stating whether the facility is an
10 eligible qualified energy generator and the estimated annual
11 production potential of the generating facility, which shall be
12 the limit of that facility's energy production eligible for the
13 tax credit for the taxable year. The energy, minerals and
14 natural resources department may issue rules governing the
15 procedure for administering the provisions of this subsection
16 and shall report annually to the appropriate interim legislative
17 committee information that will allow the legislative committee
18 to analyze the effectiveness of the renewable energy production
19 tax credit, including the identity of qualified energy
20 generators, the energy production means used, the amount of
21 energy produced by those qualified energy generators and whether
22 any applications could not be approved due to program limits.

23 H. A taxpayer may be allocated all or a portion of
24 the right to claim a renewable energy production tax credit
25 without regard to proportional ownership interest if:

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1 (1) the taxpayer owns an interest in a business
2 entity that is taxed for federal income tax purposes as a
3 partnership;

4 (2) the business entity:

5 (a) would qualify for the renewable
6 energy production tax credit pursuant to Paragraph (1) or (2) of
7 Subsection B of this section;

8 (b) owns an interest in a business entity
9 that is also taxed for federal income tax purposes as a
10 partnership and that would qualify for the renewable energy
11 production tax credit pursuant to Paragraph (1) or (2) of
12 Subsection B of this section; or

13 (c) owns, through one or more
14 intermediate business entities that are each taxed for federal
15 income tax purposes as a partnership, an interest in the
16 business entity described in Subparagraph (b) of this paragraph;

17 (3) the taxpayer and all other taxpayers
18 allocated a right to claim the renewable energy production tax
19 credit pursuant to this subsection own collectively at least a
20 five percent interest in a qualified energy generator;

21 (4) the business entity provides notice of the
22 allocation and the taxpayer's interest to the energy, minerals
23 and natural resources department on forms prescribed by that
24 department; and

25 (5) the energy, minerals and natural resources

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1 department certifies the allocation in writing to the taxpayer.

2 I. Upon receipt of notice of an allocation of the
3 right to claim all or a portion of the renewable energy
4 production tax credit, the energy, minerals and natural
5 resources department shall promptly certify the allocation in
6 writing to the recipient of the allocation.

7 J. A husband and wife who file separate returns for
8 a taxable year in which they could have filed a joint return may
9 each claim only one-half of the credit that would have been
10 allowed on a joint return.

11 K. A taxpayer may claim the renewable energy
12 production tax credit by submitting to the taxation and revenue
13 department the certificate issued by the energy, minerals and
14 natural resources department, pursuant to Subsection G or H of
15 this section, documentation showing the taxpayer's interest in
16 the facility, documentation of the amount of electricity
17 produced by the facility in the taxable year and any other
18 information the taxation and revenue department may require to
19 determine the amount of the tax credit due the taxpayer.

20 L. If the requirements of this section have been
21 complied with, the department shall approve the renewable energy
22 production tax credit. The credit may be deducted from a
23 taxpayer's New Mexico income tax liability for the taxable year
24 for which the credit is claimed. If the amount of tax credit
25 exceeds the taxpayer's income tax liability for the taxable

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1 year:

2 (1) the excess may be carried forward for a
3 period of five taxable years; or

4 (2) if the tax credit was issued with respect
5 to a qualified energy generator that first produced electricity
6 using a qualified energy resource on or after October 1, 2007,
7 the excess shall be refunded to the taxpayer.

8 M. Once a taxpayer has been granted a renewable
9 energy production tax credit for a given facility, that taxpayer
10 shall be allowed to retain the facility's original date of
11 [~~application for~~] certification of eligibility to receive tax
12 credits [for that facility] pursuant to Subsection G of this
13 section until either the facility goes out of production for
14 more than six consecutive months in a year or until the
15 facility's ten-year eligibility has expired."

16 SECTION 2. Section 7-2A-19 NMSA 1978 (being Laws 2002,
17 Chapter 59, Section 1, as amended) is amended to read:

18 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
19 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

20 A. The tax credit provided in this section may be
21 referred to as the "renewable energy production tax credit". The
22 tax credit provided in this section may not be claimed with
23 respect to the same electricity production for which the
24 renewable energy production tax credit provided in the Income
25 Tax Act has been claimed.

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1 B. A person is eligible for the renewable energy
2 production tax credit if the person:

3 (1) holds title to a qualified energy generator
4 that first produced electricity on or before January 1, [~~2018~~]
5 2021; or

6 (2) leases property upon which a qualified
7 energy generator operates from a county or municipality under
8 authority of an industrial revenue bond and if the qualified
9 energy generator first produced electricity on or before January
10 1, [~~2018~~] 2021.

11 C. The amount of the tax credit shall equal one cent
12 (\$.01) per kilowatt-hour of the first four hundred thousand
13 megawatt-hours of electricity produced by the qualified energy
14 generator in the taxable year using a wind- or biomass-derived
15 qualified energy resource, provided that the total amount of tax
16 credits claimed by all taxpayers for a single qualified energy
17 generator in a taxable year using a wind- or biomass-derived
18 qualified energy resource shall not exceed one cent (\$.01) per
19 kilowatt-hour of the first four hundred thousand megawatt-hours
20 of electricity produced by the qualified energy generator.

21 D. The amount of the tax credit for electricity
22 produced by a qualified energy generator in the taxable year
23 using a solar-light-derived or solar-heat-derived qualified
24 energy resource shall be at the amounts specified in Paragraphs
25 (1) through (10) of this subsection; provided that the total

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1 amount of tax credits claimed for a taxable year by all
2 taxpayers for a single qualified energy generator using a solar-
3 light-derived or solar-heat-derived qualified energy resource
4 shall be limited to the first two hundred thousand megawatt-
5 hours of electricity produced by the qualified energy generator
6 in the taxable year:

7 (1) one and one-half cents (\$.015) per
8 kilowatt-hour in the first taxable year in which the qualified
9 energy generator is certified eligible pursuant to Subsection G
10 of this section and produces electricity using a solar-light-
11 derived or solar-heat-derived qualified energy resource;

12 (2) two cents (\$.02) per kilowatt-hour in the
13 second taxable year in which the qualified energy generator is
14 certified eligible pursuant to Subsection G of this section and
15 produces electricity using a solar-light-derived or solar-heat-
16 derived qualified energy resource;

17 (3) two and one-half cents (\$.025) per
18 kilowatt-hour in the third taxable year in which the qualified
19 energy generator is certified eligible pursuant to Subsection G
20 of this section and produces electricity using a solar-light-
21 derived or solar-heat-derived qualified energy resource;

22 (4) three cents (\$.03) per kilowatt-hour in the
23 fourth taxable year in which the qualified energy generator is
24 certified eligible pursuant to Subsection G of this section and
25 produces electricity using a solar-light-derived or solar-heat-

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1 derived qualified energy resource;

2 (5) three and one-half cents (\$.035) per
3 kilowatt-hour in the fifth taxable year in which the qualified
4 energy generator is certified eligible pursuant to Subsection G
5 of this section and produces electricity using a solar-light-
6 derived or solar-heat-derived qualified energy resource;

7 (6) four cents (\$.04) per kilowatt-hour in the
8 sixth taxable year in which the qualified energy generator is
9 certified eligible pursuant to Subsection G of this section and
10 produces electricity using a solar-light-derived or solar-heat-
11 derived qualified energy resource;

12 (7) three and one-half cents (\$.035) per
13 kilowatt-hour in the seventh taxable year in which the qualified
14 energy generator is certified eligible pursuant to Subsection G
15 of this section and produces electricity using a solar-light-
16 derived or solar-heat-derived qualified energy resource;

17 (8) three cents (\$.03) per kilowatt-hour in the
18 eighth taxable year in which the qualified energy generator is
19 certified eligible pursuant to Subsection G of this section and
20 produces electricity using a solar-light-derived or solar-heat-
21 derived qualified energy resource;

22 (9) two and one-half cents (\$.025) per
23 kilowatt-hour in the ninth taxable year in which the qualified
24 energy generator is certified eligible pursuant to Subsection G
25 of this section and produces electricity using a solar-light-

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1 derived or solar-heat-derived qualified energy resource; and

2 (10) two cents (\$.02) per kilowatt-hour in the
3 tenth taxable year in which the qualified energy generator is
4 certified eligible pursuant to Subsection G of this section and
5 produces electricity using a solar-light-derived or solar-heat-
6 derived qualified energy resource.

7 E. A taxpayer eligible for a renewable energy
8 production tax credit pursuant to Subsection B of this section
9 shall be eligible for the renewable energy production tax credit
10 for ten consecutive years, beginning on the date the qualified
11 energy generator [~~begins producing electricity~~] is certified
12 eligible pursuant to Subsection G of this section.

13 F. As used in this section:

14 (1) "biomass" means organic material that is
15 available on a renewable or recurring basis, including:

16 (a) forest-related materials, including
17 mill residues, logging residues, forest thinnings, slash, brush,
18 low-commercial value materials or undesirable species, salt
19 cedar and other phreatophyte or woody vegetation removed from
20 river basins or watersheds and woody material harvested for the
21 purpose of forest fire fuel reduction or forest health and
22 watershed improvement;

23 (b) agricultural-related materials,
24 including orchard trees, vineyard, grain or crop residues,
25 including straws and stover, aquatic plants and agricultural

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1 processed co-products and waste products, including fats, oils,
2 greases, whey and lactose;

3 (c) animal waste, including manure and
4 slaughterhouse and other processing waste;

5 (d) solid woody waste materials,
6 including landscape or right-of-way tree trimmings, rangeland
7 maintenance residues, waste pallets, crates and manufacturing,
8 construction and demolition wood wastes, excluding pressure-
9 treated, chemically treated or painted wood wastes and wood
10 contaminated with plastic;

11 (e) crops and trees planted for the
12 purpose of being used to produce energy;

13 (f) landfill gas, wastewater treatment
14 gas and biosolids, including organic waste byproducts generated
15 during the wastewater treatment process; and

16 (g) segregated municipal solid waste,
17 excluding tires and medical and hazardous waste;

18 (2) "qualified energy generator" means a
19 facility with at least one megawatt generating capacity located
20 in New Mexico that produces electricity using a qualified energy
21 resource and that sells that electricity to an unrelated person;
22 and

23 (3) "qualified energy resource" means a
24 resource that generates electrical energy by means of a
25 fluidized bed technology or similar low-emissions technology or

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1 a zero-emissions generation technology that has substantial
2 long-term production potential and that uses only the following
3 energy sources:

- 4 (a) solar light;
- 5 (b) solar heat;
- 6 (c) wind; or
- 7 (d) biomass.

8 G. A person that holds title to a facility
9 generating electricity from a qualified energy resource or a
10 person that leases such a facility from a county or municipality
11 pursuant to an industrial revenue bond may request certification
12 of eligibility for the renewable energy production tax credit
13 from the energy, minerals and natural resources department,
14 which shall determine if the facility is a qualified energy
15 generator. The energy, minerals and natural resources
16 department may certify the eligibility of an energy generator
17 only if the total amount of electricity that may be produced
18 annually by all qualified energy generators that are certified
19 pursuant to this section and pursuant to the Income Tax Act will
20 not exceed a total of [~~two~~] four million megawatt-hours plus an
21 additional [~~five hundred thousand~~] one million megawatt-hours
22 produced by qualified energy generators using a solar-light-
23 derived or solar-heat-derived qualified energy resource.
24 Applications shall be considered in the order received. The
25 energy, minerals and natural resources department may estimate

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1 the annual power-generating potential of a generating facility
2 for the purposes of this section. The energy, minerals and
3 natural resources department shall issue a certificate to the
4 applicant stating whether the facility is an eligible qualified
5 energy generator and the estimated annual production potential
6 of the generating facility, which shall be the limit of that
7 facility's energy production eligible for the tax credit for the
8 taxable year. The energy, minerals and natural resources
9 department may issue rules governing the procedure for
10 administering the provisions of this subsection and shall report
11 annually to the appropriate interim legislative committee
12 information that will allow the legislative committee to analyze
13 the effectiveness of the renewable energy production tax credit,
14 including the identity of qualified energy generators, the
15 energy production means used, the amount of energy produced by
16 those qualified energy generators and whether any applications
17 could not be approved due to program limits.

18 H. A taxpayer may be allocated all or a portion of
19 the right to claim a renewable energy production tax credit
20 without regard to proportional ownership interest if:

21 (1) the taxpayer owns an interest in a business
22 entity that is taxed for federal income tax purposes as a
23 partnership;

24 (2) the business entity:

25 (a) would qualify for the renewable

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1 energy production tax credit pursuant to Paragraph (1) or (2) of
2 Subsection B of this section;

3 (b) owns an interest in a business entity
4 that is also taxed for federal income tax purposes as a
5 partnership and that would qualify for the renewable energy
6 production tax credit pursuant to Paragraph (1) or (2) of
7 Subsection B of this section; or

8 (c) owns, through one or more
9 intermediate business entities that are each taxed for federal
10 income tax purposes as a partnership, an interest in the
11 business entity described in Subparagraph (b) of this paragraph;

12 (3) the taxpayer and all other taxpayers
13 allocated a right to claim the renewable energy production tax
14 credit pursuant to this subsection own collectively at least a
15 five percent interest in a qualified energy generator;

16 (4) the business entity provides notice of the
17 allocation and the taxpayer's interest to the energy, minerals
18 and natural resources department on forms prescribed by that
19 department; and

20 (5) the energy, minerals and natural resources
21 department certifies the allocation in writing to the taxpayer.

22 I. Upon receipt of notice of an allocation of the
23 right to claim all or a portion of the renewable energy
24 production tax credit, the energy, minerals and natural
25 resources department shall promptly certify the allocation in

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1 writing to the recipient of the allocation.

2 J. A taxpayer may claim the renewable energy
3 production tax credit by submitting to the taxation and revenue
4 department the certificate issued by the energy, minerals and
5 natural resources department, pursuant to Subsection G or H of
6 this section, documentation showing the taxpayer's interest in
7 the facility, documentation of the amount of electricity
8 produced by the facility in the taxable year and any other
9 information the taxation and revenue department may require to
10 determine the amount of the tax credit due the taxpayer.

11 K. If the requirements of this section have been
12 complied with, the department shall approve the renewable energy
13 production tax credit. The credit may be deducted from a
14 taxpayer's New Mexico corporate income tax liability for the
15 taxable year for which the credit is claimed. If the amount of
16 tax credit exceeds the taxpayer's corporate income tax liability
17 for the taxable year:

18 (1) the excess may be carried forward for a
19 period of five taxable years; or

20 (2) if the tax credit was issued with respect
21 to a qualified energy generator that first produced electricity
22 using a qualified energy resource on or after October 1, 2007,
23 the excess shall be refunded to the taxpayer.

24 L. Once a taxpayer has been granted a renewable
25 energy production tax credit for a given facility, that taxpayer

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1 shall be allowed to retain the facility's original date of
2 ~~[application for]~~ certification of eligibility to receive tax
3 credits ~~[for that facility]~~ pursuant to Subsection G of this
4 section until either the facility goes out of production for
5 more than six consecutive months in a year or until the
6 facility's ten-year eligibility has expired."

7 SECTION 3. APPLICABILITY.--The provisions of this act
8 apply to taxable years beginning on or after January 1, 2014.

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