

SENATE TAX, BUSINESS AND TRANSPORTATION COMMITTEE SUBSTITUTE  
FOR SENATE BILL 316

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
CREATING THE ADVANCED ENERGY EQUIPMENT INCOME TAX CREDIT AND  
THE ADVANCED ENERGY EQUIPMENT CORPORATE INCOME TAX CREDIT.

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

SECTION 1. A new section of the Income Tax Act is enacted  
to read:

"NEW MATERIAL ADVANCED ENERGY EQUIPMENT INCOME TAX  
CREDIT.--

A. The tax credit provided by this section may be  
referred to as the "advanced energy equipment income tax  
credit". A taxpayer who is not a dependent of another  
individual, who makes qualified expenditures for a qualified  
manufacturing facility located in New Mexico and who files an  
individual New Mexico income tax return for a taxable year

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underscored material = new  
[bracketed material] = delete

1 beginning on or after January 1, 2025, and prior to January 1,  
2 2033, may claim the tax credit in the amount provided in  
3 Subsection B of this section.

4 B. The amount of the tax credit shall be in an  
5 amount equal to the lesser of twenty percent of the amount of  
6 the qualified expenditures made by the taxpayer for a qualified  
7 manufacturing facility or twenty-five million dollars  
8 (\$25,000,000).

9 C. Prior to incurring a qualified expenditure, a  
10 taxpayer shall apply for preliminary certification of  
11 eligibility for the tax credit from the energy, minerals and  
12 natural resources department on forms and in the manner  
13 prescribed by that department. Such preliminary certification  
14 shall be made in consultation with the economic development  
15 department and shall be limited to confirming that the  
16 qualified expenditures proposed to be made by the taxpayer will  
17 in whole or in part be used to produce advanced energy products  
18 and providing an estimate of the amount of tax credit for which  
19 the taxpayer may be eligible. A taxpayer shall be eligible for  
20 only one certificate of eligibility per qualified manufacturing  
21 facility.

22 D. Within twelve months of commencement of  
23 production of any advanced energy product, the taxpayer shall  
24 seek final certification from the energy, minerals and natural  
25 resources department. An application for final certification

1 shall include information required by the energy, minerals and  
2 natural resources department to determine eligibility for the  
3 tax credit, including information substantiating qualified  
4 expenditures. If, after consultation with the economic  
5 development department, the energy, minerals and natural  
6 resources department determines that the taxpayer meets the  
7 requirements of this section, the energy, minerals and natural  
8 resources department shall issue a dated certificate of  
9 eligibility to the taxpayer providing the amount of tax credit  
10 for which the taxpayer is eligible and the taxable years in  
11 which the credit may be claimed. The energy, minerals and  
12 natural resources department shall provide the department with  
13 the certificates of eligibility issued pursuant to this  
14 subsection in an electronic format at regularly agreed-upon  
15 intervals. A certificate of eligibility for the tax credit may  
16 be sold, exchanged or otherwise transferred to another  
17 taxpayer. The parties to such a transaction shall notify the  
18 department of the sale, exchange or transfer within ten days of  
19 the sale, exchange or transfer in an electronic format  
20 prescribed by the department.

21 E. A taxpayer allowed to claim the tax credit shall  
22 claim the credit in a manner required by the department. The  
23 tax credit shall be claimed within one taxable year of the end  
24 of the calendar year in which the energy, minerals and natural  
25 resources department provides final certification of the

.227991.2

1 credit. Any portion of the tax credit that remains unused at  
2 the end of the taxpayer's reporting period may be carried  
3 forward for five years.

4 F. Married individuals filing separate returns for  
5 a taxable year for which they could have filed a joint return  
6 may each claim only one-half of the tax credit that would have  
7 been claimed on a joint return.

8 G. A taxpayer may be allocated the right to claim  
9 the tax credit in a proportion to the taxpayer's ownership  
10 interest if the taxpayer owns an interest in a business entity  
11 that is taxed for federal income tax purposes as a partnership  
12 or limited liability company and that business entity has met  
13 all of the requirements to be eligible for the credit. The  
14 total credit claimed by all members of the partnership or  
15 limited liability company shall not exceed the allowable credit  
16 pursuant to this section.

17 H. If the taxpayer or a successor in the business  
18 of the taxpayer ceases operations at the qualifying  
19 manufacturing facility or ceases to produce advanced energy  
20 products for at least one hundred eighty consecutive days  
21 within a two-year period after the taxpayer has claimed the tax  
22 credit, any amount of credit for which the taxpayer received  
23 final certification with respect to that facility that is not  
24 claimed against the taxpayer's tax liability shall be  
25 extinguished, and within thirty days after the one hundred

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1 eightieth day of cessation of operations, the taxpayer shall  
2 pay to the department the tax liability against which the  
3 certified credit was claimed. For the purposes of this  
4 section, a taxpayer shall not be deemed to have ceased  
5 operations during reasonable periods for maintenance or  
6 retooling, for the repair or replacement of facilities damaged  
7 or destroyed or during labor disputes.

8 I. As used in this section:

9 (1) "advanced energy product" means a  
10 technology, product, system or component eligible for a federal  
11 tax credit under Section 45X of the federal Internal Revenue  
12 Code;

13 (2) "essential" means directly necessary to  
14 the production of an advanced energy products;

15 (3) "manufacturing equipment" means an  
16 essential machine, mechanism or tool or a component of an  
17 essential machine, mechanism or tool used directly and  
18 exclusively in a taxpayer's qualified manufacturing facility  
19 and that is subject to depreciation pursuant to the federal  
20 Internal Revenue Code by the taxpayer carrying on the  
21 manufacturing. "Manufacturing equipment" does not include a  
22 vehicle that leaves the site of a manufacturing operation for  
23 the purpose of transporting persons or property, including  
24 property for which the taxpayer claims a credit pursuant to  
25 Section 7-9-79 NMSA 1978;

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1 (4) "qualified expenditure" means an  
2 expenditure made on or after January 1, 2025 and prior to  
3 January 1, 2033 for the purchase of that portion of the costs  
4 of manufacturing equipment dedicated to manufacturing advanced  
5 energy products; and

6 (5) "qualified manufacturing facility" means a  
7 facility located in New Mexico that employs personnel to  
8 perform production tasks with manufacturing equipment not  
9 previously existing at the facility to produce advanced energy  
10 products."

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

13 "[NEW MATERIAL] ADVANCED ENERGY EQUIPMENT CORPORATE INCOME  
14 TAX CREDIT.--

15 A. The tax credit provided by this section may be  
16 referred to as the "advanced energy equipment corporate income  
17 tax credit". A taxpayer that makes qualified expenditures for  
18 a qualified manufacturing facility located in New Mexico and  
19 that files a corporate income tax return for a taxable year  
20 beginning on or after January 1, 2025, and prior to January 1,  
21 2033, may claim the tax credit in the amount provided in  
22 Subsection B of this section.

23 B. The amount of the tax credit shall be in an  
24 amount equal to the lesser of twenty percent of the amount of  
25 the qualified expenditures made by the taxpayer for a qualified

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1 manufacturing facility or twenty-five million dollars  
2 (\$25,000,000).

3 C. Prior to incurring a qualified expenditure, a  
4 taxpayer shall apply for preliminary certification of  
5 eligibility for the tax credit from the energy, minerals and  
6 natural resources department on forms and in the manner  
7 prescribed by that department. Such preliminary certification  
8 shall be made in consultation with the economic development  
9 department and shall be limited to confirming that the  
10 qualified expenditures proposed to be made by the taxpayer will  
11 in whole or in part be used to produce advanced energy products  
12 and providing an estimate of the amount of tax credit for which  
13 the taxpayer may be eligible. A taxpayer shall be eligible for  
14 only one certificate of eligibility per qualified manufacturing  
15 facility.

16 D. Within twelve months of commencement of  
17 production of any advanced energy product, the taxpayer shall  
18 seek final certification from the energy, minerals and natural  
19 resources department. An application for final certification  
20 shall include information required by the energy, minerals and  
21 natural resources department to determine eligibility for the  
22 tax credit, including information substantiating qualified  
23 expenditures. If, after consultation with the economic  
24 development department, the energy, minerals and natural  
25 resources department determines that the taxpayer meets the

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1 requirements of this section, the energy, minerals and natural  
2 resources department shall issue a dated certificate of  
3 eligibility to the taxpayer providing the amount of tax credit  
4 for which the taxpayer is eligible and the taxable years in  
5 which the credit may be claimed. The energy, minerals and  
6 natural resources department shall provide the department with  
7 the certificates of eligibility issued pursuant to this  
8 subsection in an electronic format at regularly agreed-upon  
9 intervals. A certificate of eligibility for the tax credit may  
10 be sold, exchanged or otherwise transferred to another  
11 taxpayer. The parties to such a transaction shall notify the  
12 department of the sale, exchange or transfer within ten days of  
13 the sale, exchange or transfer in an electronic format  
14 prescribed by the department.

15 E. A taxpayer allowed to claim the tax credit shall  
16 claim the credit in a manner required by the department. The  
17 tax credit shall be claimed within one taxable year of the end  
18 of the calendar year in which the energy, minerals and natural  
19 resources department provides final certification of the  
20 credit. Any portion of the tax credit that remains unused at  
21 the end of the taxpayer's reporting period may be carried  
22 forward for five years.

23 F. If the taxpayer or a successor in the business  
24 of the taxpayer ceases operations at the qualifying  
25 manufacturing facility or ceases to produce advanced energy

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1 products for at least one hundred eighty consecutive days  
2 within a two-year period after the taxpayer has claimed the tax  
3 credit, any amount of credit for which the taxpayer received  
4 final certification with respect to that facility that is not  
5 claimed against the taxpayer's tax liability shall be  
6 extinguished, and within thirty days after the one hundred  
7 eightieth day of cessation of operations, the taxpayer shall  
8 pay to the department the tax liability against which the  
9 certified credit was claimed. For the purposes of this  
10 section, a taxpayer shall not be deemed to have ceased  
11 operations during reasonable periods for maintenance or  
12 retooling, for the repair or replacement of facilities damaged  
13 or destroyed or during labor disputes.

14 G. As used in this section:

15 (1) "advanced energy product" means a  
16 technology, product, system or component eligible for a federal  
17 tax credit under Section 45X of the federal Internal Revenue  
18 Code;

19 (2) "essential" means directly necessary to  
20 the production of an advanced energy products;

21 (3) "manufacturing equipment" means an  
22 essential machine, mechanism or tool or a component of an  
23 essential machine, mechanism or tool used directly and  
24 exclusively in a taxpayer's qualified manufacturing facility  
25 and that is subject to depreciation pursuant to the federal

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1 Internal Revenue Code by the taxpayer carrying on the  
2 manufacturing. "Manufacturing equipment" does not include a  
3 vehicle that leaves the site of a manufacturing operation for  
4 the purpose of transporting persons or property, including  
5 property for which the taxpayer claims a credit pursuant to  
6 Section 7-9-79 NMSA 1978;

7 (4) "qualified expenditure" means an  
8 expenditure made on or after January 1, 2025 and prior to  
9 January 1, 2033 for the purchase of that portion of the costs  
10 of manufacturing equipment dedicated to manufacturing advanced  
11 energy products; and

12 (5) "qualified manufacturing facility" means a  
13 facility located in New Mexico that employs personnel to  
14 perform production tasks with manufacturing equipment not  
15 previously existing at the facility to produce advanced energy  
16 products."

17 **SECTION 3. DELAYED REPEAL.**--Sections 1 and 2 of this act  
18 are repealed effective January 1, 2034.

19 **SECTION 4. APPLICABILITY.**--The provisions of this act  
20 apply to taxable years beginning on or after January 1, 2025.

21 **SECTION 5. EFFECTIVE DATE.**--The effective date of the  
22 provisions of this act is January 1, 2025.