

1 SENATE BILL 268

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Peter Wirth

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; EXTENDING AND INCREASING THE AGRICULTURAL
12 BIOMASS INCOME TAX CREDIT AND AGRICULTURAL BIOMASS CORPORATE
13 INCOME TAX CREDIT.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 7-2-18.26 NMSA 1978 (being Laws 2010,
17 Chapter 84, Section 1) is amended to read:

18 "7-2-18.26. AGRICULTURAL BIOMASS INCOME TAX CREDIT.--

19 A. A taxpayer who owns a dairy or feedlot and who
20 files an individual New Mexico income tax return for a taxable
21 year beginning on or after January 1, 2011 and ending prior to
22 January 1, [2020] 2030, may apply for, and the department may
23 allow, a tax credit equal to [~~five dollars (\$5.00)~~] ten dollars
24 (\$10.00) per wet ton of agricultural biomass transported from
25 the taxpayer's dairy or feedlot to a facility that uses

.212266.1

underscored material = new
[bracketed material] = delete

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

1 agricultural biomass to generate electricity or make biocrude
2 or other liquid or gaseous fuel for commercial use. The tax
3 credit created in this section may be referred to as the
4 "agricultural biomass income tax credit".

5 B. If the requirements of this section have been
6 complied with, the department shall issue to the taxpayer a
7 document granting an agricultural biomass income tax credit.
8 The document shall be numbered for identification and declare
9 its date of issuance and the amount of the tax credit allowed
10 pursuant to this section. The document may be submitted by the
11 taxpayer with that taxpayer's income tax return or may be sold,
12 exchanged or otherwise transferred to another taxpayer. The
13 parties to such a transaction shall notify the department of
14 the sale, exchange or transfer within ten days of the sale,
15 exchange or transfer.

16 C. Any portion of the agricultural biomass income
17 tax credit that remains unused in a taxable year may be carried
18 forward for a maximum of four consecutive taxable years
19 following the taxable year in which the credit originates until
20 fully expended.

21 D. A taxpayer who otherwise qualifies and claims an
22 agricultural biomass income tax credit with respect to a dairy
23 or feedlot owned by a partnership or other business association
24 of which the taxpayer is a member may claim the credit only in
25 proportion to that taxpayer's interest in the partnership or

.212266.1

underscored material = new
[bracketed material] = delete

1 business association. The total agricultural biomass income
2 tax credits claimed in the aggregate with respect to the same
3 dairy or feedlot by all members of the partnership or business
4 association shall not exceed the amount of the credit that
5 could have been claimed by a single owner of the dairy or
6 feedlot.

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

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

22 G. A taxpayer who claims an agricultural biomass
23 income tax credit shall not also claim an agricultural biomass
24 corporate income tax credit for transportation of the same
25 agricultural biomass on which the claim for that agricultural

.212266.1

underscored material = new
[bracketed material] = delete

1 biomass income tax credit is based.

2 H. The department shall limit the annual combined
3 total of all agricultural biomass income tax credits and all
4 agricultural biomass corporate income tax credits allowed to a
5 maximum of five million dollars (\$5,000,000). Applications for
6 the credit shall be considered in the order received by the
7 department.

8 I. A taxpayer allowed a tax credit pursuant to this
9 section shall report the amount of the credit to the department
10 in a manner required by the department.

11 J. The department shall compile an annual report on
12 the agricultural biomass income tax credit that shall include
13 the number of taxpayers approved by the department to receive
14 the credit, the aggregate amount of credits approved and any
15 other information necessary to evaluate the effectiveness of
16 the credit. The department shall present the report to the
17 revenue stabilization and tax policy committee and the
18 legislative finance committee with an analysis of the
19 effectiveness and cost of the tax credit and whether the tax
20 credit is performing the purpose for which it was created.

21 [~~F.~~] K. As used in this section:

22 (1) "agricultural biomass" means wet manure
23 meeting specifications established by the energy, minerals and
24 natural resources department from either a dairy or feedlot
25 commercial operation;

.212266.1

underscored material = new
[bracketed material] = delete

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

5 (3) "feedlot" means an operation that fattens
6 livestock for market; and

7 (4) "dairy" means a facility that raises
8 livestock for milk production."

9 SECTION 2. Section 7-2A-26 NMSA 1978 (being Laws 2010,
10 Chapter 84, Section 2) is amended to read:

11 "7-2A-26. AGRICULTURAL BIOMASS CORPORATE INCOME TAX
12 CREDIT.--

13 A. A taxpayer that files a New Mexico corporate
14 income tax return for a taxable year beginning on or after
15 January 1, 2011 and ending prior to January 1, ~~[2020]~~ 2030 for
16 a dairy or feedlot owned by the taxpayer may claim against the
17 taxpayer's corporate income and franchise tax liability, and
18 the department may allow, a tax credit equal to ~~[five dollars~~
19 ~~(\$5.00)]~~ ten dollars (\$10.00) per wet ton of agricultural
20 biomass transported from the taxpayer's dairy or feedlot to a
21 facility that uses agricultural biomass to generate electricity
22 or make biocrude or other liquid or gaseous fuel for commercial
23 use. The credit provided in this section may be referred to as
24 the "agricultural biomass corporate income tax credit".

25 B. If the requirements of this section have been

.212266.1

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

1 complied with, the department shall issue to the taxpayer a
2 document granting an agricultural biomass corporate income tax
3 credit. The document shall be numbered for identification and
4 declare its date of issuance and the amount of the tax credit
5 allowed pursuant to this section. The document may be
6 submitted by the taxpayer with that taxpayer's corporate income
7 tax return or may be sold, exchanged or otherwise transferred
8 to another taxpayer. The parties to such a transaction shall
9 notify the department of the sale, exchange or transfer within
10 ten days of the sale, exchange or transfer.

11 C. A portion of the agricultural biomass corporate
12 income tax credit that remains unused in a taxable year may be
13 carried forward for a maximum of four consecutive taxable years
14 following the taxable year in which the credit originates until
15 the credit is fully expended.

16 D. ~~[Prior to July 1, 2011]~~ The energy, minerals and
17 natural resources department shall adopt rules establishing
18 procedures to provide certification of transportation of
19 agricultural biomass to a qualified facility that uses
20 agricultural biomass to generate electricity or make biocrude
21 or other liquid or gaseous fuel for commercial use for purposes
22 of obtaining an agricultural biomass corporate income tax
23 credit. The rules may be modified as determined necessary by
24 the energy, minerals and natural resources department to
25 determine accurate recording of the quantity of agricultural

.212266.1

underscored material = new
[bracketed material] = delete

1 biomass transported and used for the purpose allowable in this
2 section.

3 E. A taxpayer that claims an agricultural biomass
4 corporate income tax credit shall not also claim an
5 agricultural biomass income tax credit for transportation of
6 the same agricultural biomass on which the claim for that
7 agricultural biomass income tax credit is based.

8 F. The department shall limit the annual combined
9 total of all agricultural biomass income tax credits and all
10 agricultural biomass corporate income tax credits allowed to a
11 maximum of five million dollars (\$5,000,000). Applications for
12 the credit shall be considered in the order received by the
13 department.

14 G. A taxpayer allowed a tax credit pursuant to this
15 section shall report the amount of the credit to the department
16 in a manner required by the department.

17 H. The department shall compile an annual report on
18 the agricultural biomass corporate income tax credit that shall
19 include the number of taxpayers approved by the department to
20 receive the credit, the aggregate amount of credits approved
21 and any other information necessary to evaluate the
22 effectiveness of the credit. The department shall present the
23 report to the revenue stabilization and tax policy committee
24 and the legislative finance committee with an analysis of the
25 effectiveness and cost of the tax credit and whether the tax

.212266.1

underscored material = new
[bracketed material] = delete

1 credit is performing the purpose for which it was created.

2 [~~G-~~] I. As used in this section:

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

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

11 (3) "feedlot" means an operation that fattens
12 livestock for market; and

13 (4) "dairy" means a facility that raises
14 livestock for milk production."

15 **SECTION 3. APPLICABILITY.**--The provisions of this act
16 apply to taxable years beginning on or after January 1, 2019.