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HOUSE BILL 288

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO TAXATION; AMENDING THE INCOME TAX ACT; CHANGING THE  
CALCULATION OF NET INCOME; CHANGING THE TAX RATES ON THAT  
INCOME; MAKING CLARIFYING CHANGES TO SECTIONS OF THE INCOME TAX  
ACT; REPEALING AND MODIFYING MULTIPLE INCOME TAX CREDITS,  
DEDUCTIONS AND EXEMPTIONS.

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

**SECTION 1.** Section 7-2-2 NMSA 1978 (being Laws 1986,  
Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS.--For the purpose of the Income Tax  
Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross  
income as defined in Section 62 of the Internal Revenue Code,  
as that section may be amended or renumbered;

B. "base income":

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1 (1) means, for estates and trusts, that part  
2 of the estate's or trust's income defined as taxable income and  
3 upon which the federal income tax is calculated in the Internal  
4 Revenue Code for income tax purposes plus, for taxable years  
5 beginning on or after January 1, 1991, the amount of the net  
6 operating loss deduction allowed by Section 172(a) of the  
7 Internal Revenue Code, as that section may be amended or  
8 renumbered, and taken by the taxpayer for that year;

9 (2) means, for taxpayers other than estates or  
10 trusts, that part of the taxpayer's income defined as adjusted  
11 gross income plus, for taxable years beginning on or after  
12 January 1, 1991, the amount of the net operating loss deduction  
13 allowed by Section 172(a) of the Internal Revenue Code, as that  
14 section may be amended or renumbered, and taken by the taxpayer  
15 for that year;

16 (3) includes, for all taxpayers, any other  
17 income of the taxpayer not included in adjusted gross income  
18 but upon which a federal tax is calculated pursuant to the  
19 Internal Revenue Code for income tax purposes, except amounts  
20 for which a calculation of tax is made pursuant to Section 55  
21 of the Internal Revenue Code, as that section may be amended or  
22 renumbered; "base income" also includes interest received on a  
23 state or local bond; and

24 (4) includes, for all taxpayers, an amount  
25 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior

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1 taxable year if:

2 (a) [~~such~~] that amount is transferred to  
3 another qualified tuition program, as defined in Section 529 of  
4 the Internal Revenue Code, not authorized in the Education  
5 Trust Act; or

6 (b) a distribution or refund is made for  
7 any reason other than: 1) to pay for qualified higher  
8 education expenses, as defined pursuant to Section 529 of the  
9 Internal Revenue Code; or 2) upon the beneficiary's death,  
10 disability or receipt of a scholarship;

11 C. "compensation" means wages, salaries,  
12 commissions and any other form of remuneration paid to  
13 employees for personal services;

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

18 E. "fiduciary" means a guardian, trustee, executor,  
19 administrator, committee, conservator, receiver, individual or  
20 corporation acting in any fiduciary capacity;

21 F. "filing status" means "married filing joint  
22 returns", "married filing separate returns", "head of  
23 household", "surviving spouse" and "single", as those terms are  
24 generally defined for federal tax purposes;

25 G. "fiscal year" means any accounting period of

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1 twelve months ending on the last day of any month other than  
2 December;

3 H. "head of household" means "head of household" as  
4 generally defined for federal income tax purposes;

5 I. "individual" means a natural person, an estate,  
6 a trust or a fiduciary acting for a natural person, trust or  
7 estate;

8 J. "Internal Revenue Code" means the United States  
9 Internal Revenue Code of 1986, as amended;

10 K. "lump-sum amount" means, for the purpose of  
11 determining liability for federal income tax, an amount that  
12 was not included in adjusted gross income but upon which the  
13 five-year-averaging or the ten-year-averaging method of tax  
14 computation provided in Section 402 of the Internal Revenue  
15 Code, as that section may be amended or renumbered, was  
16 applied;

17 L. "modified gross income" means all income of the  
18 taxpayer and, if any, the taxpayer's spouse and dependents,  
19 undiminished by losses and from whatever source, including:

- 20 (1) compensation;  
21 (2) net profit from business;  
22 (3) gains from dealings in property;  
23 (4) interest;  
24 (5) net rents;  
25 (6) royalties;

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- 1 (7) dividends;
  - 2 (8) alimony and separate maintenance payments;
  - 3 (9) annuities;
  - 4 (10) income from life insurance and endowment
  - 5 contracts;
  - 6 (11) pensions;
  - 7 (12) discharge of indebtedness;
  - 8 (13) distributive share of partnership income;
  - 9 (14) income in respect of a decedent;
  - 10 (15) income from an interest in an estate or a
  - 11 trust;
  - 12 (16) social security benefits;
  - 13 (17) unemployment compensation benefits;
  - 14 (18) workers' compensation benefits;
  - 15 (19) public assistance and welfare benefits;
  - 16 (20) cost-of-living allowances; and
  - 17 (21) gifts;
- 18 M. "modified gross income" excludes:
- 19 (1) payments for hospital, dental, medical or
  - 20 drug expenses to or on behalf of the taxpayer;
  - 21 (2) the value of room and board provided by
  - 22 federal, state or local governments or by private individuals
  - 23 or agencies based upon financial need and not as a form of
  - 24 compensation;
  - 25 (3) payments pursuant to a federal, state or

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1 local government program directly or indirectly to a third  
2 party on behalf of the taxpayer when identified to a particular  
3 use or invoice by the payer; or

4 (4) payments for credits and rebates pursuant  
5 to the Income Tax Act and made for a credit pursuant to Section  
6 7-3-9 NMSA 1978;

7 N. "net income" means:

8 (1) for estates and trusts, base income  
9 adjusted to exclude amounts that the state is prohibited from  
10 taxing because of the laws or constitution of this state or the  
11 United States; and ~~[means]~~

12 (2) for taxpayers other than estates or  
13 trusts, base income adjusted to exclude:

14 ~~[(1)]~~ (a) for taxable years beginning  
15 prior to January 1, 2019, an amount equal to the standard  
16 deduction allowed the taxpayer for the taxpayer's taxable year  
17 by Section 63 of the Internal Revenue Code, as that section may  
18 be amended or renumbered;

19 ~~[(2)]~~ (b) for taxable years beginning  
20 prior to January 1, 2019, an amount equal to the itemized  
21 deductions defined in Section 63 of the Internal Revenue Code,  
22 as that section may be amended or renumbered, allowed the  
23 taxpayer for the taxpayer's taxable year less the amount  
24 excluded pursuant to ~~[Paragraph (1)]~~ Subparagraph (a) of this  
25 ~~[subsection]~~ paragraph and less the amount of state and local

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1 income and sales taxes included in the taxpayer's itemized  
2 deductions;

3 ~~[(3)]~~ (c) for taxable years beginning  
4 prior to January 1, 2019, an amount equal to the product of the  
5 exemption amount allowed for the taxpayer's taxable year by  
6 Section 151 of the Internal Revenue Code, as that section may  
7 be amended or renumbered, multiplied by the number of personal  
8 exemptions allowed for federal income tax purposes;

9 (d) for taxable years beginning on or  
10 after January 1, 2019, an amount equal to the product of: 1)  
11 four thousand one hundred eighty dollars (\$4,180); and 2) the  
12 sum of the number of personal exemptions allowed for federal  
13 income tax purposes and: if the filing status is married  
14 filing joint returns, head of household, surviving spouse or  
15 single, two; or, if the filing status is married filing  
16 separate returns, one;

17 ~~[(4)]~~ (e) income from obligations of the  
18 United States of America less expenses incurred to earn that  
19 income;

20 ~~[(5)]~~ (f) other amounts that the state  
21 is prohibited from taxing because of the laws or constitution  
22 of this state or the United States;

23 ~~[(6)]~~ (g) for taxable years [that began]  
24 beginning prior to January 1, 1991, an amount equal to the sum  
25 of: ~~[(a)]~~ 1) net operating loss carryback deductions to that

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1 year from taxable years beginning prior to January 1, 1991  
2 claimed and allowed, as provided by the Internal Revenue Code;  
3 and ~~(b)~~ 2) net operating loss carryover deductions to that  
4 year claimed and allowed;

5 ~~(7)~~ (h) for taxable years beginning on  
6 or after January 1, 1991 and prior to January 1, 2013, an  
7 amount equal to the sum of any net operating loss carryover  
8 deductions to that year claimed and allowed; provided that the  
9 amount of any net operating loss carryover from a taxable year  
10 beginning on or after January 1, 1991 and prior to January 1,  
11 2013 may be excluded only as follows: ~~(a)~~ 1) in the case of  
12 a timely filed return, in the taxable year immediately  
13 following the taxable year for which the return is filed; or  
14 ~~(b)~~ 2) in the case of amended returns or original returns not  
15 timely filed, in the first taxable year beginning after the  
16 date on which the return or amended return establishing the net  
17 operating loss is filed; and ~~(c)~~ 3) in either case, if the  
18 net operating loss carryover exceeds the amount of net income  
19 exclusive of the net operating loss carryover for the taxable  
20 year to which the exclusion first applies, in the next four  
21 succeeding taxable years in turn until the net operating loss  
22 carryover is exhausted for any net operating loss carryover  
23 from a taxable year beginning prior to January 1, 2013; in no  
24 event shall a net operating loss carryover from a taxable year  
25 beginning prior to January 1, 2013 be excluded in any taxable

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1 year after the fourth taxable year beginning after the taxable  
2 year to which the exclusion first applies;

3 ~~[(8)]~~ (i) for taxable years beginning on  
4 or after January 1, 2013, an amount equal to the sum of any net  
5 operating loss carryover deductions to that year claimed and  
6 allowed, ~~[provided that the amount of any net operating loss~~  
7 ~~carryover may be excluded]~~ but only as follows: ~~[(a)]~~ 1) in  
8 the case of a timely filed return, in the taxable year  
9 immediately following the taxable year for which the return is  
10 filed; or ~~[(b)]~~ 2) in the case of an amended ~~[returns]~~ return  
11 or original ~~[returns]~~ return not timely filed, in the first  
12 taxable year beginning after the date on which the return or  
13 amended return establishing the net operating loss is filed;  
14 and ~~[(e)]~~ 3) in either case, if the net operating loss  
15 carryover exceeds the amount of net income exclusive of the net  
16 operating loss carryover for the taxable year to which the  
17 exclusion first applies, in the next nineteen succeeding  
18 taxable years in turn until the net operating loss carryover is  
19 exhausted for any net operating loss carryover from a taxable  
20 year beginning on or after January 1, 2013; in no event shall a  
21 net operating loss carryover from a taxable year beginning ~~[(1)]~~  
22 prior to January 1, 2013 be excluded in any taxable year after  
23 the fourth taxable year beginning after the taxable year to  
24 which the exclusion first applies; and ~~[(2)]~~ on or after January  
25 1, 2013 be excluded in any taxable year after the nineteenth

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1 taxable year beginning after the taxable year to which the  
2 exclusion first applies; and

3 ~~[(9)]~~ (j) for taxable years beginning on  
4 or after January 1, 2011 but prior to January 1, 2019, an  
5 amount equal to the amount included in adjusted gross income  
6 that represents a refund of state and local income and sales  
7 taxes that were deducted for federal tax purposes in taxable  
8 years beginning on or after January 1, 2010;

9 O. "net operating loss" means ~~[any]~~ a net operating  
10 loss, as defined by Section 172(c) of the Internal Revenue  
11 Code, as that section may be amended or renumbered, for a  
12 taxable year as further increased by the income, if any, from  
13 obligations of the United States for that year less related  
14 expenses;

15 P. "net operating loss carryover" means the amount,  
16 or any portion of the amount, of a net operating loss for ~~[any]~~  
17 a taxable year that, pursuant to ~~[Paragraph (6), (7) or (8)]~~  
18 Subparagraph (g), (h) or (i) of Paragraph (2) of Subsection N  
19 of this section, may be excluded from base income;

20 Q. "nonresident" means every individual not a  
21 resident of this state;

22 R. "person" means ~~[any]~~ an individual, estate,  
23 trust, receiver, cooperative association, club, corporation,  
24 company, firm, partnership, limited liability company, joint  
25 venture, syndicate or other association [~~"person" also means]~~

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1 and, to the extent permitted by law, [~~any~~] a federal, state or  
2 other governmental unit or subdivision or agency, department or  
3 instrumentality thereof;

4 S. "resident" means an individual who is domiciled  
5 in this state during any part of the taxable year or an  
6 individual who is physically present in this state for one  
7 hundred eighty-five days or more during the taxable year. [~~but~~  
8 ~~any~~] For purposes of determining tax liability under the Income  
9 Tax Act, a resident's residency does not include periods after  
10 the change of abode of an individual [~~other than someone~~] who  
11 [~~was~~] is physically present in the state for less than one  
12 hundred eighty-five days [~~or more~~] during the taxable year and  
13 who, on or before the last day of the taxable year, changed the  
14 individual's place of abode to a place [~~without~~] outside this  
15 state with the bona fide intention of continuing actually to  
16 abide permanently [~~without~~] outside this state [~~is not a~~  
17 ~~resident for the purposes of the Income Tax Act for periods~~  
18 ~~after that change of abode~~];

19 T. "secretary" means the secretary of taxation and  
20 revenue or the secretary's delegate;

21 U. "state" means [~~any~~] a state of the United  
22 States, the District of Columbia, the commonwealth of Puerto  
23 Rico, [~~any~~] a territory or possession of the United States or  
24 [~~any~~] a political subdivision of a foreign country;

25 V. "state or local bond" means a bond issued by a

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1 state other than New Mexico or by a local government other than  
2 one of New Mexico's political subdivisions, the interest from  
3 which is excluded from income for federal income tax purposes  
4 under Section 103 of the Internal Revenue Code, as that section  
5 may be amended or renumbered;

6 W. "surviving spouse" means "surviving spouse", as  
7 that term is generally defined for federal income tax purposes;

8 X. "taxable income" means net income less any lump-  
9 sum amount;

10 Y. "taxable year" means the calendar year or fiscal  
11 year ~~[upon the basis of]~~ in which ~~[the]~~ a taxpayer's net income  
12 is computed under the Income Tax Act and includes, in the case  
13 of ~~[the]~~ a return ~~[made]~~ filed for ~~[a fractional part of]~~ a  
14 period less than a year, ~~[under the provisions of the Income~~  
15 ~~Tax Act]~~ the period for which the return is ~~[made]~~ filed; and

16 Z. "taxpayer" means ~~[any]~~ an individual subject to  
17 the tax imposed by the Income Tax Act."

18 SECTION 2. Section 7-2-7 NMSA 1978 (being Laws 2005,  
19 Chapter 104, Section 4) is repealed and a new Section 7-2-7  
20 NMSA 1978 is enacted to read:

21 "7-2-7. [NEW MATERIAL] INDIVIDUAL INCOME TAX RATES.--The  
22 tax imposed by Section 7-2-3 NMSA 1978 is at the following  
23 rates for a taxable year beginning on or after January 1, 2019:

24 A. For married individuals filing separate returns:

25 If the taxable income is: The tax is:

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1 Not over \$25,000 4% of taxable income  
2 Over \$25,000 but not over \$50,000 \$1,000 plus 5% of excess  
3 over \$25,000  
4 Over \$50,000 \$2,250 plus 6% of  
5 excess over \$50,000.

6 B. For heads of household, surviving spouses,  
7 married individuals filing joint returns, single individuals  
8 and estates and trusts:

9 If the taxable income is: The tax is:  
10 Not over \$50,000 4% of taxable income  
11 Over \$50,000 but not over \$100,000 \$2,000 plus 5% of  
12 excess over \$50,000  
13 Over \$100,000 \$4,500 plus 6% of  
14 excess over \$100,000.

15 C. The tax on the sum of any lump-sum amounts  
16 included in net income is an amount equal to five multiplied by  
17 the difference between:

18 (1) the amount of tax due on the taxpayer's  
19 taxable income; and  
20 (2) the amount of tax that would be due on an  
21 amount equal to the taxpayer's taxable income and twenty  
22 percent of the taxpayer's lump-sum amounts included in net  
23 income."

24 SECTION 3. Section 7-2A-19 NMSA 1978 (being Laws 2002,  
25 Chapter 59, Section 1, as amended) is amended to read:

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1 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
2 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

3 A. The tax credit provided in this section may be  
4 referred to as the "renewable energy production tax credit".  
5 ~~[The tax credit provided in this section may not be claimed~~  
6 ~~with respect to the same electricity production for which the~~  
7 ~~renewable energy production tax credit provided in the Income~~  
8 ~~Tax Act has been claimed.]~~

9 B. A person is eligible for the renewable energy  
10 production tax credit if the person:

11 (1) holds title to a qualified energy  
12 generator that first produced electricity on or before January  
13 1, 2018; or

14 (2) leases property upon which a qualified  
15 energy generator operates from a county or municipality under  
16 authority of an industrial revenue bond and if the qualified  
17 energy generator first produced electricity on or before  
18 January 1, 2018.

19 C. The amount of the tax credit shall equal one  
20 cent (\$.01) per kilowatt-hour of the first four hundred  
21 thousand megawatt-hours of electricity produced by the  
22 qualified energy generator in the taxable year using a wind- or  
23 biomass-derived qualified energy resource; provided that the  
24 total amount of tax credits claimed by all taxpayers for a  
25 single qualified energy generator in a taxable year using a

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1 wind- or biomass-derived qualified energy resource shall not  
2 exceed one cent (\$.01) per kilowatt-hour of the first four  
3 hundred thousand megawatt-hours of electricity produced by the  
4 qualified energy generator.

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

16 (1) one and one-half cents (\$.015) per  
17 kilowatt-hour in the first taxable year in which the qualified  
18 energy generator produces electricity using a solar-light-  
19 derived or solar-heat-derived qualified energy resource;

20 (2) two cents (\$.02) per kilowatt-hour in the  
21 second taxable year in which the qualified energy generator  
22 produces electricity using a solar-light-derived or solar-heat-  
23 derived qualified energy resource;

24 (3) two and one-half cents (\$.025) per  
25 kilowatt-hour in the third taxable year in which the qualified

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1 energy generator produces electricity using a solar-light-  
2 derived or solar-heat-derived qualified energy resource;

3 (4) three cents (\$.03) per kilowatt-hour in  
4 the fourth taxable year in which the qualified energy generator  
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 produces electricity using a solar-light-  
10 derived or solar-heat-derived qualified energy resource;

11 (6) four cents (\$.04) per kilowatt-hour in the  
12 sixth taxable year in which the qualified energy generator  
13 produces electricity using a solar-light-derived or solar-heat-  
14 derived qualified energy resource;

15 (7) three and one-half cents (\$.035) per  
16 kilowatt-hour in the seventh taxable year in which the  
17 qualified energy generator produces electricity using a  
18 solar-light-derived or solar-heat-derived qualified energy  
19 resource;

20 (8) three cents (\$.03) per kilowatt-hour in  
21 the eighth taxable year in which the qualified energy generator  
22 produces electricity using a solar-light-derived or solar-heat-  
23 derived qualified energy resource;

24 (9) two and one-half cents (\$.025) per  
25 kilowatt-hour in the ninth taxable year in which the qualified

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1 energy generator produces electricity using a solar-light-  
2 derived or solar-heat-derived qualified energy resource; and

3 (10) two cents (\$.02) per kilowatt-hour in the  
4 tenth taxable year in which the qualified energy generator  
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  
10 credit for ten consecutive years, beginning on the date the  
11 qualified energy generator begins producing electricity.

12 F. As used in this section:

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

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

22 (b) agricultural-related materials,  
23 including orchard trees, vineyard, grain or crop residues,  
24 including straws and stover, aquatic plants and agricultural  
25 processed co-products and waste products, including fats, oils,

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1 greases, whey and lactose;

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

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

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

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

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

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

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

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1 long-term production potential and that uses only the following  
2 energy sources:

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

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

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

3 (b) owns an interest in a business  
4 entity 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  
12 paragraph;

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

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

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

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

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1 resources department shall promptly certify the allocation in  
2 writing to the recipient of the allocation.

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

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

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

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

25 L. Once a taxpayer has been granted a renewable

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1 energy production tax credit for a given facility, that  
2 taxpayer shall be allowed to retain the facility's original  
3 date of application for tax credits for that facility until  
4 either the facility goes out of production for more than six  
5 consecutive months in a year or until the facility's ten-year  
6 eligibility has expired."

7 SECTION 4. Section 7-2A-21 NMSA 1978 (being Laws 2007,  
8 Chapter 204, Section 4, as amended) is amended to read:

9 "7-2A-21. SUSTAINABLE BUILDING TAX CREDIT.--

10 A. The tax credit provided by this section may be  
11 referred to as the "sustainable building tax credit". The  
12 sustainable building tax credit shall be available for the  
13 construction in New Mexico of a sustainable building, the  
14 renovation of an existing building in New Mexico into a  
15 sustainable building or the permanent installation of  
16 manufactured housing, regardless of where the housing is  
17 manufactured, that is a sustainable building. [~~The tax credit  
18 provided in this section may not be claimed with respect to the  
19 same sustainable building for which the sustainable building  
20 tax credit provided in the Income Tax Act has been claimed.~~]

21 B. The purpose of the sustainable building tax  
22 credit is to encourage the construction of sustainable  
23 buildings and the renovation of existing buildings into  
24 sustainable buildings.

25 C. A taxpayer that files a corporate income tax

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1 return is eligible to be granted a sustainable building tax  
2 credit by the department if the taxpayer submits a document  
3 issued pursuant to Subsection J of this section with the  
4 taxpayer's corporate income tax return.

5 D. For taxable years ending on or before  
6 December 31, 2016, the sustainable building tax credit may be  
7 claimed with respect to a sustainable commercial building. The  
8 credit shall be calculated based on the certification level the  
9 building has achieved in the LEED green building rating system  
10 and the amount of qualified occupied square footage in the  
11 building, as indicated on the following chart:

12	LEED Rating Level	Qualified	Tax Credit per
13		Occupied	Square Foot
14		Square Footage	
15	LEED-NC Silver	First 10,000	\$3.50
16		Next 40,000	\$1.75
17		Over 50,000	
18		up to 500,000	\$ .70
19	LEED-NC Gold	First 10,000	\$4.75
20		Next 40,000	\$2.00
21		Over 50,000	
22		up to 500,000	\$1.00
23	LEED-NC Platinum	First 10,000	\$6.25
24		Next 40,000	\$3.25
25		Over 50,000	

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1		up to 500,000	\$2.00
2	LEED-EB or CS Silver	First 10,000	\$2.50
3		Next 40,000	\$1.25
4		Over 50,000	
5		up to 500,000	\$ .50
6	LEED-EB or CS Gold	First 10,000	\$3.35
7		Next 40,000	\$1.40
8		Over 50,000	
9		up to 500,000	\$ .70
10	LEED-EB or CS		
11	Platinum	First 10,000	\$4.40
12		Next 40,000	\$2.30
13		Over 50,000	
14		up to 500,000	\$1.40
15	LEED-CI Silver	First 10,000	\$1.40
16		Next 40,000	\$ .70
17		Over 50,000	
18		up to 500,000	\$ .30
19	LEED-CI Gold	First 10,000	\$1.90
20		Next 40,000	\$ .80
21		Over 50,000	
22		up to 500,000	\$ .40
23	LEED-CI Platinum	First 10,000	\$2.50
24		Next 40,000	\$1.30
25		Over 50,000	

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1 up to 500,000 \$ .80.

2 E. For taxable years ending on or before  
3 December 31, 2016, the sustainable building tax credit may be  
4 claimed with respect to a sustainable residential building.  
5 The credit shall be calculated based on the amount of  
6 qualified occupied square footage, as indicated on the  
7 following chart:

8 Rating System/Level	9 Qualified Occupied	10 Tax Credit per Square Foot
11 LEED-H Silver or Build	12 First 2,000	13 \$5.00
14 Green NM Silver	15 Next 1,000	16 \$2.50
17 LEED-H Gold or Build	18 First 2,000	19 \$6.85
20 Green NM Gold	21 Next 1,000	22 \$3.40
23 LEED-H Platinum or Build	24 First 2,000	25 \$9.00
26 Green NM Emerald	27 Next 1,000	28 \$4.45
29 EPA ENERGY STAR		
30 Manufactured Housing	31 Up to 3,000	32 \$3.00.

33 F. A person that is a building owner may apply  
34 for a certificate of eligibility for the sustainable building  
35 tax credit from the energy, minerals and natural resources  
36 department after the construction, installation or renovation  
37 of the sustainable building is complete. Applications shall  
38 be considered in the order received. If the energy, minerals  
39 and natural resources department determines that the building

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1 owner meets the requirements of this subsection and that the  
2 building with respect to which the tax credit application is  
3 made meets the requirements of this section as a sustainable  
4 residential building or a sustainable commercial building,  
5 the energy, minerals and natural resources department may  
6 issue a certificate of eligibility to the building owner,  
7 subject to the limitation in Subsection G of this section.

8 The certificate shall include the rating system certification  
9 level awarded to the building, the amount of qualified  
10 occupied square footage in the building and a calculation of  
11 the maximum amount of sustainable building tax credit for  
12 which the building owner would be eligible. The energy,  
13 minerals and natural resources department may issue rules  
14 governing the procedure for administering the provisions of  
15 this subsection. If the certification level for the  
16 sustainable residential building is awarded on or after  
17 January 1, 2007, the energy, minerals and natural resources  
18 department may issue a certificate of eligibility to a  
19 building owner who is:

20 (1) the owner of the sustainable residential  
21 building at the time the certification level for the building  
22 is awarded; or

23 (2) the subsequent purchaser of a  
24 sustainable residential building with respect to which no tax  
25 credit has been previously claimed.

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1           G. The energy, minerals and natural resources  
2 department may issue a certificate of eligibility only if the  
3 total amount of sustainable building tax credits represented  
4 by certificates of eligibility issued by the energy, minerals  
5 and natural resources department pursuant to this section  
6 ~~[and pursuant to the Income Tax Act]~~ shall not exceed in any  
7 calendar year an aggregate amount of one million dollars  
8 (\$1,000,000) with respect to sustainable commercial buildings  
9 and an aggregate amount of four million dollars (\$4,000,000)  
10 with respect to sustainable residential buildings; provided  
11 that no more than one million two hundred fifty thousand  
12 dollars (\$1,250,000) of the aggregate amount with respect to  
13 sustainable residential buildings shall be for manufactured  
14 housing. If for any taxable year the energy, minerals and  
15 natural resources department determines that the applications  
16 for sustainable building tax credits with respect to  
17 sustainable residential buildings for that taxable year  
18 exceed the aggregate limit set in this section, the energy,  
19 minerals and natural resources department may issue  
20 certificates of eligibility under the aggregate annual limit  
21 for sustainable commercial buildings to owners of sustainable  
22 residential buildings that meet the requirements of the  
23 energy, minerals and natural resources department and of this  
24 section; provided that applications for sustainable building  
25 credits for other sustainable commercial buildings total less

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1 than the full amount allocated for tax credits for  
2 sustainable commercial buildings.

3 H. Installation of a solar thermal system or a  
4 photovoltaic system eligible for the solar market development  
5 tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be  
6 used as a component of qualification for the rating system  
7 certification level used in determining eligibility for the  
8 sustainable building tax credit, unless a solar market  
9 development tax credit pursuant to Section 7-2-18.14  
10 NMSA 1978 has not been claimed with respect to that system  
11 and the building owner and the taxpayer claiming the  
12 sustainable building tax credit certify that such a tax  
13 credit will not be claimed with respect to that system.

14 I. To be eligible for the sustainable building  
15 tax credit, the building owner shall provide to the taxation  
16 and revenue department a certificate of eligibility issued by  
17 the energy, minerals and natural resources department  
18 pursuant to the requirements of Subsection F of this section  
19 and any other information the taxation and revenue department  
20 may require to determine the amount of the tax credit for  
21 which the building owner is eligible.

22 J. If the requirements of this section have been  
23 complied with, the department shall issue to the building  
24 owner a document granting a sustainable building tax credit.  
25 The document shall be numbered for identification and declare

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1 its date of issuance and the amount of the tax credit allowed  
2 pursuant to this section. The document may be submitted by  
3 the building owner with that taxpayer's income tax return, if  
4 applicable, or may be sold, exchanged or otherwise  
5 transferred to another taxpayer. The parties to such a  
6 transaction shall notify the department of the sale, exchange  
7 or transfer within ten days of the sale, exchange or  
8 transfer.

9 K. If the total approved amount of all  
10 sustainable building tax credits for a taxpayer in a taxable  
11 year represented by the documents issued pursuant to  
12 Subsection J of this section is:

13 (1) less than one hundred thousand dollars  
14 (\$100,000), a maximum of twenty-five thousand dollars  
15 (\$25,000) shall be applied against the taxpayer's corporate  
16 income tax liability for the taxable year for which the  
17 credit is approved and the next three subsequent taxable  
18 years as needed depending on the amount of credit; or

19 (2) one hundred thousand dollars (\$100,000)  
20 or more, increments of twenty-five percent of the total  
21 credit amount in each of the four taxable years, including  
22 the taxable year for which the credit is approved and the  
23 three subsequent taxable years, shall be applied against the  
24 taxpayer's corporate income tax liability.

25 L. If the sum of all sustainable building tax

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1 credits that can be applied to a taxable year for a taxpayer,  
2 calculated according to Paragraph (1) or (2) of Subsection K  
3 of this section, exceeds the taxpayer's corporate income tax  
4 liability for that taxable year, the excess may be carried  
5 forward for a period of up to seven years.

6 M. A taxpayer that otherwise qualifies and claims  
7 a sustainable building tax credit with respect to a  
8 sustainable building owned by a partnership or other business  
9 association of which the taxpayer is a member may claim a  
10 credit only in proportion to that taxpayer's interest in the  
11 partnership or association. The total credit claimed in the  
12 aggregate by all members of the partnership or association  
13 with respect to the sustainable building shall not exceed the  
14 amount of the credit that could have been claimed by a sole  
15 owner of the property.

16 N. The department shall compile an annual report  
17 on the sustainable building tax credit created pursuant to  
18 this section that shall include the number of taxpayers  
19 approved by the department to receive the tax credit, the  
20 aggregate amount of tax credits approved and any other  
21 information necessary to evaluate the effectiveness of the  
22 tax credit. Beginning in 2015 and every five years  
23 thereafter, the department shall compile and present the  
24 annual reports to the revenue stabilization and tax policy  
25 committee and the legislative finance committee with an

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1 analysis of the effectiveness and cost of the tax credit and  
2 whether the tax credit is performing the purpose for which it  
3 was created.

4 0. For the purposes of this section:

5 (1) "build green New Mexico rating system"  
6 means the certification standards adopted by the homebuilders  
7 association of central New Mexico;

8 (2) "LEED-CI" means the LEED rating system  
9 for commercial interiors;

10 (3) "LEED-CS" means the LEED rating system  
11 for the core and shell of buildings;

12 (4) "LEED-EB" means the LEED rating system  
13 for existing buildings;

14 (5) "LEED gold" means the rating in  
15 compliance with, or exceeding, the second-highest rating  
16 awarded by the LEED certification process;

17 (6) "LEED" means the most current leadership  
18 in energy and environmental design green building rating  
19 system guidelines developed and adopted by the United States  
20 green building council;

21 (7) "LEED-H" means the LEED rating system  
22 for homes;

23 (8) "LEED-NC" means the LEED rating system  
24 for new buildings and major renovations;

25 (9) "LEED platinum" means the rating in



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1 compliance with, or exceeding, the highest rating awarded by  
2 the LEED certification process;

3 (10) "LEED silver" means the rating in  
4 compliance with, or exceeding, the third-highest rating  
5 awarded by the LEED certification process;

6 (11) "manufactured housing" means a  
7 multisectioned home that is:

8 (a) a manufactured home or modular  
9 home;

10 (b) a single-family dwelling with a  
11 heated area of at least thirty-six feet by twenty-four feet  
12 and a total area of at least eight hundred sixty-four square  
13 feet;

14 (c) constructed in a factory to the  
15 standards of the United States department of housing and  
16 urban development, the National Manufactured Housing  
17 Construction and Safety Standards Act of 1974 and the Housing  
18 and Urban Development Zone Code 2 or New Mexico construction  
19 codes up to the date of the unit's construction; and

20 (d) installed consistent with the  
21 Manufactured Housing Act and rules adopted pursuant to that  
22 act relating to permanent foundations;

23 (12) "qualified occupied square footage"  
24 means the occupied spaces of the building as determined by:

25 (a) the United States green building

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1 council for those buildings obtaining LEED certification;

2 (b) the administrators of the build  
3 green New Mexico rating system for those homes obtaining  
4 build green New Mexico certification; and

5 (c) the United States environmental  
6 protection agency for ENERGY STAR-certified manufactured  
7 homes;

8 (13) "person" does not include state, local  
9 government, public school district or tribal agencies;

10 (14) "sustainable building" means either a  
11 sustainable commercial building or a sustainable residential  
12 building;

13 (15) "sustainable commercial building" means  
14 a multifamily dwelling unit, as registered and certified  
15 under the LEED-H or build green New Mexico rating system,  
16 that is certified by the United States green building council  
17 as LEED-H silver or higher or by build green New Mexico as  
18 silver or higher and has achieved a home energy rating system  
19 index of sixty or lower as developed by the residential  
20 energy services network or a building that has been  
21 registered and certified under the LEED-NC, LEED-EB, LEED-CS  
22 or LEED-CI rating system and that:

23 (a) is certified by the United States  
24 green building council at LEED silver or higher;

25 (b) achieves any prerequisite for and

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1 at least one point related to commissioning under LEED  
2 "energy and atmosphere", if included in the applicable rating  
3 system; and

4 (c) has reduced energy consumption, as  
5 follows: 1) through 2011, a fifty percent energy reduction  
6 will be required based on the national average for that  
7 building type as published by the United States department of  
8 energy; and beginning January 1, 2012, a sixty percent energy  
9 reduction will be required based on the national average for  
10 that building type as published by the United States  
11 department of energy; and 2) is substantiated by the United  
12 States environmental protection agency target finder energy  
13 performance results form, dated no sooner than the schematic  
14 design phase of development;

15 (16) "sustainable residential building"

16 means:

17 (a) a building used as a single-family  
18 residence as registered and certified under the build green  
19 New Mexico or LEED-H rating systems that: 1) is certified by  
20 the United States green building council as LEED-H silver or  
21 higher or by build green New Mexico as silver or higher; and  
22 2) has achieved a home energy rating system index of sixty or  
23 lower as developed by the residential energy services  
24 network; or

25 (b) manufactured housing that is

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1 ENERGY STAR-qualified by the United States environmental  
2 protection agency; and

3 (17) "tribal" means of, belonging to or  
4 created by a federally recognized Indian nation, tribe or  
5 pueblo."

6 SECTION 5. Section 7-2A-25 NMSA 1978 (being Laws 2009,  
7 Chapter 279, Section 2) is amended to read:

8 "7-2A-25. ADVANCED ENERGY CORPORATE INCOME TAX  
9 CREDIT.--

10 A. The tax credit that may be claimed pursuant to  
11 this section may be referred to as the "advanced energy  
12 corporate income tax credit".

13 B. A taxpayer that holds an interest in a  
14 qualified generating facility located in New Mexico and that  
15 files a New Mexico corporate income tax return may claim an  
16 advanced energy corporate income tax credit in an amount  
17 equal to six percent of the eligible generation plant costs  
18 of a qualified generating facility, subject to the  
19 limitations imposed in this section. The tax credit claimed  
20 shall be verified and approved by the department.

21 C. An entity that holds an interest in a  
22 qualified generating facility may request a certificate of  
23 eligibility from the department of environment to enable the  
24 requester to apply for an advanced energy corporate income  
25 tax credit. The department of environment:

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1 (1) shall determine if the facility is a  
2 qualified generating facility;

3 (2) shall require that the requester provide  
4 the department of environment with the information necessary  
5 to assess whether the requester's facility meets the criteria  
6 to be a qualified generating facility;

7 (3) shall issue a certificate to the  
8 requester stating that the facility is or is not a qualified  
9 generating facility within one hundred eighty days after  
10 receiving all information necessary to make a determination;

11 (4) shall:

12 (a) issue a schedule of fees in which  
13 no fee exceeds one hundred fifty thousand dollars (\$150,000);  
14 and

15 (b) deposit fees collected pursuant to  
16 this paragraph in the state air quality permit fund created  
17 pursuant to Section 74-2-15 NMSA 1978; and

18 (5) shall report annually to the appropriate  
19 interim legislative committee information that will allow the  
20 legislative committee to analyze the effectiveness of the  
21 advanced energy tax credits, including the identity of  
22 qualified generating facilities, the energy production means  
23 used, the amount of emissions identified in this section  
24 reduced and removed by those qualified generating facilities  
25 and whether any requests for certificates of eligibility

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1 could not be approved due to program limits.

2 D. A taxpayer that holds an interest in a  
3 qualified generating facility may be allocated the right to  
4 claim the advanced energy corporate income tax credit without  
5 regard to the taxpayer's relative interest in the qualified  
6 generating facility if:

7 (1) the business entity making the  
8 allocation provides notice of the allocation and the  
9 taxpayer's interest in the qualified generating facility to  
10 the department on forms prescribed by the department;

11 (2) allocations to the taxpayer and all  
12 other taxpayers allocated a right to claim the advanced  
13 energy tax credit shall not exceed one hundred percent of the  
14 advanced energy tax credit allowed for the qualified  
15 generating facility; and

16 (3) the taxpayer and all other taxpayers  
17 allocated a right to claim the advanced energy tax credits  
18 collectively own at least a five percent interest in the  
19 qualified generating facility.

20 E. Upon receipt of the notice of an allocation of  
21 the right to claim all or a portion of the advanced energy  
22 corporate income tax credit, the department shall verify the  
23 allocation due to the recipient.

24 F. To claim the advanced energy corporate income  
25 tax credit, a taxpayer shall submit with the taxpayer's New

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1 Mexico corporate income tax return a certificate of  
2 eligibility from the department of environment stating that  
3 the taxpayer may be eligible for advanced energy tax credits.  
4 The taxation and revenue department shall provide credit  
5 claim forms. A credit claim form shall accompany any return  
6 in which the taxpayer wishes to apply for an approved credit,  
7 and the claim shall specify the amount of credit intended to  
8 apply to each return. The taxation and revenue department  
9 shall determine the amount of advanced energy corporate  
10 income tax credit for which the taxpayer may apply.

11 G. The total amount of all advanced energy tax  
12 credits claimed shall not exceed the total amount determined  
13 by the department to be allowable pursuant to this section  
14 [~~the Income Tax Act~~] and Section 7-9G-2 NMSA 1978.

15 H. Any balance of the advanced energy corporate  
16 income tax credit that the taxpayer is approved to claim may  
17 be claimed by the taxpayer as an advanced energy combined  
18 reporting tax credit allowed pursuant to Section 7-9G-2 NMSA  
19 1978. If the advanced energy corporate income tax credit  
20 exceeds the amount of the taxpayer's tax liabilities pursuant  
21 to the Corporate Income and Franchise Tax Act and Section  
22 7-9G-2 NMSA 1978 in the taxable year in which it is claimed,  
23 the balance of the unpaid credit may be carried forward for  
24 ten years and claimed as an advanced energy corporate income  
25 tax credit or an advanced energy combined reporting tax

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1 credit. The advanced energy corporate income tax credit is  
2 not refundable.

3 I. A taxpayer claiming the advanced energy  
4 corporate income tax credit pursuant to this section is  
5 ineligible for credits pursuant to the Investment Credit Act  
6 or any other credit that may be taken pursuant to the  
7 Corporate Income and Franchise Tax Act or credits that may be  
8 taken against the gross receipts tax, compensating tax or  
9 withholding tax for the same expenditures.

10 J. The aggregate amount of all advanced energy  
11 tax credits that may be claimed with respect to a qualified  
12 generating facility shall not exceed sixty million dollars  
13 (\$60,000,000).

14 K. As used in this section:

15 (1) "advanced energy tax credit" means the  
16 [~~advanced energy income tax credit, the~~] advanced energy  
17 corporate income tax credit and the advanced energy combined  
18 reporting tax credit;

19 (2) "coal-based electric generating  
20 facility" means a new or repowered generating facility and an  
21 associated coal gasification facility, if any, that uses coal  
22 to generate electricity and that meets the following  
23 specifications:

24 (a) emits the lesser of: 1) what is  
25 achievable with the best available control technology; or 2)

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1 thirty-five thousandths pound per million British thermal  
2 units of sulfur dioxide, twenty-five thousandths pound per  
3 million British thermal units of oxides of nitrogen and one  
4 hundredth pound per million British thermal units of total  
5 particulates in the flue gas;

6 (b) removes the greater of: 1) what  
7 is achievable with the best available control technology; or  
8 2) ninety percent of the mercury from the input fuel;

9 (c) captures and sequesters or  
10 controls carbon dioxide emissions so that by the later of  
11 January 1, 2017 or eighteen months after the commercial  
12 operation date of the coal-based electric generating  
13 facility, no more than one thousand one hundred pounds per  
14 megawatt-hour of carbon dioxide is emitted into the  
15 atmosphere;

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

20 (e) includes methods and procedures to  
21 monitor the disposition of the carbon dioxide captured and  
22 sequestered from the coal-based electric generating facility;  
23 and

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

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1                   (3) "eligible generation plant costs" means  
2 expenditures for the development and construction of a  
3 qualified generating facility, including permitting; site  
4 characterization and assessment; engineering; design; carbon  
5 dioxide capture, treatment, compression, transportation and  
6 sequestration; site and equipment acquisition; and fuel  
7 supply development used directly and exclusively in a  
8 qualified generating facility;

9                   (4) "entity" means an individual, estate,  
10 trust, receiver, cooperative association, club, corporation,  
11 company, firm, partnership, limited liability company,  
12 limited liability partnership, joint venture, syndicate or  
13 other association or a gas, water or electric utility owned  
14 or operated by a county or municipality;

15                   (5) "geothermal electric generating  
16 facility" means a facility with a name-plate capacity of one  
17 megawatt or more that uses geothermal energy to generate  
18 electricity, including a facility that captures and provides  
19 geothermal energy to a preexisting electric generating  
20 facility using other fuels in part;

21                   (6) "interest in a qualified generating  
22 facility" means title to a qualified generating facility; a  
23 leasehold interest in a qualified generating facility; an  
24 ownership interest in a business or entity that is taxed for  
25 federal income tax purposes as a partnership that holds title

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1 to or a leasehold interest in a qualified generating  
2 facility; or an ownership interest, through one or more  
3 intermediate entities that are each taxed for federal income  
4 tax purposes as a partnership, in a business that holds title  
5 to or a leasehold interest in a qualified generating  
6 facility;

7 (7) "name-plate capacity" means the maximum  
8 rated output of the facility measured as alternating current  
9 or the equivalent direct current measurement;

10 (8) "qualified generating facility" means a  
11 facility that begins construction not later than December 31,  
12 2015 and is:

13 (a) a solar thermal electric  
14 generating facility that begins construction on or after July  
15 1, 2007 and that may include an associated renewable energy  
16 storage facility;

17 (b) a solar photovoltaic electric  
18 generating facility that begins construction on or after July  
19 1, 2009 and that may include an associated renewable energy  
20 storage facility;

21 (c) a geothermal electric generating  
22 facility that begins construction on or after July 1, 2009;

23 (d) a recycled energy project if that  
24 facility begins construction on or after July 1, 2007; or

25 (e) a new or repowered coal-based

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underscoring material = new  
~~[bracketed material] = delete~~

1 electric generating facility and an associated coal  
2 gasification facility;

3 (9) "recycled energy" means energy produced  
4 by a generation unit with a name-plate capacity of not more  
5 than fifteen megawatts that converts the otherwise lost  
6 energy from the exhaust stacks or pipes to electricity  
7 without combustion of additional fossil fuel;

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

13 (11) "solar photovoltaic electric  
14 generating facility" means an electric generating facility  
15 with a name-plate capacity of one megawatt or more that uses  
16 solar photovoltaic energy to generate electricity; and

17 (12) "solar thermal electric generating  
18 facility" means an electric generating facility with a  
19 name-plate capacity of one megawatt or more that uses solar  
20 thermal energy to generate electricity, including a facility  
21 that captures and provides solar energy to a preexisting  
22 electric generating facility using other fuels in part."

23 **SECTION 6.** Section 7-2A-26 NMSA 1978 (being Laws 2010,  
24 Chapter 84, Section 2) is amended to read:

25 "7-2A-26. AGRICULTURAL BIOMASS CORPORATE INCOME TAX

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1 CREDIT.--

2 A. A taxpayer that files a New Mexico corporate  
3 income tax return for a taxable year beginning on or after  
4 January 1, 2011 and ending prior to January 1, 2020 for a  
5 dairy or feedlot owned by the taxpayer may claim against the  
6 taxpayer's corporate income and franchise tax liability, and  
7 the department may allow, a tax credit equal to five dollars  
8 (\$5.00) per wet ton of agricultural biomass transported from  
9 the taxpayer's dairy or feedlot to a facility that uses  
10 agricultural biomass to generate electricity or make biocrude  
11 or other liquid or gaseous fuel for commercial use. The  
12 credit provided in this section may be referred to as the  
13 "agricultural biomass corporate income tax credit".

14 B. If the requirements of this section have been  
15 complied with, the department shall issue to the taxpayer a  
16 document granting an agricultural biomass corporate income  
17 tax credit. The document shall be numbered for  
18 identification and declare its date of issuance and the  
19 amount of the tax credit allowed pursuant to this section.  
20 The document may be submitted by the taxpayer with that  
21 taxpayer's corporate income tax return or may be sold,  
22 exchanged or otherwise transferred to another taxpayer. The  
23 parties to such a transaction shall notify the department of  
24 the sale, exchange or transfer within ten days of the sale,  
25 exchange or transfer.

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1 C. A portion of the agricultural biomass  
2 corporate income tax credit that remains unused in a taxable  
3 year may be carried forward for a maximum of four consecutive  
4 taxable years following the taxable year in which the credit  
5 originates until the credit is fully expended.

6 D. Prior to July 1, 2011, the energy, minerals  
7 and natural resources department shall adopt rules  
8 establishing procedures to provide certification of  
9 transportation of agricultural biomass to a qualified  
10 facility that uses agricultural biomass to generate  
11 electricity or make biocrude or other liquid or gaseous fuel  
12 for commercial use for purposes of obtaining an agricultural  
13 biomass corporate income tax credit. The rules may be  
14 modified as determined necessary by the energy, minerals and  
15 natural resources department to determine accurate recording  
16 of the quantity of agricultural biomass transported and used  
17 for the purpose allowable in this section.

18 ~~E. A taxpayer that claims an agricultural~~  
19 ~~biomass corporate income tax credit shall not also claim an~~  
20 ~~agricultural biomass income tax credit for transportation of~~  
21 ~~the same agricultural biomass on which the claim for that~~  
22 ~~agricultural biomass income tax credit is based.~~

23 F.] E. The department shall limit the annual  
24 combined total of all ~~agricultural biomass income tax~~  
25 ~~credits and all~~ agricultural biomass corporate income tax

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1 credits allowed to a maximum of five million dollars  
2 (\$5,000,000). Applications for the credit shall be  
3 considered in the order received by the department.

4 [~~G.~~] F. As used in this section:

5 (1) "agricultural biomass" means wet manure  
6 meeting specifications established by the energy, minerals  
7 and natural resources department from either a dairy or  
8 feedlot commercial operation;

9 (2) "biocrude" means a nonfossil form of  
10 energy that can be transported and refined using existing  
11 petroleum refining facilities and that is made from  
12 biologically derived feedstocks and other agricultural  
13 biomass;

14 (3) "feedlot" means an operation that  
15 fattens livestock for market; and

16 (4) "dairy" means a facility that raises  
17 livestock for milk production."

18 **SECTION 7.** Section 7-2A-27 NMSA 1978 (being Laws 2012,  
19 Chapter 55, Section 2) is amended to read:

20 "7-2A-27. VETERAN EMPLOYMENT TAX CREDIT.--

21 A. A taxpayer that employs a qualified military  
22 veteran in New Mexico is eligible for a credit against the  
23 taxpayer's tax liability imposed pursuant to the Corporate  
24 Income and Franchise Tax Act in an amount up to one thousand  
25 dollars (\$1,000) of the gross wages paid to each qualified

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1 military veteran by the taxpayer during the taxable year for  
2 which the return is filed. A taxpayer that employs a  
3 qualified military veteran for less than the full taxable  
4 year is eligible for a credit amount equal to one thousand  
5 dollars (\$1,000) multiplied by the fraction of a full year  
6 for which the qualified military veteran was employed. The  
7 tax credit provided by this section may be referred to as the  
8 "veteran employment tax credit".

9 B. The purpose of the veteran employment tax  
10 credit is to encourage the full-time employment of qualified  
11 military veterans within two years of discharge from the  
12 armed forces of the United States.

13 C. A taxpayer may claim the veteran employment  
14 tax credit provided in this section for each taxable year in  
15 which the taxpayer employs one or more qualified military  
16 veterans; provided that the taxpayer may not claim the  
17 veteran employment tax credit for any individual qualified  
18 military veteran for more than one calendar year from the  
19 date of hire.

20 D. That portion of a veteran employment tax  
21 credit approved by the department that exceeds a taxpayer's  
22 corporate income tax liability in the taxable year in which  
23 the credit is claimed shall not be refunded to the taxpayer  
24 but may be carried forward for up to three years. The  
25 veteran employment tax credit shall not be transferred to

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1 another taxpayer.

2 E. The taxpayer shall submit to the department  
3 with respect to each employee for whom the veteran employment  
4 tax credit is claimed information required by the department  
5 with respect to the veteran's employment by the taxpayer  
6 during the taxable year for which the veteran employment tax  
7 credit is claimed, including information establishing that  
8 the employee is a qualified military veteran that can be used  
9 to determine that the employee was not also employed in the  
10 same taxable year by another taxpayer claiming a veteran  
11 employment tax credit for that employee pursuant to this  
12 section [~~or the Income Tax Act~~].

13 F. The department shall adopt rules establishing  
14 procedures to certify qualified military veterans for  
15 purposes of obtaining a veteran employment tax credit. The  
16 rules shall ensure that not more than one veteran employment  
17 tax credit per qualified military veteran shall be allowed in  
18 a taxable year and that the credits allowed per qualified  
19 military veteran are limited to a maximum of one year's  
20 employment.

21 G. The department shall compile an annual report  
22 for the revenue stabilization and tax policy committee and  
23 the legislative finance committee that sets forth the number  
24 of taxpayers approved to receive the veteran employment tax  
25 credit, the aggregate amount of credits approved and the

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1 average and median amounts of credits approved. The  
2 department shall advise those committees in 2015 whether the  
3 veteran employment tax credit is performing the purpose for  
4 which it was enacted.

5 H. Acceptance of the veteran employment tax  
6 credit is authorization to the department to reveal the  
7 amount of the tax credit claimed by the taxpayer and other  
8 information from the taxpayer's tax reports as needed to  
9 report fully as required by this section to the revenue  
10 stabilization and tax policy committee and the legislative  
11 finance committee.

12 I. As used in this section, "qualified military  
13 veteran" means an individual who is hired within two years of  
14 receipt of an honorable discharge from a branch of the United  
15 States military, who works at least forty hours per week  
16 during the taxable year for which the veteran employment tax  
17 credit is claimed and who was not previously employed by the  
18 taxpayer prior to the individual's deployment."

19 **SECTION 8.** Section 7-2D-13 NMSA 1978 (being Laws 1993,  
20 Chapter 313, Section 13, as amended) is amended to read:

21 "7-2D-13. ELECTION.--

22 A. On any date after June 30, 1993, a taxpayer  
23 who holds any stock of a corporation that has its commercial  
24 domicile in New Mexico and meets the requirements of this  
25 section may elect to have the stock treated as a qualified

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1 diversifying business stock in accordance with the provisions  
2 of this section for purposes of claiming the tax credit  
3 pursuant to the Venture Capital Investment Act.

4 B. On any date after June 30, 1994, if a taxpayer  
5 holds any stock of a corporation that has its commercial  
6 domicile in New Mexico on that date and which stock, at the  
7 time it was issued, would have been treated as qualified  
8 diversifying business stock pursuant to the Venture Capital  
9 Investment Act but for the facts that the stock was issued on  
10 or before June 30, 1994 and that the stock was issued by a  
11 corporation that at the time did not have its commercial  
12 domicile in New Mexico and the value of such stock on that  
13 date exceeds its adjusted basis, the taxpayer may elect to  
14 set that date as the election date and treat the stock as  
15 having been sold on that date for an amount equal to its  
16 value on that date and as having been reacquired on that date  
17 for an amount equal to such value.

18 ~~[G. For purposes of determining the tax credit~~  
19 ~~pursuant to Section 7-2D-8.1 NMSA 1978 and whether or not the~~  
20 ~~taxpayer actually incurs federal or New Mexico income tax~~  
21 ~~liability, the gain from sales determined in Subsection B of~~  
22 ~~this section shall be treated as received or accrued and the~~  
23 ~~holding period of the reacquired stock shall be treated as~~  
24 ~~beginning on that election date. Such stock shall be treated~~  
25 ~~after such reacquisition as acquired in the same manner and~~

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1 ~~at the same time as the original acquisition. Neither the~~  
2 ~~requirement of Subsection A of Section 7-2D-4 NMSA 1978 that~~  
3 ~~the stock must have been issued after June 30, 1994 nor the~~  
4 ~~requirement of Subsection A of Section 7-2D-5 NMSA 1978 that~~  
5 ~~the issuing corporation have its commercial domicile in New~~  
6 ~~Mexico shall apply.~~

7 ~~D.]~~ C. An election under this section with  
8 respect to any stock shall be made in the manner the  
9 secretary prescribes. Such an election, once made with  
10 respect to any stock, is irrevocable.

11 ~~[E.]~~ D. Notwithstanding the provisions of this  
12 section, no credit shall be allowed or claimed on any  
13 qualified diversifying business net capital gain arising from  
14 the sale of stock prior to July 1, 1998."

15 **SECTION 9.** Section 7-2E-1.1 NMSA 1978 (being Laws  
16 2007, Chapter 172, Section 2, as amended) is amended to read:

17 "7-2E-1.1. TAX CREDIT--RURAL JOB TAX CREDIT.--

18 A. The tax credit created by this section may be  
19 referred to as the "rural job tax credit". Every eligible  
20 employer may apply for, and the taxation and revenue  
21 department may allow, a tax credit for each qualifying job  
22 the employer creates. The maximum tax credit amount with  
23 respect to each qualifying job is equal to:

24 (1) twenty-five percent of the first  
25 sixteen thousand dollars (\$16,000) in wages paid for the

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1 qualifying job if the job is performed or based at a location  
2 in a tier one area; or

3 (2) twelve and one-half percent of the  
4 first sixteen thousand dollars (\$16,000) in wages paid if the  
5 qualifying job is performed or based at a location in a tier  
6 two area.

7 B. The purpose of the rural job tax credit is to  
8 encourage businesses to start new businesses in rural areas  
9 of the state.

10 C. The amount of the rural job tax credit shall  
11 be six and one-fourth percent of the first sixteen thousand  
12 dollars (\$16,000) in wages paid for the qualifying job in a  
13 qualifying period. The rural job tax credit may be claimed  
14 for each qualifying job for a maximum of:

15 (1) four qualifying periods for each  
16 qualifying job performed or based at a location in a tier one  
17 area; and

18 (2) two qualifying periods for each  
19 qualifying job performed or based at a location in a tier two  
20 area.

21 D. With respect to each qualifying job for which  
22 an eligible employer seeks the rural job tax credit, the  
23 employer shall certify the amount of wages paid to each  
24 eligible employee during each qualifying period, the number  
25 of weeks during the qualifying period the position was

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1 occupied and whether the qualifying job was in a tier one or  
2 tier two area.

3 E. The economic development department shall  
4 determine which employers are eligible employers and shall  
5 report the listing of eligible businesses to the taxation and  
6 revenue department in a manner and at times the departments  
7 shall agree upon.

8 F. To receive a rural job tax credit with respect  
9 to any qualifying period, an eligible employer must apply to  
10 the taxation and revenue department on forms and in the  
11 manner the department may prescribe. The application shall  
12 include a certification made pursuant to Subsection D of this  
13 section. If all the requirements of this section have been  
14 complied with, the taxation and revenue department may issue  
15 to the applicant a document granting a tax credit for the  
16 appropriate qualifying period. The tax credit document shall  
17 be numbered for identification and declare its date of  
18 issuance and the amount of rural job tax credit allowed for  
19 the respective jobs created. The tax credit documents may be  
20 sold, exchanged or otherwise transferred and may be carried  
21 forward for a period of three years from the date of  
22 issuance. The parties to such a transaction to sell,  
23 exchange or transfer a rural job tax credit document shall  
24 notify the department of the transaction within ten days of  
25 the sale, exchange or transfer.

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1           G. The holder of the tax credit document may  
2 apply all or a portion of the rural job tax credit granted by  
3 the document against the holder's modified combined tax  
4 liability [~~personal income tax liability~~] or corporate income  
5 tax liability. Any balance of rural job tax credit granted  
6 by the document may be carried forward for up to three years  
7 from the date of issuance of the tax credit document. No  
8 amount of rural job tax credit may be applied against a gross  
9 receipts tax imposed by a municipality or county.

10           H. Notwithstanding the provisions of Section  
11 7-1-8 NMSA 1978, the taxation and revenue department may  
12 disclose to any person the balance of rural job tax credit  
13 remaining on any tax credit document and the balance of  
14 credit remaining on that document for any period.

15           I. The secretary of economic development, the  
16 secretary of taxation and revenue and the secretary of  
17 workforce solutions or their designees shall annually  
18 evaluate the effectiveness of the rural job tax credit in  
19 stimulating economic development in the rural areas of New  
20 Mexico and make a joint report of their findings to each  
21 session of the legislature so long as the rural job tax  
22 credit is in effect.

23           J. An eligible employer that creates a qualifying  
24 job in the period beginning on or after July 1, 2006 but  
25 before July 1, 2007 or creates a qualifying job, the

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1 qualifying period of which includes a part of the period  
2 between July 1, 2006 and July 1, 2007, for which the eligible  
3 employer has not received a rural job tax credit document  
4 pursuant to this section may submit an application for, and  
5 the taxation and revenue department may issue to the eligible  
6 employer applying, a document granting a tax credit for the  
7 appropriate qualifying period. Claims for a rural job tax  
8 credit submitted pursuant to the provisions of this  
9 subsection shall be submitted within three years from the  
10 date of issuance of the rural job tax credit document.

11 K. A qualifying job shall not be eligible for a  
12 rural job credit pursuant to this section if:

13 (1) the job is created due to a business  
14 merger, acquisition or other change in organization;

15 (2) the eligible employee was terminated  
16 from employment in New Mexico by another employer involved in  
17 the merger, acquisition or other change in organization; and

18 (3) the job is performed by:

19 (a) the person who performed the job  
20 or its functional equivalent prior to the business merger,  
21 acquisition or other change in organization; or

22 (b) a person replacing the person who  
23 performed the job or its functional equivalent prior to the  
24 business merger, acquisition or other change in organization.

25 L. Notwithstanding Subsection K of this section,

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1 a qualifying job that was created by another employer and for  
2 which the rural job tax credit claim was received by the  
3 taxation and revenue department prior to July 1, 2013 and is  
4 under review or has been approved shall remain eligible for  
5 the rural job tax credit for the balance of the qualifying  
6 periods for which the job qualifies by the new employer that  
7 results from a business merger, acquisition or other change  
8 in the organization.

9 M. A job shall not be eligible for a rural job  
10 tax credit pursuant to this section if the job is created due  
11 to an eligible employer entering into a contract or becoming  
12 a subcontractor to a contract with a governmental entity that  
13 replaces one or more entities performing functionally  
14 equivalent services for the governmental entity in New Mexico  
15 unless the job is a qualifying job that was not being  
16 performed by an employee of the replaced entity.

17 N. As used in this section:

18 (1) "eligible employee" means any  
19 individual other than an individual who:

20 (a) bears any of the relationships  
21 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
22 152(a) to the employer or, if the employer is a corporation,  
23 to an individual who owns, directly or indirectly, more than  
24 fifty percent in value of the outstanding stock of the  
25 corporation or, if the employer is an entity other than a

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1 corporation, to any individual who owns, directly or  
2 indirectly, more than fifty percent of the capital and  
3 profits interests in the entity;

4 (b) if the employer is an estate or  
5 trust, is a grantor, beneficiary or fiduciary of the estate  
6 or trust or is an individual who bears any of the  
7 relationships described in Paragraphs (1) through (8) of 26  
8 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary  
9 of the estate or trust; or

10 (c) is a dependent, as that term is  
11 described in 26 U.S.C. Section 152(a)(9), of the employer or,  
12 if the taxpayer is a corporation, of an individual who owns,  
13 directly or indirectly, more than fifty percent in value of  
14 the outstanding stock of the corporation or, if the employer  
15 is an entity other than a corporation, of any individual who  
16 owns, directly or indirectly, more than fifty percent of the  
17 capital and profits interests in the entity or, if the  
18 employer is an estate or trust, of a grantor, beneficiary or  
19 fiduciary of the estate or trust;

20 (2) "eligible employer" means an employer  
21 who is eligible for in-plant training assistance pursuant to  
22 Section 21-19-7 NMSA 1978;

23 (3) "metropolitan statistical area" means a  
24 metropolitan statistical area in New Mexico as determined by  
25 the United States ~~[bureau of the]~~ census bureau;

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1 (4) "modified combined tax liability" means  
2 the total liability for the reporting period for the gross  
3 receipts tax imposed by Section 7-9-4 NMSA 1978 together with  
4 any tax collected at the same time and in the same manner as  
5 that gross receipts tax, such as the compensating tax, the  
6 withholding tax, the interstate telecommunications gross  
7 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA  
8 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,  
9 minus the amount of any credit other than the rural job tax  
10 credit applied against any or all of these taxes or  
11 surcharges; but "modified combined tax liability" excludes  
12 all amounts collected with respect to local option gross  
13 receipts taxes;

14 (5) "qualifying job" means a job  
15 established by the employer that is occupied by an eligible  
16 employee for at least forty-eight weeks of a qualifying  
17 period;

18 (6) "qualifying period" means the period of  
19 twelve months beginning on the day an eligible employee  
20 begins working in a qualifying job or the period of twelve  
21 months beginning on the anniversary of the day an eligible  
22 employee began working in a qualifying job;

23 (7) "rural area" means any part of the  
24 state other than:

25 (a) an H class county;

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1 (b) the state fairgrounds;

2 (c) an incorporated municipality

3 within a metropolitan statistical area if the municipality's  
4 population is thirty thousand or more according to the most  
5 recent federal decennial census; and

6 (d) any area within ten miles of the  
7 exterior boundaries of a municipality described in  
8 Subparagraph (c) of this paragraph;

9 (8) "tier one area" means:

10 (a) any municipality within the rural  
11 area if the municipality's population according to the most  
12 recent federal decennial census is fifteen thousand or less;  
13 or

14 (b) any part of the rural area that is  
15 not within the exterior boundaries of a municipality;

16 (9) "tier two area" means any municipality  
17 within the rural area if the municipality's population  
18 according to the most recent federal decennial census is more  
19 than fifteen thousand; and

20 (10) "wages" means all compensation paid by  
21 an eligible employer to an eligible employee through the  
22 employer's payroll system, including those wages the employee  
23 elects to defer or redirect, such as the employee's  
24 contribution to 401(k) or cafeteria plan programs, but not  
25 including benefits or the employer's share of payroll taxes."

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1           SECTION 10. Section 7-9G-2 NMSA 1978 (being Laws 2007,  
2 Chapter 229, Section 1, as amended) is amended to read:

3           "7-9G-2. ADVANCED ENERGY COMBINED REPORTING TAX  
4 CREDIT--GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING  
5 TAX.--

6           A. Except as otherwise provided in this section,  
7 a taxpayer that holds an interest in a qualified generating  
8 facility located in New Mexico may claim a credit to be  
9 computed pursuant to the provisions of this section. The  
10 credit provided by this section may be referred to as the  
11 "advanced energy combined reporting tax credit".

12           B. As used in this section:

13                   (1) "advanced energy tax credit" means the  
14 [~~advanced energy income tax credit, the~~] advanced energy  
15 corporate income tax credit and the advanced energy combined  
16 reporting tax credit;

17                   (2) "coal-based electric generating  
18 facility" means a new or repowered generating facility and an  
19 associated coal gasification facility, if any, that uses coal  
20 to generate electricity and that meets the following  
21 specifications:

22                           (a) emits the lesser of: 1) what is  
23 achievable with the best available control technology; or  
24 2) thirty-five thousandths pound per million British thermal  
25 units of sulfur dioxide, twenty-five thousandths pound per

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1 million British thermal units of oxides of nitrogen and one  
2 hundredth pound per million British thermal units of total  
3 particulates in the flue gas;

4 (b) removes the greater of: 1) what  
5 is achievable with the best available control technology; or  
6 2) ninety percent of the mercury from the input fuel;

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

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

18 (e) includes methods and procedures to  
19 monitor the disposition of the carbon dioxide captured and  
20 sequestered from the coal-based electric generating facility;  
21 and

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

24 (3) "department" means the taxation and  
25 revenue department, the secretary of taxation and revenue or

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1 any employee of the department exercising authority lawfully  
2 delegated to that employee by the secretary;

3 (4) "eligible generation plant costs" means  
4 expenditures for the development and construction of a  
5 qualified generating facility, including permitting; site  
6 characterization and assessment; engineering; design; carbon  
7 dioxide capture, treatment, compression, transportation and  
8 sequestration; site and equipment acquisition; and fuel  
9 supply development used directly and exclusively in a  
10 qualified generating facility;

11 (5) "entity" means an individual, estate,  
12 trust, receiver, cooperative association, club, corporation,  
13 company, firm, partnership, limited liability company,  
14 limited liability partnership, joint venture, syndicate or  
15 other association or a gas, water or electric utility owned  
16 or operated by a county or municipality;

17 (6) "geothermal electric generating  
18 facility" means a facility with a name-plate capacity of one  
19 megawatt or more that uses geothermal energy to generate  
20 electricity, including a facility that captures and provides  
21 geothermal energy to a preexisting electric generating  
22 facility using other fuels in part;

23 (7) "gross receipts tax due to the state"  
24 means the taxpayer's gross receipts liability for the  
25 reporting period that is:

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1 (a) determined by, if the taxpayer's  
2 business location is described in Subsection A of Section  
3 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross  
4 receipts for the reporting period by the difference between  
5 the gross receipts tax rate specified in Section 7-9-4 NMSA  
6 1978 and one and two hundred twenty-five thousandths percent;  
7 or

8 (b) equal to, if the taxpayer's  
9 business location is not described in Subsection A of Section  
10 7-1-6.4 NMSA 1978, the gross receipts tax rate specified in  
11 Section 7-9-4 NMSA 1978;

12 (8) "interest in a qualified generating  
13 facility" means title to a qualified generating facility; a  
14 leasehold interest in a qualified generating facility; an  
15 ownership interest in a business or entity that is taxed for  
16 federal income tax purposes as a partnership that holds title  
17 to or a leasehold interest in a qualified generating  
18 facility; or an ownership interest, through one or more  
19 intermediate entities that are each taxed for federal income  
20 tax purposes as a partnership, in a business that holds title  
21 to or a leasehold interest in a qualified generating  
22 facility;

23 (9) "name-plate capacity" means the maximum  
24 rated output of the facility measured as alternating current  
25 or the equivalent direct current measurement;

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1                   (10) "qualified generating facility" means  
2 a facility that begins construction not later than December  
3 31, 2015 and is:

4                   (a) a solar thermal electric  
5 generating facility that begins construction on or after July  
6 1, 2007 and that may include an associated renewable energy  
7 storage facility;

8                   (b) a solar photovoltaic electric  
9 generating facility that begins construction on or after  
10 July 1, 2009 and that may include an associated renewable  
11 energy storage facility;

12                   (c) a geothermal electric generating  
13 facility that begins construction on or after July 1, 2009;

14                   (d) a recycled energy project if that  
15 facility begins construction on or after July 1, 2007; or

16                   (e) a new or repowered coal-based  
17 electric generating facility and an associated coal  
18 gasification facility;

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

24                   (12) "sequester" means to store, or  
25 chemically convert, carbon dioxide in a manner that prevents

.209080.1

1 its release into the atmosphere and may include the use of  
2 geologic formations and enhanced oil, coalbed methane or  
3 natural gas recovery techniques;

4 (13) "solar photovoltaic electric  
5 generating facility" means an electric generating facility  
6 with a name-plate capacity of one megawatt or more that uses  
7 solar photovoltaic energy to generate electricity; and

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

14 C. A taxpayer that holds an interest in a  
15 qualified generating facility may be allocated the right to  
16 claim the advanced energy combined reporting tax credit  
17 without regard to the taxpayer's relative interest in the  
18 qualified generating facility if:

19 (1) the business entity making the  
20 allocation provides notice of the allocation and the  
21 taxpayer's interest in the qualified generating facility to  
22 the department on forms prescribed by the department;

23 (2) allocations to the taxpayer and all  
24 other taxpayers allocated a right to claim the advanced  
25 energy tax credit shall not exceed one hundred percent of the

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1 advanced energy tax credit allowed for the qualified  
2 generating facility; and

3 (3) the taxpayer and all other taxpayers  
4 allocated a right to claim the advanced energy tax credits  
5 collectively own at least a five percent interest in the  
6 qualified generating facility.

7 D. Upon receipt of the notice of an allocation of  
8 the right to claim all or a portion of the advanced energy  
9 combined reporting tax credit, the department shall verify  
10 the allocation due to the recipient.

11 E. Subject to the limit imposed in Subsection [K]  
12 J of this section, the advanced energy combined reporting tax  
13 credit with respect to a qualified generating facility shall  
14 equal six percent of the eligible generation plant costs of  
15 the qualified generating facility. Taxpayers eligible to  
16 claim an advanced energy combined reporting tax credit  
17 holding less than one hundred percent of the interest in the  
18 qualified generating facility shall designate an individual  
19 to report annually to the department. That designated  
20 individual shall report the eligible generation plant costs  
21 incurred during the calendar year and the relative interest  
22 of those costs attributed to each eligible interest holder.  
23 The taxpayers shall submit a copy of the relative interests  
24 attributed to each interest holder to the department, and any  
25 change to the apportioned interests shall be submitted to the

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1 department. The designated person and the department may  
2 identify a mutually acceptable reporting schedule.

3 F. A taxpayer may apply for the advanced energy  
4 combined reporting tax credit by submitting to the taxation  
5 and revenue department a certificate issued by the department  
6 of environment pursuant to Subsection K of this section,  
7 documentation showing the taxpayer's interest in the  
8 qualified generating facility identified in the certificate,  
9 documentation of all eligible generation plant costs incurred  
10 by the taxpayer prior to the date of the application by the  
11 taxpayer for the advanced energy combined reporting tax  
12 credit and any other information the taxation and revenue  
13 department requests to determine the amount of tax credit due  
14 to the taxpayer.

15 G. A taxpayer having applied for and been granted  
16 approval to claim an advanced energy combined reporting tax  
17 credit by the department pursuant to this section may claim  
18 an amount of available credit against the taxpayer's gross  
19 receipts tax, compensating tax or withholding tax due to the  
20 state. Any balance of the advanced energy combined reporting  
21 tax credit that the taxpayer is approved to claim after  
22 applying that tax credit against the taxpayer's gross  
23 receipts tax, compensating tax or withholding tax liabilities  
24 may be claimed by the taxpayer against the taxpayer's tax  
25 liability pursuant to the ~~[Income Tax Act by claiming an~~

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1 ~~advanced energy income tax credit or against the taxpayer's~~  
2 ~~tax liability pursuant to the~~] Corporate Income and Franchise  
3 Tax Act by claiming an advanced energy corporate income tax  
4 credit. The advanced energy combined reporting tax credit is  
5 not refundable. The total amount of tax credit claimed  
6 pursuant to this section, when combined with the advanced  
7 energy tax credits claimed pursuant to [~~the Income Tax Act~~  
8 ~~and~~] the Corporate Income and Franchise Tax Act, shall not  
9 exceed the total amount of advanced energy tax credits  
10 approved by the department for the qualified generating  
11 facility.

12 H. A taxpayer that is liable for the payment of  
13 gross receipts or compensating tax with respect to the  
14 ownership, development, construction, maintenance or  
15 operation of a new coal-based electric generating facility  
16 that does not meet the criteria for a qualified generating  
17 facility and that begins construction after January 1, 2007  
18 shall not claim an advanced energy tax combined reporting  
19 credit pursuant to this section or a gross receipts tax  
20 credit, a compensating tax credit or a withholding tax credit  
21 pursuant to any other state law.

22 I. If the amount of the advanced energy tax  
23 credit approved by the department exceeds the taxpayer's  
24 liability, the excess may be carried forward for up to ten  
25 years.

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1           J. The aggregate amount of advanced energy tax  
2 credit that may be claimed with respect to each qualified  
3 generating facility shall not exceed sixty million dollars  
4 (\$60,000,000).

5           K. An entity that holds an interest in a  
6 qualified generating facility may request a certificate of  
7 eligibility from the department of environment to enable the  
8 requester to apply for the advanced energy combined reporting  
9 tax credit. The department of environment:

10                   (1) shall determine if the facility is a  
11 qualified generating facility;

12                   (2) shall require that the requester  
13 provide the department of environment with the information  
14 necessary to assess whether the requester's facility meets  
15 the criteria to be a qualified generating facility;

16                   (3) shall issue a certificate to the  
17 requester stating that the facility is or is not a qualified  
18 generating facility within one hundred eighty days after  
19 receiving all information necessary to make a determination;

20                   (4) shall:

21                           (a) issue rules governing the  
22 procedure for administering the provisions of this subsection  
23 and Subsection L of this section and for providing  
24 certificates of eligibility for advanced energy tax credits;

25                           (b) issue a schedule of fees in which

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1 no fee exceeds one hundred fifty thousand dollars (\$150,000);  
2 and

3 (c) deposit fees collected pursuant to  
4 this paragraph in the state air quality permit fund created  
5 pursuant to Section 74-2-15 NMSA 1978; and

6 (5) shall report annually to the  
7 appropriate interim legislative committee information that  
8 will allow the legislative committee to analyze the  
9 effectiveness of the advanced energy tax credits, including  
10 the identity of qualified generating facilities, the energy  
11 production means used, the amount of emissions identified in  
12 this section reduced and removed by those qualified  
13 generating facilities and whether any requests for  
14 certificates of eligibility could not be approved due to  
15 program limits.

16 L. If the department of environment issues a  
17 certificate of eligibility to a taxpayer stating that the  
18 taxpayer holds an interest in a qualified generating facility  
19 and the taxpayer does not sequester or control carbon dioxide  
20 emissions to the extent required by this section by the later  
21 of January 1, 2017 or eighteen months after the commercial  
22 operation date of the qualified generating facility, the  
23 taxpayer's certification as a qualified generating facility  
24 shall be revoked by the department of environment and the  
25 taxpayer shall repay to the state tax credits granted pursuant

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1 to this section; provided that if the taxpayer demonstrates to  
2 the department of environment that the taxpayer made every  
3 effort to sequester or control carbon dioxide emissions to the  
4 extent feasible and the facility's inability to meet the  
5 sequestration requirements of a qualified generating facility  
6 was beyond the facility's control, in which case the  
7 department of environment shall determine, after a public  
8 hearing, the amount of the tax credit that should be repaid to  
9 the state. The department of environment, in its  
10 determination, shall consider the environmental performance of  
11 the facility and the extent to which the inability to meet the  
12 sequestration requirements of a qualified generating facility  
13 was in the control of the taxpayer. The repayment as  
14 determined by the department of environment shall be paid  
15 within one hundred eighty days following a final order by the  
16 department of environment.

17 M. Expenditures for which a taxpayer claims an  
18 advanced energy combined reporting tax credit pursuant to this  
19 section are ineligible for credits pursuant to the provisions  
20 of the Investment Credit Act or any other credit against  
21 personal income tax, corporate income tax, compensating tax,  
22 gross receipts tax or withholding tax.

23 N. A taxpayer shall apply for approval for a  
24 credit within one year following the end of the calendar year  
25 in which the eligible generation plant costs are incurred."

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1           SECTION 11. Section 7-9I-5 NMSA 1978 (being Laws 2005,  
2 Chapter 104, Section 21) is amended to read:

3           "7-9I-5. AFFORDABLE HOUSING TAX CREDIT.--

4           A. The tax credit provided in this section may be  
5 referred to as the "affordable housing tax credit". Except  
6 as otherwise provided by the Affordable Housing Tax Credit  
7 Act, a holder of an investment voucher that submits the  
8 investment voucher to the department may apply for, and the  
9 department may allow, a tax credit in an amount not to exceed  
10 the value of the investment voucher during the tax year in  
11 which the authority certifies to the department:

12                   (1) completion of a service for which an  
13 investment voucher has been issued pursuant to the Affordable  
14 Housing Tax Credit Act; or

15                   (2) approval by the authority or completion  
16 of an affordable housing project for which a land, building  
17 or cash donation has been made and for which an investment  
18 voucher has been issued pursuant to the Affordable Housing  
19 Tax Credit Act.

20           B. A holder of an investment voucher may apply  
21 all or a portion of the affordable housing tax credit against  
22 the holder's modified combined tax liability [~~personal income~~  
23 ~~tax liability~~] or corporate income tax liability. Any  
24 balance of the affordable housing tax credit claimed may be  
25 carried forward for up to five years from the calendar year

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1 during which the authority certifies to the department  
2 approval of the affordable housing project for which the  
3 investment voucher used to claim the affordable housing tax  
4 credit is issued. No amount of the affordable housing tax  
5 credit may be applied against a local option gross receipts  
6 tax imposed by a municipality or county or against the  
7 ~~[government]~~ governmental gross receipts tax.

8 C. Notwithstanding the provisions of Section  
9 7-1-8 NMSA 1978, the department may disclose to a person the  
10 balance of the affordable housing tax credit remaining with  
11 respect to any investment voucher submitted by that person."

12 SECTION 12. TEMPORARY PROVISION--APPLICABILITY OF  
13 REPEALED TAX CREDITS AND DEDUCTIONS.--The tax credits and  
14 deductions allowed by Sections 7-2-5.9, 7-2-18.5, 7-2-18.8,  
15 7-2-18.13, 7-2-18.18, 7-2-18.19, 7-2-18.24 through 7-2-18.28,  
16 7-2-32, 7-2-34 and 7-2D-8.1 NMSA 1978 shall not be claimed  
17 for taxable years beginning on or after January 1, 2019.

18 SECTION 13. REPEAL.--Sections 7-2-5.9, 7-2-18.5,  
19 7-2-18.8, 7-2-18.13, 7-2-18.18, 7-2-18.19, 7-2-18.24 through  
20 7-2-18.28, 7-2-32, 7-2-34 and 7-2D-8.1 NMSA 1978 (being Laws  
21 2005, Chapter 104, Section 6, Laws 1998, Chapter 97, Section  
22 2, Laws 2001, Chapter 73, Section 1, Laws 2005, Chapter 267,  
23 Section 1, Laws 2007, Chapter 204, Sections 2 and 3, Laws  
24 2009, Chapter 271, Section 1, Laws 2009, Chapter 279, Section  
25 1, Laws 2010, Chapter 84, Section 1, Laws 2011, Chapter 89,

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1 Section 1, Laws 2012, Chapter 55, Section 1, Laws 1997,  
2 Chapter 259, Section 8, Laws 1999, Chapter 205, Section 1 and  
3 Laws 1995, Chapter 89, Section 8, as amended) are repealed  
4 effective January 1, 2019.

5 SECTION 14. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is January 1, 2019.

