

Bill

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

AN ACT

RELATING TO TAXATION; PROVIDING CONSISTENT DEFINITIONS OF
"MODIFIED COMBINED TAX LIABILITY" FOR TAX DEDUCTION PURPOSES.

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

SECTION 1. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter
248, Section 3, as amended) is amended to read:

"7-1-3. DEFINITIONS.--Unless the context clearly indicates a
different meaning, the definitions of words and phrases as they
are stated in this section are to be used, and whenever in the Tax
Administration Act these words and phrases appear, the singular
includes the plural and the plural includes the singular:

A. "automated clearinghouse transaction" means an
electronic credit or debit transmitted through an automated
clearinghouse, payable to the state treasurer and deposited with
the fiscal agent of New Mexico;

1 B. "department" means the taxation and revenue
2 department, the secretary or any employee of the department
3 exercising authority lawfully delegated to that employee by the
4 secretary;

5 C. "electronic payment" means a payment made by
6 automated clearinghouse deposit, any funds wire transfer system or
7 a credit card, debit card or electronic cash transaction through
8 the internet;

9 D. "employee of the department" means any employee of
10 the department, including the secretary, or any person acting as
11 agent or authorized to represent or perform services for the
12 department in any capacity with respect to any law made subject to
13 administration and enforcement under the provisions of the Tax
14 Administration Act;

15 E. "financial institution" means any state or federally
16 chartered, federally insured depository institution;

17 F. "Internal Revenue Code" means the Internal Revenue
18 Code of 1986, as that code may be amended or its sections
19 renumbered;

20 G. "levy" means the lawful power, hereby invested in the
21 secretary, to take into possession or to require the present or
22 future surrender to the secretary or the secretary's delegate of
23 any property or rights to property belonging to a delinquent
24 taxpayer;

25 H. "local option gross receipts tax" means a tax

1 authorized to be imposed by a county or municipality upon the
2 taxpayer's gross receipts, as that term is defined in the Gross
3 Receipts and Compensating Tax Act, and required to be collected by
4 the department at the same time and in the same manner as the
5 gross receipts tax; "local option gross receipts tax" includes the
6 taxes imposed pursuant to the Municipal Local Option Gross
7 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act,
8 County Local Option Gross Receipts Taxes Act, Local Hospital Gross
9 Receipts Tax Act, County Correctional Facility Gross Receipts Tax
10 Act and such other acts as may be enacted authorizing counties or
11 municipalities to impose taxes on gross receipts, which taxes are
12 to be collected by the department in the same time and in the same
13 manner as it collects the gross receipts tax;

14 I. "managed audit" means a review and analysis conducted
15 by a taxpayer under an agreement with the department to determine
16 the taxpayer's compliance with a tax administered pursuant to the
17 Tax Administration Act and the presentation of the results to the
18 department for assessment of tax found to be due;

19 J. "net receipts" means the total amount of money paid
20 by taxpayers to the department in a month pursuant to a tax or tax
21 act less any refunds disbursed in that month with respect to that
22 tax or tax act; provided that, for the purposes of determining the
23 distributions and transfers required by the Tax Administration Act
24 with respect to the gross receipts tax imposed pursuant to Section
25 7-9-4 NMSA 1978, the compensating tax imposed pursuant to Section

1 7-9-7 NMSA 1978 and the withholding tax imposed on wages pursuant
2 to Section 7-3-3 NMSA 1978, "net receipts" also includes the
3 amount of a tax credit claimed and allowed in the month against
4 the tax or tax act;

5 K. "overpayment" means an amount paid, pursuant to any
6 law subject to administration and enforcement under the provisions
7 of the Tax Administration Act, by a person to the department or
8 withheld from the person in excess of tax due from the person to
9 the state at the time of the payment or at the time the amount
10 withheld is credited against tax due;

11 L. "paid" includes the term "paid over";

12 M. "pay" includes the term "pay over";

13 N. "payment" includes the term "payment over";

14 O. "person" means any individual, estate, trust,
15 receiver, cooperative association, club, corporation, company,
16 firm, partnership, limited liability company, limited liability
17 partnership, joint venture, syndicate, other association or gas,
18 water or electric utility owned or operated by a county or
19 municipality; "person" also means, to the extent permitted by law,
20 a federal, state or other governmental unit or subdivision, or an
21 agency, department or instrumentality thereof; and "person", as
22 used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an
23 officer or employee of a corporation, a member or employee of a
24 partnership or any individual who, as such, is under a duty to
25 perform any act in respect of which a violation occurs;

1 P. "property" means property or rights to property;

2 Q. "property or rights to property" means any tangible
3 property, real or personal, or any intangible property of a
4 taxpayer;

5 R. "return" means any tax or information return,
6 declaration of estimated tax or claim for refund, including any
7 amendments or supplements to the return, required or permitted
8 pursuant to a law subject to administration and enforcement
9 pursuant to the Tax Administration Act and filed with the
10 secretary or the secretary's delegate by or on behalf of any
11 person;

12 S. "return information" means a taxpayer's name,
13 address, government-issued identification number and other
14 identifying information; any information contained in or derived
15 from a taxpayer's return; any information with respect to any
16 actual or possible administrative or legal action by an employee
17 of the department concerning a taxpayer's return, such as audits,
18 managed audits, denial of credits or refunds, assessments of tax,
19 penalty or interest, protests of assessments or denial of refunds
20 or credits, levies or liens; or any other information with respect
21 to a taxpayer's return or tax liability that was not obtained from
22 public sources or that was created by an employee of the
23 department; but "return information" does not include statistical
24 data or other information that cannot be associated with or
25 directly or indirectly identify a particular taxpayer;

1 T. "secretary" means the secretary of taxation and
2 revenue and, except for purposes of Subsection B of Section 7-1-4
3 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978, also
4 includes the deputy secretary or a division director or deputy
5 division director delegated by the secretary;

6 U. "secretary or the secretary's delegate" means the
7 secretary or any employee of the department exercising authority
8 lawfully delegated to that employee by the secretary;

9 V. "security" means money, property or rights to
10 property or a surety bond;

11 W. "state" means any state of the United States, the
12 District of Columbia, the commonwealth of Puerto Rico and any
13 territory or possession of the United States;

14 X. "tax" means the total amount of each tax imposed and
15 required to be paid, withheld and paid or collected and paid under
16 provision of any law made subject to administration and
17 enforcement according to the provisions of the Tax Administration
18 Act and, unless the context otherwise requires, includes the
19 amount of any interest or civil penalty relating thereto; "tax"
20 also means any amount of any abatement of tax made or any credit,
21 rebate or refund paid or credited by the department under any law
22 subject to administration and enforcement under the provisions of
23 the Tax Administration Act to any person contrary to law and
24 includes, unless the context requires otherwise, the amount of any
25 interest or civil penalty relating thereto;

1 Y. "taxpayer" means a person liable for payment of any
2 tax, a person responsible for withholding and payment or for
3 collection and payment of any tax or a person to whom an
4 assessment has been made, if the assessment remains unabated or
5 the amount thereof has not been paid; and

6 Z. "tax return preparer" means a person who prepares for
7 others for compensation or who employs one or more persons to
8 prepare for others for compensation any return of income tax, a
9 substantial portion of any return of income tax, any claim for
10 refund with respect to income tax or a substantial portion of any
11 claim for refund with respect to income tax; provided that a
12 person shall not be a "tax return preparer" merely because such
13 person:

14 (1) furnishes typing, reproducing or other
15 mechanical assistance;

16 (2) is an employee who prepares an income tax
17 return or claim for refund with respect to an income tax return of
18 the employer, or of an officer or employee of the employer, by
19 whom the person is regularly and continuously employed; or

20 (3) prepares as a trustee or other fiduciary an
21 income tax return or claim for refund with respect to income tax
22 for any person."

23 SECTION 2. Section 7-2E-1.1 NMSA 1978 (being Laws 2007,
24 Chapter 172, Section 2) is amended to read:

25 "7-2E-1.1. TAX CREDIT--RURAL JOB TAX CREDIT.--

1 A. The tax credit created by this section may be
2 referred to as the "rural job tax credit". Every eligible employer
3 may apply for, and the taxation and revenue department may allow,
4 a tax credit for each qualifying job the employer creates. The
5 maximum tax credit amount with respect to each qualifying job is
6 equal to:

7 (1) twenty-five percent of the first sixteen
8 thousand dollars (\$16,000) in wages paid for the qualifying job if
9 the job is performed or based at a location in a tier one area; or

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

13 B. The amount of the rural job tax credit shall be six
14 and one-fourth percent of the first sixteen thousand dollars
15 (\$16,000) in wages paid for the qualifying job in a qualifying
16 period. The rural job tax credit may be claimed for each
17 qualifying job for a maximum of:

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

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

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

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

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

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

24 F. The holder of the tax credit document may apply all
25 or a portion of the rural job tax credit granted by the document

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

8 G. Notwithstanding the provisions of Section 7-1-8 NMSA
9 1978, the taxation and revenue department may disclose to any
10 person the balance of rural job tax credit remaining on any tax
11 credit document and the balance of credit remaining on that
12 document for any period.

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

20 I. An eligible employer that creates a qualifying job in
21 the period beginning on or after July 1, 2006 but before July 1,
22 2007 or creates a qualifying job, the qualifying period of which
23 includes a part of the period between July 1, 2006 and July 1,
24 2007, for which the eligible employer has not received a rural job
25 tax credit document pursuant to this section may submit an

1 application for, and the taxation and revenue department may issue
2 to the eligible employer applying, a document granting a tax
3 credit for the appropriate qualifying period. Claims for a rural
4 job tax credit submitted pursuant to the provisions of this
5 subsection shall be submitted within three years from the date of
6 issuance of the rural job tax credit document.

7 J. As used in this section:

8 (1) "eligible employee" means any individual other
9 than an individual who:

10 (a) bears any of the relationships described
11 in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the
12 employer or, if the employer is a corporation, to an individual
13 who owns, directly or indirectly, more than fifty percent in value
14 of the outstanding stock of the corporation or, if the employer is
15 an entity other than a corporation, to any individual who owns,
16 directly or indirectly, more than fifty percent of the capital and
17 profits interests in the entity;

18 (b) if the employer is an estate or trust, is
19 a grantor, beneficiary or fiduciary of the estate or trust or is
20 an individual who bears any of the relationships described in
21 Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a
22 grantor, beneficiary or fiduciary of the estate or trust; or

23 (c) is a dependent, as that term is described
24 in 26 U.S.C. Section 152(a)(9), of the employer or, if the
25 taxpayer is a corporation, of an individual who owns, directly or

1 indirectly, more than fifty percent in value of the outstanding
2 stock of the corporation or, if the employer is an entity other
3 than a corporation, of any individual who owns, directly or
4 indirectly, more than fifty percent of the capital and profits
5 interests in the entity or, if the employer is an estate or trust,
6 of a grantor, beneficiary or fiduciary of the estate or trust;

7 (2) "eligible employer" means an employer
8 who has been approved for in-plant training assistance pursuant to
9 Section 21-19-7 NMSA 1978;

10 (3) "metropolitan statistical area" means a
11 metropolitan statistical area in New Mexico as determined by the
12 United States bureau of the census;

13 (4) "modified combined tax liability" means the
14 total liability of the taxpayer for the reporting period for the
15 gross receipts tax imposed ~~[by]~~ pursuant to Section 7-9-4 NMSA
16 1978, ~~[together with any tax collected at the same time and in the~~
17 ~~same manner as that gross receipts tax, such as]~~ the compensating
18 tax imposed pursuant to Section 7-9-7 NMSA 1978 and the
19 withholding tax ~~[the interstate telecommunications gross receipts~~
20 ~~tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the~~
21 ~~surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount~~
22 ~~of any credit other than the rural job tax credit applied against~~
23 ~~any or all of these taxes or surcharges; but]~~ imposed on wages
24 pursuant to Section 7-3-3 NMSA 1978 reduced by the amount of any
25 other tax credit claimed and allowed against those taxes for the

1 reporting period but not reduced for the amount of any
2 distribution or transfer pursuant to the Tax Administration Act
3 with respect to net receipts from those liabilities; "modified
4 combined tax liability" excludes [~~all amounts collected with~~
5 ~~respect to~~] any liability resulting from a local option gross
6 receipts [~~taxes~~] tax;

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

10 (6) "qualifying period" means the period of twelve
11 months beginning on the day an eligible employee begins working in
12 a qualifying job or the period of twelve months beginning on the
13 anniversary of the day an eligible employee began working in a
14 qualifying job;

15 (7) "rural area" means any part of the state other
16 than:

- 17 (a) an H class county;
- 18 (b) the state fairgrounds;
- 19 (c) an incorporated municipality within a
20 metropolitan statistical area if the municipality's population is
21 thirty thousand or more according to the most recent federal
22 decennial census; and
- 23 (d) any area within ten miles of the exterior
24 boundaries of a municipality described in Subparagraph
25 (c) of this paragraph;

1 (8) "tier one area" means:

2 (a) any municipality within the rural area if
3 the municipality's population according to the most recent federal
4 decennial census is fifteen thousand or less; or

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

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

11 (10) "wages" means wages as defined by Paragraphs
12 (1), (2) and (3) of 26 U.S.C. Section 51(c)."

13 SECTION 3. Section 7-9A-3 NMSA 1978 (being Laws 1979, Chapter
14 347, Section 3, as amended) is amended to read:

15 "7-9A-3. DEFINITIONS.--As used in the Investment Credit Act:

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

20 B. "equipment" means an essential machine, mechanism or
21 tool, or a component or fitting thereof, used directly and
22 exclusively in a manufacturing operation and subject to
23 depreciation for purposes of the Internal Revenue Code by the
24 taxpayer carrying on the manufacturing operation. "Equipment" does
25 not include any vehicle that leaves the site of the manufacturing

1 operation for purposes of transporting persons or property or any
2 property for which the taxpayer claims the credit pursuant to
3 Section 7-9-79 NMSA 1978;

4 C. "manufacturing" means combining or processing
5 components or materials, including recyclable materials, to
6 increase their value for sale in the ordinary course of business,
7 including genetic testing and production, but not including:

8 (1) construction;

9 (2) farming;

10 (3) power generation, except for electricity
11 generation at a facility other than one for which both location
12 approval and a certificate of convenience and necessity are
13 required prior to commencing construction or operation of the
14 facility, pursuant to the Public Utility Act [~~and the Electric~~
15 ~~Utility Industry Restructuring Act of 1999~~]; or

16 (4) processing natural resources, including
17 hydrocarbons;

18 D. "manufacturing operation" means a plant, including a
19 genetic testing and production facility, employing personnel to
20 perform production tasks, in conjunction with equipment not
21 previously existing at the site, to produce goods;

22 E. "modified combined tax liability" means the total
23 liability of the taxpayer for the reporting period for the gross
24 receipts tax imposed pursuant to Section 7-9-4 NMSA 1978, the
25 compensating tax imposed pursuant to Section 7-9-7 NMSA 1978 and

1 the withholding tax imposed on wages pursuant to Section 7-3-3
2 NMSA 1978 reduced by the amount of any other tax credit claimed
3 and allowed against those taxes for the reporting period but not
4 reduced for the amount of any distribution or transfer pursuant to
5 the Tax Administration Act with respect to net receipts from those
6 liabilities; "modified combined tax liability" excludes any
7 liability resulting from a local option gross receipts tax;

8 ~~[E-]~~ F. "recyclable materials" means materials that
9 would otherwise become solid waste if not recycled and that can be
10 collected, separated or processed and placed in use in the form of
11 raw materials or products; and

12 ~~[F-]~~ G. "taxpayer" means a person liable for payment of
13 any tax, a person responsible for withholding and payment over or
14 for collection and payment over of any tax or a person to whom an
15 assessment has been made, if the assessment
16 remains unabated or the amount thereof has not been paid."

17 SECTION 4. Section 7-9A-5 NMSA 1978 (being Laws 1979, Chapter
18 347, Section 5, as amended by Laws 1991, Chapter 159, Section 4
19 and also by Laws 1991, Chapter 162, Section 4) is amended to read:

20 "7-9A-5. INVESTMENT CREDIT--AMOUNT--CLAIMANT.--The investment
21 credit provided for in the Investment Credit Act is an amount
22 equal to the percent of the compensating tax rate provided for in
23 the Gross Receipts and Compensating Tax Act applied to the value
24 of the qualified equipment and may be claimed against a taxpayer's
25 modified combined tax liability by the taxpayer carrying on a

1 manufacturing operation in New Mexico."

2 SECTION 5. Section 7-9F-1 NMSA 1978 (being Laws 2000 (2nd
3 S.S.), Chapter 22, Section 1) is amended to read:

4 "7-9F-1. SHORT TITLE.--~~[This act]~~ Chapter 7, Article 9F NMSA
5 1978 may be cited as the "Technology Jobs Tax Credit Act".

6 SECTION 6. Section 7-9F-3 NMSA 1978 (being Laws 2000 (2nd
7 S.S.), Chapter 22, Section 3) is amended to read:

8 "7-9F-3. DEFINITIONS.--As used in the Technology Jobs Tax
9 Credit Act:

10 A. "affiliate" means a person who directly or indirectly
11 owns or controls, is owned or controlled by or is under common
12 ownership or control with another person through ownership of
13 voting securities or other ownership interests representing a
14 majority of the total voting power of the entity;

15 B. "annual payroll expense" means the wages paid or
16 payable by the taxpayer for the one-year period ending on the day
17 the taxpayer applies for an additional credit pursuant to the
18 Technology Jobs Tax Credit Act;

19 C. "base payroll expense" means the wages paid or
20 payable by the taxpayer for the one-year period ending on the day
21 one year prior to the day the taxpayer applies for an additional
22 credit pursuant to the Technology Jobs Tax Credit Act, adjusted
23 for any increase in the consumer price index for the United States
24 for all items as published by the United States department of
25 labor since that day;

1 D. "department" means the taxation and revenue
2 department, the secretary of taxation and revenue or any employee
3 of the department exercising authority lawfully delegated to that
4 employee by the secretary;

5 E. "facility" means a factory, mill, plant, refinery,
6 warehouse, dairy, feedlot, building or complex of buildings
7 located within the state, including the land on which [~~the~~
8 ~~facility~~] it is located and all machinery, equipment and other
9 real and tangible personal property located at or within [~~the~~
10 ~~facility~~] it and used in connection with [~~the~~] its operation [~~of~~
11 ~~the facility~~];

12 F. "modified combined tax liability" means the total
13 liability of the taxpayer for the reporting period for the gross
14 receipts tax imposed pursuant to Section 7-9-4 NMSA 1978, the
15 compensating tax imposed pursuant to Section 7-9-7 NMSA 1978 and
16 the withholding tax imposed on wages pursuant to Section 7-3-3
17 NMSA 1978 reduced by the amount of any other tax credit claimed and
18 allowed against those taxes for the reporting period but not
19 reduced for the amount of any distribution or transfer pursuant to
20 the Tax Administration Act with respect to net receipts from those
21 liabilities; "modified combined tax liability" excludes any
22 liability resulting from a local option gross receipts tax;

23 [~~F.~~] G. "qualified expenditure" means an expenditure or
24 an allocated portion of an expenditure by a taxpayer in connection
25 with qualified research at a qualified facility, including

1 expenditures for depletable land and rent paid or incurred for
2 land, improvements, the allowable amount paid or incurred to
3 operate or maintain a facility, buildings, equipment, computer
4 software, computer software upgrades, consultants and contractors
5 performing work in New Mexico, payroll, technical books and
6 manuals and test materials, but not including any expenditure on
7 property that is owned by a municipality or county in connection
8 with an industrial revenue bond project, property for which the
9 taxpayer has received any credit pursuant to ~~[the Capital~~
10 ~~Equipment Tax Credit Act or]~~ the Investment Credit Act, property
11 that was owned by the taxpayer or an affiliate before the
12 effective date of the Technology Jobs Tax Credit Act or research
13 and development expenditures reimbursed by a person who is not an
14 affiliate of the taxpayer. If ~~[an]~~ a "qualified expenditure" is an
15 allocation of an expenditure, the cost accounting methodology used
16 for the allocation of the expenditure shall be the same cost
17 accounting methodology used by the taxpayer in its other business
18 activities;

19 ~~[G.]~~ H. "qualified facility" means a facility in New
20 Mexico at which qualified research is conducted other than a
21 facility operated by a taxpayer for the United States or any
22 agency, department or instrumentality thereof;

23 ~~[H.]~~ I. "qualified research" means research:

24 (1) that is undertaken for the purpose of
25 discovering information:

1 (a) that is technological in nature; and

2 (b) the application of which is intended to
3 be useful in the development of a new or improved business
4 component of the taxpayer; and

5 (2) substantially all of the activities of which
6 constitute elements of a process of experimentation related to a
7 new or improved function, performance, reliability or quality, but
8 not related to style, taste or cosmetic or seasonal design
9 factors;

10 [~~I.~~] J. "rural area" means any area of the state other
11 than a class A county, a class B county that has a net taxable
12 value for rate-setting purposes for any property tax year of more
13 than three billion dollars (\$3,000,000,000), the municipality of
14 Rio Rancho and the area within three miles of the exterior
15 boundaries of a class A county;

16 [~~J.~~] K. "taxpayer" means any of the following persons,
17 other than a federal, state or other governmental unit or
18 subdivision or an agency, department, institution or
19 instrumentality thereof:

20 (1) a person liable for payment of any tax;

21 (2) a person responsible for withholding and
22 payment or collection and payment of any tax;

23 (3) a person to whom an assessment has been made
24 if the assessment remains unabated or the assessed amount has not
25 been paid; or

(4) for purposes of the additional credit against the taxpayer's income tax pursuant to the Technology Jobs Tax Credit Act and to the extent of their respective interest in that entity, the shareholders, members, partners or other owners of:

(a) a small business corporation that has elected to be treated as an S corporation for federal income tax purposes; or

(b) an entity treated as a partnership or disregarded entity for federal income tax purposes; and

~~[K.]~~ L. "wages" means remuneration ~~[in cash or other form]~~ for services performed by an employee for an employer."

SECTION 7. Section 7-9F-5 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 22, Section 5) is amended to read:

"7-9F-5. BASIC CREDIT--ADDITIONAL CREDIT--AMOUNTS--CLAIMANT.-

-

A. The basic credit provided for in the Technology Jobs Tax Credit Act ~~[is]~~ may be claimed against a taxpayer's modified combined tax liability due to the state in an amount equal to four percent of the amount of qualified expenditures made by a taxpayer ~~[conducting qualified research at a qualified facility]~~.

B. The additional credit provided for in the Technology Jobs Tax Credit Act ~~[is]~~ may be claimed against a taxpayer's tax liability due pursuant to the Income Tax Act or the taxpayer's corporate income tax liability due pursuant to the Corporate Income and Franchise Tax Act in an amount equal to four percent of

1 the amount of qualified expenditures made by a taxpayer
2 ~~[conducting qualified research at a qualified facility]."~~

3 SECTION 8. Section 7-9F-9 NMSA 1978 (being Laws 2000 (2nd
4 S.S.), Chapter 22, Section 9) is amended to read:

5 "7-9F-9. CLAIMING ~~[THE CREDIT FOR]~~ CREDITS AGAINST CERTAIN
6 TAXES.--

7 A. A taxpayer may apply for approval of a credit within
8 one year following the end of the calendar year in which the
9 qualified expenditure was made.

10 B. A taxpayer having applied for and been granted
11 approval for a basic credit by the department pursuant to the
12 Technology Jobs Tax Credit Act may claim the amount of the
13 approved basic credit against the taxpayer's ~~[compensating tax,~~
14 ~~gross receipts tax or withholding tax due to the state of New~~
15 ~~Mexico]~~ modified combined tax liability; provided that no taxpayer
16 may claim an amount of approved basic credit for any reporting
17 period that exceeds the sum of the taxpayer's ~~[gross receipts tax,~~
18 ~~compensating tax and withholding tax]~~ modified combined tax
19 liability due for that reporting period.

20 C. A taxpayer who has applied for and been granted
21 approval for an additional credit by the department pursuant to
22 the Technology Jobs Tax Credit Act may claim the amount of the
23 approved additional credit against the taxpayer's income tax or
24 corporate income tax due the state of New Mexico; provided that:

25 (1) no taxpayer may claim an amount of approved

1 additional credit for any reporting period that exceeds the amount
2 of the taxpayer's income tax or corporate income tax due for that
3 reporting period; and

4 (2) a husband and wife who file separate returns
5 pursuant to the Income Tax Act for a taxable year in which they
6 could have filed a joint return may each claim only one-half of
7 the additional credit that would have been allowed them on a joint
8 return.

9 D. Any amount of approved basic credit not claimed
10 against the taxpayer's [~~gross receipts tax, compensating tax or~~
11 ~~withholding tax~~] modified combined tax liability due and any
12 amount of approved additional credit not claimed against the
13 taxpayer's income tax or corporate income tax due for a reporting
14 period may be claimed in subsequent reporting periods; provided
15 that a husband and wife who file separate returns pursuant to the
16 Income Tax Act for a taxable year in which they could have filed a
17 joint return may each claim only one-half of the additional credit
18 that would have been allowed them on a joint return."

19 SECTION 9. Section 7-9F-11 NMSA 1978 (being Laws 2000 (2nd
20 S.S.), Chapter 22, Section 11) is amended to read:

21 "7-9F-11. RECAPTURE.--If the taxpayer or a successor in
22 business of the taxpayer ceases operations in New Mexico for at
23 least one hundred eighty consecutive days within a two-year period
24 after the taxpayer has claimed a basic credit or an additional
25 credit at a facility [~~with respect to which the taxpayer has~~

1 ~~claimed the basic credit or the additional credit~~], the department
2 shall grant no further basic credit or additional credit to the
3 taxpayer with respect to that facility. In addition, any amount of
4 approved basic credit not claimed against the taxpayer's [~~gross~~
5 ~~receipts tax, compensating tax or withholding tax~~] modified
6 combined tax liability and any amount of approved additional
7 credit not claimed against the taxpayer's income tax or corporate
8 income tax shall be extinguished, and within thirty days after the
9 one hundred eightieth day of the cessation of operations, the
10 taxpayer shall pay the amount of any [~~gross receipts tax,~~
11 ~~compensating tax or withholding tax~~] modified combined tax
12 liability for which an approved basic credit was taken and any
13 income tax or corporate income tax against which an approved
14 additional credit was taken. For purposes of this section, a
15 taxpayer shall not be deemed to have ceased operations during
16 reasonable periods for maintenance or retooling or for the repair
17 or replacement of facilities damaged or destroyed or during the
18 continuance of labor disputes."

19 SECTION 10. Section 7-9G-1 NMSA 1978 (being Laws 2004,
20 Chapter 15, Section 1, as amended) is amended to read:

21 "7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING
22 HIGH-WAGE JOBS.--

23 A. A taxpayer who is an eligible employer may apply for,
24 and the taxation and revenue department may allow, a tax credit
25 for each new high-wage economic-based job. The credit provided in

1 this section may be referred to as the "high-wage jobs tax
2 credit".

3 B. The high-wage jobs tax credit may be claimed and
4 allowed in an amount equal to ten percent of the wages and
5 benefits distributed to an eligible employee in a new high-wage
6 economic-based job, but shall not exceed twelve thousand dollars
7 (\$12,000).

8 C. The high-wage jobs tax credit may be claimed by an
9 eligible employer for each new high-wage economic-based job
10 performed for the year in which the new high-wage economic-based
11 job is created and for the three following qualifying periods.

12 D. A new high-wage economic-based job shall not be
13 eligible for a credit pursuant to this section unless the eligible
14 employer's total number of employees with new high-wage economic-
15 based jobs on the last day of the qualifying period at the
16 location at which the job is performed or based is at least one
17 more than the number on the day prior to the date the job was
18 created.

19 E. With respect to each new high-wage economic-based job
20 for which an eligible employer seeks the high-wage jobs tax
21 credit, the employer shall certify:

22 (1) the amount of wages paid to each eligible
23 employee in a new high-wage economic-based job during each
24 qualifying period;

25 (2) the number of weeks the position was occupied

1 during the qualifying period;

2 (3) whether the new high-wage economic-based job
3 was in a municipality with a population of forty thousand or more
4 or with a population of less than forty thousand according to the
5 most recent federal decennial census and whether the job was in
6 the unincorporated area of a county; and

7 (4) the total number of employees employed by the
8 employer at the job location on the day prior to the qualifying
9 period and on the last day of the qualifying period.

10 F. To receive a high-wage jobs tax credit with respect
11 to any qualifying period, an eligible employer shall apply to the
12 taxation and revenue department on forms and in the manner
13 prescribed by the department. The application shall include a
14 certification made pursuant to Subsection E of this section.

15 G. The credit provided in this section may be deducted
16 from the modified combined tax liability of a taxpayer. If the
17 credit exceeds the modified combined tax liability of the
18 taxpayer, the excess shall be refunded to the taxpayer.

19 H. The economic development department shall report to
20 the appropriate interim legislative committee before November 1 of
21 each year the cost of this tax credit to the state and its impact
22 on company recruitment and job creation.

23 I. As used in this section:

24 (1) "benefits" means any employee benefit plan as
25 defined in Title 1, Section 3 of the federal Employee Retirement

1 Income Security Act of 1974, 29 U.S.C. 1002;

2 (2) "eligible employee" means an individual who is
3 employed by an eligible employer and who is a resident of New
4 Mexico; "eligible employee" does not include an individual who:

5 (a) bears any of the relationships described
6 in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the
7 employer or, if the employer is a corporation, to an individual
8 who owns, directly or indirectly, more than fifty percent in value
9 of the outstanding stock of the corporation or, if the employer is
10 an entity other than a corporation, to an individual who owns,
11 directly or indirectly, more than fifty percent of the capital and
12 profits interest in the entity;

13 (b) if the employer is an estate or trust, is
14 a grantor, beneficiary or fiduciary of the estate or trust or is
15 an individual who bears any of the relationships described in
16 Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a
17 grantor, beneficiary or fiduciary of the estate or trust;

18 (c) is a dependent, as that term is described
19 in 26 U.S.C. Section 152(a)(9), of the employer or, if the
20 taxpayer is a corporation, of an individual who owns, directly or
21 indirectly, more than fifty percent in value of the outstanding
22 stock of the corporation or, if the employer is an entity other
23 than a corporation, of an individual who owns, directly or
24 indirectly, more than fifty percent of the capital and profits
25 interest in the entity or, if the employer is an estate or trust,

1 of a grantor, beneficiary or fiduciary of the estate or trust; or

2 (d) is working or has worked as an employee
3 or as an independent contractor for an entity that directly or
4 indirectly owns stock in a corporation of the eligible employer or
5 other interest of the eligible employer that represents fifty
6 percent or more of the total voting power of that entity or has a
7 value equal to fifty percent or more of the capital and profits
8 interest in the entity;

9 (3) "eligible employer" means an employer that:

10 (a) made more than fifty percent of its sales
11 to persons outside New Mexico during the most recent twelve months
12 of the employer's modified combined tax liability reporting
13 periods ending prior to claiming a high-wage jobs tax credit; or

14 (b) is eligible for development training
15 program assistance pursuant to Section 21-19-7 NMSA 1978;

16 (4) "modified combined tax liability" means the
17 total liability of the taxpayer for the reporting period for the
18 gross receipts tax imposed ~~[by]~~ pursuant to Section 7-9-4 NMSA
19 1978, ~~[together with any tax collected at the same time and in the~~
20 ~~same manner as the gross receipts tax, such as]~~ the compensating
21 tax imposed pursuant to Section 7-9-7 NMSA 1978 and the
22 withholding tax ~~[the interstate telecommunications gross receipts~~
23 ~~tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the~~
24 ~~surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount~~
25 ~~of any credit other than the high-wage jobs tax credit applied~~

1 ~~against any or all of these taxes or surcharges; but~~ imposed on
2 wages pursuant to Section 7-3-3 NMSA 1978 reduced by the amount of
3 any other tax credit claimed and allowed against those taxes for
4 the reporting period but not reduced for the amount of any
5 distribution or transfer pursuant to the Tax Administration Act
6 with respect to net receipts from those liabilities; "modified
7 combined tax liability" excludes ~~[all amounts collected with~~
8 ~~respect to]~~ any liability resulting from a local option gross
9 receipts ~~[taxes]~~ tax;

10 (5) "new high-wage economic-based job" means a job
11 created by an eligible employer on or after July 1, 2004 and prior
12 to July 1, 2015 that is occupied for at least forty-eight weeks of
13 a qualifying period by an eligible employee who is paid wages
14 calculated for the qualifying period to be at least:

15 (a) forty thousand dollars (\$40,000) if the
16 job is performed or based in a municipality with a population of
17 forty thousand or more according to the most recent federal
18 decennial census; and

19 (b) twenty-eight thousand dollars (\$28,000)
20 if the job is performed or based in a municipality with a
21 population of less than forty thousand according to the most
22 recent federal decennial census or in the unincorporated area of a
23 county;

24 (6) "qualifying period" means the period of twelve
25 months beginning on the day an eligible employee begins working in

1 a new high-wage economic-based job or the period of twelve months
2 beginning on the anniversary of the day an eligible employee began
3 working in a new high-wage economic-based job; and

4 (7) "wages" means wages as defined in Paragraphs
5 (1), (2) and (3) of 26 U.S.C. Section 51(c)."

6 Section 11. Section 7-9G-2 NMSA 1978 (being Laws 2007, Chapter
7 229, Section 1) is amended to read:

8 "7-9G-2. ADVANCED ENERGY COMBINED REPORTING TAX CREDIT--GROSS
9 RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--

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

16 B. As used in this section:

17 (1) "advanced energy tax credit" means the
18 advanced energy income tax credit, the advanced energy corporate
19 income tax credit and the advanced energy combined reporting tax
20 credit;

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

25 (a) emits the lesser of: 1) what is

1 achievable with the best available control technology; or 2)
2 thirty-five thousandths pound per million British thermal units of
3 sulfur dioxide, twenty-five thousandths pound per million British
4 thermal units of oxides of nitrogen and one hundredth pound per
5 million British thermal units of total particulates in the flue
6 gas;

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

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

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

25 (3) "department" means the taxation and revenue

1 department, the secretary of taxation and revenue or any employee
2 of the department exercising authority lawfully delegated to that
3 employee by the secretary;

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

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

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

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

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

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

~~(8)] "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;~~

(8) "modified combined tax liability" means the total liability of the taxpayer for the reporting period for the gross receipts tax imposed pursuant to Section 7-9-4 NMSA 1978, the compensating tax imposed pursuant to Section 7-9-7 NMSA 1978 and the withholding tax imposed on wages pursuant to Section 7-3-3

1 NMSA 1978 reduced by the amount of any other tax credit claimed
2 and allowed against those taxes for the reporting period but not
3 reduced for the amount of any distribution or transfer pursuant to
4 the Tax Administration Act with respect to net receipts from those
5 liabilities; "modified combined tax liability" excludes any
6 liability resulting from a local option gross receipts tax;

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

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

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

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

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

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

23 (e) a new or repowered coal-based electric
24 generating facility and an associated coal gasification facility;

25 (11) "recycled energy" means energy produced by a

1 generation unit with a name-plate capacity of not more than
2 fifteen megawatts that converts the otherwise lost energy from the
3 exhaust stacks or pipes to electricity without combustion of
4 additional fossil fuel;

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

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

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

19 C. A taxpayer that holds an interest in a qualified
20 generating facility may be allocated the right to claim the
21 advanced energy combined reporting tax credit without regard to
22 the taxpayer's relative interest in the qualified generating
23 facility if:

24 (1) the business entity making the allocation
25 provides notice of the allocation and the taxpayer's interest in

1 the qualified generating facility to the department on forms
2 prescribed by the department;

3 (2) allocations to the taxpayer and all other
4 taxpayers allocated a right to claim the advanced energy tax
5 credit shall not exceed one hundred percent of the advanced energy
6 tax credit allowed for the qualified generating facility; and

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

11 D. Upon receipt of the notice of an allocation of the
12 right to claim all or a portion of the advanced energy combined
13 reporting tax credit, the department shall verify the allocation
14 due to the recipient.

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

1 taxpayers shall submit a copy of the relative interests attributed
2 to each interest holder to the department, and any change to the
3 apportioned interests shall be submitted to the department. The
4 designated person and the department may identify a mutually
5 acceptable reporting schedule.

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

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

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

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

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

25 J. The aggregate amount of advanced energy tax credit

1 that may be claimed with respect to each qualified generating
2 facility shall not exceed sixty million dollars (\$60,000,000).

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

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

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

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

18 (4) shall:

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

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

25 (c) deposit fees collected pursuant to this

1 paragraph in the state air quality permit fund created pursuant to
2 Section 74-2-15 NMSA 1978; and

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

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

1 facility was beyond the facility's control, in which case the
2 department of environment shall determine, after a public hearing,
3 the amount of the tax credit that should be repaid to the state.
4 The department of environment, in its determination, shall
5 consider the environmental performance of the facility and the
6 extent to which the inability to meet the sequestration
7 requirements of a qualified generating facility was in the control
8 of the taxpayer. The repayment as determined by the department of
9 environment shall be paid within one hundred eighty days following
10 a final order by the department of environment.

11 M. Expenditures for which a taxpayer claims an advanced
12 energy combined reporting tax credit pursuant to this section are
13 ineligible for credits pursuant to the provisions of the
14 Investment Credit Act or any other credit against personal income
15 tax, corporate income tax, compensating tax, gross receipts tax or
16 withholding tax.

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

20 SECTION 12. Section 7-9I-2 NMSA 1978 (being Laws 2005,
21 Chapter 104, Section 18, as amended) is amended to read:

22 "7-9I-2. DEFINITIONS.--As used in the Affordable Housing Tax
23 Credit Act:

24 A. "affordable housing project" means land acquisition,
25 construction, building acquisition, remodeling, improvement,

1 rehabilitation, conversion or weatherization for residential
2 housing that is approved by the authority and that includes
3 single-family housing or multifamily housing;

4 B. "authority" means the New Mexico mortgage finance
5 authority;

6 C. "department" means the taxation and revenue
7 department;

8 D. "modified combined tax liability" means the total
9 liability of a taxpayer for the reporting period for the gross
10 receipts tax imposed ~~[by]~~ pursuant to Section 7-9-4 NMSA 1978,
11 ~~[together with any tax collected at the same time and in the same~~
12 ~~manner as the gross receipts tax, such as]~~ the compensating tax
13 imposed pursuant to Section 7-9-7 NMSA 1978 and the withholding
14 tax ~~[the interstate telecommunications gross receipts tax, the~~
15 ~~surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge~~
16 ~~imposed by Section 63-9F-11 NMSA 1978, minus the amount of any~~
17 ~~credit other than the affordable housing tax credit applied~~
18 ~~against any or all of these taxes or surcharges; but]~~ imposed on
19 wages pursuant to Section 7-3-3 NMSA 1978 reduced by the amount of
20 any other tax credit claimed and allowed against those taxes for
21 the reporting period but not reduced for the amount of any
22 distribution or transfer pursuant to the Tax Administration Act
23 with respect to net receipts from those liabilities; "modified
24 combined tax liability" excludes ~~[all amounts collected with~~
25 ~~respect to]~~ any liability resulting from a local option gross

1 receipts [~~taxes and governmental gross receipts taxes~~] tax; and

2 E. "person" means an individual, county, municipality,
3 tribal government, housing authority, corporation, limited
4 liability company, partnership, joint venture, syndicate,
5 association or nonprofit organization."

6 SECTION 13. Section 7-9J-1 NMSA 1978 (being Laws 2007,
7 Chapter 204, Section 11) is amended to read:

8 "7-9J-1. SHORT TITLE.--~~[Sections 11 through 18 of this act]~~
9 Chapter 7, Article 9J NMSA 1978 may be cited as the "Alternative
10 Energy Product Manufacturers Tax Credit Act".

11 SECTION 14. Section 7-9J-2 NMSA 1978 (being Laws 2007,
12 Chapter 204, Section 12) is amended to read:

13 "7-9J-2. DEFINITIONS.--As used in the Alternative Energy
14 Product Manufacturers Tax Credit Act:

15 A. "alternative energy product" means an alternative
16 energy vehicle, fuel cell system, renewable energy system or any
17 component of an alternative energy vehicle, fuel cell system or
18 renewable energy system or components for integrated gasification
19 combined cycle coal facilities and equipment related to the
20 sequestration of carbon from integrated gasification combined
21 cycle plants;

22 B. "alternative energy vehicle" means a motor vehicle
23 manufactured by an original equipment manufacturer that fully
24 warrants and certifies that the motor vehicle meets the federal
25 motor vehicle safety standards and is designed to be propelled in

1 whole or in part by electricity; "alternative energy vehicle"
2 includes a gasoline-electric hybrid motor vehicle [~~exempt from the~~
3 ~~motor vehicle excise tax pursuant to Subsection F of Section 7-14-~~
4 ~~6 NMSA 1978~~];

5 C. "component" means a part, assembly of parts,
6 material, ingredient or supply that is incorporated directly into
7 an end product;

8 D. "department" means the taxation and revenue
9 department, the secretary of taxation and revenue or an employee
10 of the department exercising authority lawfully delegated to that
11 employee by the secretary;

12 E. "fuel cell system" means a system that converts
13 hydrogen, natural gas or waste gas to electricity without
14 combustion, including:

15 (1) a fuel cell or a system used to generate or
16 reform hydrogen for use in a fuel cell; or

17 (2) a system used to generate or reform hydrogen
18 for use in a fuel cell, including:

19 (a) electrolyzers that use renewable energy;
20 and

21 (b) reformers that use natural gas as the
22 feedstock;

23 F. "manufacturing" means combining or processing
24 components or materials to increase their value for sale in the
25 ordinary course of business, but "manufacturing" does not include

1 construction, farming, power generation or processing natural
2 resources;

3 G. "manufacturing equipment" means an essential machine,
4 mechanism or tool or a component of an essential machine,
5 mechanism or tool used directly and exclusively in a taxpayer's
6 manufacturing operation and that is subject to depreciation
7 pursuant to the Internal Revenue Code of 1986 by the taxpayer
8 carrying on the manufacturing; provided that "manufacturing
9 equipment" does not include a vehicle that leaves the site of a
10 manufacturing operation for the purpose of transporting persons or
11 property, including property for which the taxpayer claims a
12 credit pursuant to Section 7-9-79 NMSA 1978;

13 H. "manufacturing operation" means a plant employing
14 personnel to perform production tasks, in conjunction with
15 manufacturing equipment not previously existing at the site, to
16 produce alternative energy products;

17 I. "modified combined tax liability" means the total
18 liability of a taxpayer for the reporting period for the gross
19 receipts tax imposed by Section 7-9-4 NMSA 1978, [~~together with~~
20 ~~any tax collected at the same time and in the same manner as that~~
21 ~~gross receipts tax, such as~~] the compensating tax imposed pursuant
22 to Section 7-9-7 NMSA 1978 and the withholding tax [~~the interstate~~
23 ~~telecommunications gross receipts tax, the surcharge imposed by~~
24 ~~Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-~~
25 ~~9F-11 NMSA 1978, minus the amount of any credit other than the~~

~~alternative energy product manufacturers tax credit applied~~
~~against any or all of those taxes or surcharges; provided that]~~
imposed on wages pursuant to Section 7-3-3 NMSA 1978 reduced by
the amount of any other tax credit claimed and allowed against
those taxes for the reporting period but not reduced for the
amount of any distribution or transfer pursuant to the Tax
Administration Act with respect to net receipts from those
liabilities; provided that "modified combined tax liability"
excludes [all amounts collected with respect to] any liability
resulting from a local option gross receipts [taxes] tax;

J. "pass-through entity" means a business association
other than:

- (1) a sole proprietorship;
- (2) an estate or trust;
- (3) a corporation, limited liability company,
partnership or other entity that is not a sole proprietorship
taxed as a corporation for federal income tax purposes for the
taxable year; or
- (4) a partnership that is organized as an
investment partnership in which the partner's income is derived
solely from interest, dividends and sales of securities;

K. "qualified expenditure" means an expenditure for the
purchase of manufacturing equipment made after July 1, 2006 by a
taxpayer approved by the department;

L. "renewable energy" means energy from solar heat,

1 solar light, wind, geothermal energy, landfill gas or biomass
2 either singly or in combination that produces low or zero
3 emissions and has substantial long-term production potential;

4 M. "renewable energy system" means a system using only
5 renewable energy to produce hydrogen or to generate electricity,
6 including related cogeneration systems that create mechanical
7 energy or that produce heat or steam for space or water heating
8 and agricultural or small industrial processes and includes a:

9 (1) photovoltaic energy system;

10 (2) solar-thermal energy system;

11 (3) biomass energy system;

12 (4) wind energy system;

13 (5) hydrogen production system; or

14 (6) battery cell energy system; and

15 N. "taxpayer" means a person, including a shareholder,
16 member, partner or other owner of a pass-through entity, who is
17 liable for payment of a tax or to whom an assessment has been made
18 if the assessment remains unabated or the amount thereof has not
19 been paid."

20 SECTION 15. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2013.