AN ACT

RELATING TO TAXATION; AMENDING THE DEFINITION OF "ADVANCED ENERGY PRODUCT" IN 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. Section 7-2-18.39 NMSA 1978 (being Laws 2024, Chapter 67, Section 35) is amended to read:

"7-2-18.39. 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 beginning on or after January 1, 2025, and prior to January 1, 2033, may claim the tax credit in the amount provided in Subsection B of this section.

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

C. Prior to incurring a qualified expenditure, a taxpayer shall apply for preliminary certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Such preliminary certification shall be made in consultation with the economic development department and shall be limited to confirming that the qualified expenditures proposed to be made by the taxpayer will in whole or in part be used to produce advanced energy products and providing an estimate of the amount of tax credit for which the taxpayer may be eligible. Only one certificate of eligibility shall be issued for all activities performed at a qualified manufacturing facility, regardless of ownership of the facility.

D. Within twelve months of commencement of production of any advanced energy product, the taxpayer shall seek final certification from the energy, minerals and natural resources department. The total annual aggregate amount of advanced energy equipment income tax credits and advanced energy equipment corporate income tax credits that may be certified in a calendar year shall not exceed twenty-five million dollars ($25,000,000). An application for final certification shall include information required by the energy, minerals and natural resources department to determine eligibility for the tax credit, including

information substantiating qualified expenditures. If, after consultation with the economic development department, the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, the energy, minerals and natural resources department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed. The energy, minerals and natural resources department shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed-upon intervals. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer in increments of not less than one million dollars ($1,000,000); provided that if the total amount certified is less than one million dollars ($1,000,000), the certificate of the entire amount of the credit may be transferred. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer in an electronic format prescribed by the department.

E. A taxpayer allowed to claim the tax credit shall claim the credit in a manner required by the department. The tax credit shall be claimed within one year of receiving final certification from the energy, minerals

and natural resources department. The taxpayer shall claim the amount certified and approved against the taxpayer's income tax liabilities. Any amount of credit that exceeds the taxpayer's income tax liabilities may be carried forward for five consecutive taxable years. A taxpayer who claims the tax credit shall report to the department and the energy, minerals and natural resources department on the continued operations of the qualified manufacturing facility.

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

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

H. If the taxpayer or a successor in the business of the taxpayer ceases operations at the qualifying manufacturing facility or ceases to produce advanced energy products for at least one hundred eighty days within a two-

year period after the taxpayer has claimed the tax credit, any amount of credit that received final certification with respect to that facility that is not claimed against a taxpayer's tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer who received final certification pursuant to Subsection D of this section shall pay to the department the tax liability against which the certified credit was claimed. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

I. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

J. As used in this section:

(1) "advanced energy product" means:

(a) a solar energy component, including a solar module, photovoltaic cell, photovoltaic wafer, solar-grade polysilicon, torque tube, structural fastener or polymeric backsheet;

(b) a wind energy component, including a wind turbine blade, nacelle and tower;

(c) a battery component, including an electrode-active material, a battery cell and a battery module;

(d) a fusion machine and the components of a fusion machine that can transform atomic nuclei through fusion processes into different elements, isotopes or other particles, including associated systems essential to facilitate fusion processes;

(e) a critical mineral, if converted or purified to specified purities or forms, including aluminum, antimony, arsenic, barite, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc and zirconium; and

(f) an inverter that is an end product, which is suitable to convert direct current energy from one or more solar module or certified distributed wind energy systems into alternating current electricity, including a central inverter, commercial inverter, distributed wind inverter, microinverter, residential inverter or utility

inverter;

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

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

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

(5) "qualified manufacturing facility" means a facility located in New Mexico, including any connected, associated or subsidiary facilities, that employs personnel to perform production tasks with manufacturing equipment not previously existing at the facility to produce advanced energy products."

SECTION 2. Section 7-2A-19.3 NMSA 1978 (being Laws 2024, Chapter 67, Section 36) is amended to read:

"7-2A-19.3. ADVANCED ENERGY EQUIPMENT CORPORATE INCOME TAX CREDIT.--

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

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

C. Prior to incurring a qualified expenditure, a taxpayer shall apply for preliminary certification of eligibility for the tax credit from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. Such preliminary certification shall be made in consultation with the economic development department and shall be limited to confirming that the qualified expenditures proposed to be made by the

taxpayer will in whole or in part be used to produce advanced energy products and providing an estimate of the amount of tax credit for which the taxpayer may be eligible. Only one certificate of eligibility shall be issued for all activities performed at a qualified manufacturing facility, regardless of ownership of the facility.

D. Within twelve months of commencement of production of any advanced energy product, the taxpayer shall seek final certification from the energy, minerals and natural resources department. The total annual aggregate amount of advanced energy equipment corporate income tax credits and advanced energy equipment income tax credits that may be certified in a calendar year shall not exceed twenty-five million dollars ($25,000,000). An application for final certification shall include information required by the energy, minerals and natural resources department to determine eligibility for the tax credit, including information substantiating qualified expenditures. If, after consultation with the economic development department, the energy, minerals and natural resources department determines that the taxpayer meets the requirements of this section, the energy, minerals and natural resources department shall issue a dated certificate of eligibility to the taxpayer providing the amount of tax credit for which the taxpayer is eligible and the taxable years in which the credit may be claimed.

The energy, minerals and natural resources department shall provide the department with the certificates of eligibility issued pursuant to this subsection in an electronic format at regularly agreed-upon intervals. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer in increments of not less than one million dollars ($1,000,000); provided that if the total amount certified is less than one million dollars ($1,000,000), a certificate of the entire amount of the credit may be transferred. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer in an electronic format prescribed by the department.

E. A taxpayer allowed to claim the tax credit shall claim the credit in a manner required by the department. The tax credit shall be claimed within one year of receiving final certification from the energy, minerals and natural resources department. The taxpayer shall claim the amount certified and approved against the taxpayer's corporate income tax liabilities. Any amount of credit that exceeds the taxpayer's corporate income tax liabilities may be carried forward for five consecutive taxable years. A taxpayer that claims the tax credit shall report to the department and the energy, minerals and natural resources department on the continued operations of the qualified

manufacturing facility.

F. If the taxpayer or a successor in the business of the taxpayer ceases operations at the qualifying manufacturing facility or ceases to produce advanced energy products for at least one hundred eighty days within a two-year period after the taxpayer has claimed the tax credit, any amount of credit that received final certification with respect to that facility that is not claimed against a taxpayer's tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer that received final certification pursuant to Subsection D of this section shall pay to the department the tax liability against which the certified credit was claimed. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

G. The tax credit provided by this section shall be included in the tax expenditure budget pursuant to Section 7-1-84 NMSA 1978, including the annual aggregate cost of the tax credit.

H. As used in this section:

(1) "advanced energy product" means:

(a) a solar energy component, including

a solar module, photovoltaic cell, photovoltaic wafer, solar-grade polysilicon, torque tube, structural fastener or polymeric backsheet;

(b) a wind energy component, including a wind turbine blade, nacelle and tower;

(c) a battery component, including an electrode-active material, a battery cell and a battery module;

(d) a fusion machine and the components of a fusion machine that can transform atomic nuclei through fusion processes into different elements, isotopes or other particles, including associated systems essential to facilitate fusion processes;

(e) a critical mineral, if converted or purified to specified purities or forms, including aluminum, antimony, arsenic, barite, bismuth, cerium, cesium, chromium, cobalt, dysprosium, erbium, europium, fluorspar, gadolinium, gallium, germanium, graphite, hafnium, holmium, indium, iridium, lanthanum, lithium, lutetium, magnesium, manganese, neodymium, nickel, niobium, palladium, platinum, praseodymium, rhodium, rubidium, ruthenium, samarium, tantalum, tellurium, terbium, thulium, tin, titanium, tungsten, vanadium, ytterbium, yttrium, zinc and zirconium; and

(f) an inverter that is an end product,

which is suitable to convert direct current energy from one or more solar module or certified distributed wind energy systems into alternating current electricity, including a central inverter, commercial inverter, distributed wind inverter, microinverter, residential inverter or utility inverter;

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

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

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

(5) "qualified manufacturing facility" means

a facility located in New Mexico, including any connected, associated or subsidiary facilities, that employs personnel to perform production tasks with manufacturing equipment not previously existing at the facility to produce advanced energy products."

SECTION 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2026.