

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 413

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO TAXATION; ENACTING THE ADVANCED ENERGY PRODUCT
MANUFACTURERS TAX CREDIT ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Advanced Energy Product Manufacturers Tax Credit Act".

Section 2. DEFINITIONS.--As used in the Advanced Energy
Product Manufacturers Tax Credit Act:

A. "advanced energy" means alternative fuels,
renewable energy and fuel cells;

B. "advanced energy business" means a taxpayer
whose business activity is manufacturing of equipment,
component parts, materials, electronic devices, hybrid electric
vehicle component devices and testing equipment and related
systems that are primarily related to advanced energy systems

.150661.4GR

underscoring = new
[bracketed material] = delete

1 and alternative fueled vehicles;

2 C. "advanced energy system" means a system that
3 converts advanced energy or hydrogen to electricity, including
4 related cogeneration systems that produce heat or steam for
5 space or water heating and agricultural or small industrial
6 processes, or to create mechanical energy. "Advanced energy
7 system" includes, but is not limited to, a:

- 8 (1) fuel cell energy system;
- 9 (2) photovoltaic energy system;
- 10 (3) solar-thermal energy system;
- 11 (4) wind energy system;
- 12 (5) combined heat and power energy system;
- 13 (6) microturbine energy system;
- 14 (7) mini-turbine energy system;
- 15 (8) sterling cycle energy system;
- 16 (9) battery cell energy system;
- 17 (10) electricity storage system; or
- 18 (11) hydrogen production or reforming system;

19 D. "alternative fuel" means natural gas, liquefied
20 petroleum gas, electricity, hydrogen, a fuel mixture containing
21 not less than eighty-five percent ethanol or methanol, a fuel
22 mixture containing not less than twenty percent vegetable oil
23 or a water-phased hydrocarbon fuel emulsion consisting of a
24 hydrocarbon base and water in an amount not less than twenty
25 percent by volume of the total water-phased fuel emulsion;

.150661.4GR

1 E. "alternative fueled vehicle" means a motor
2 vehicle manufactured by an original equipment manufacturer that
3 fully warrants and certifies that the motor vehicle meets the
4 federal motor vehicle safety standards and is designed to be
5 propelled in whole or in part by an alternative fuel;

6 F. "department" means the taxation and revenue
7 department, the secretary of taxation and revenue or any
8 employee of the department exercising authority lawfully
9 delegated to that employee by the secretary;

10 G. "manufacturing equipment" means an essential
11 machine, mechanism or tool, or a component or fitting thereof,
12 used directly and exclusively in the taxpayer's manufacturing
13 operation and subject to depreciation for purposes of the
14 Internal Revenue Code of 1986 by the taxpayer carrying on the
15 manufacturing operation. "Manufacturing equipment" does not
16 include any vehicle that leaves the site of the manufacturing
17 operation for purposes of transporting persons or property or
18 any property for which the taxpayer claims the credit pursuant
19 to Section 7-9-79 NMSA 1978;

20 H. "pass-through entity" means any business
21 association other than:

- 22 (1) a sole proprietorship;
23 (2) an estate or trust;
24 (3) a corporation, limited liability company,
25 partnership or other entity that is not a sole proprietorship

.150661.4GR

1 taxed as a corporation for federal income tax purposes for the
2 taxable year; or

3 (4) a partnership that is organized as an
4 investment partnership in which the partners' income is derived
5 solely from interest, dividends and sales of securities;

6 I. "qualified expenditure" means any expenditure
7 made after July 1, 2004 by an advanced energy business for a
8 facility located in New Mexico for the purchase of
9 manufacturing equipment, component parts, materials, electronic
10 devices, hybrid electric motor vehicle component devices and
11 testing equipment and related systems that are primarily
12 related to advanced energy systems and alternative fueled
13 vehicles;

14 J. "renewable energy" means thermal or electrical
15 energy generated by means of a low- or zero-emissions
16 generation technology that has substantial long-term production
17 potential, including solar, wind, geothermal, landfill gas or
18 biomass; and

19 K. "taxpayer" means "taxpayer" as defined in the
20 Tax Administration Act and, for purposes of the credit against
21 the taxpayer's income tax pursuant to the Advanced Energy
22 Product Manufacturers Tax Credit Act, the shareholders,
23 members, partners or other owners of an entity treated as an S
24 corporation, partnership or disregarded entity for federal
25 income tax purposes.

.150661.4GR

1 Section 3. ADMINISTRATION OF ACT.--The department shall
2 administer the Advanced Energy Product Manufacturers Tax Credit
3 Act pursuant to the Tax Administration Act.

4 Section 4. CREDIT--AMOUNTS--CLAIMANT.--The credit
5 provided for in the Advanced Energy Product Manufacturers Tax
6 Credit Act is an amount equal to five percent of the taxpayer's
7 qualified expenditures in a taxable year.

8 Section 5. ELIGIBILITY REQUIREMENTS.--A taxpayer
9 manufacturing advanced energy technology at an advanced energy
10 business facility located in New Mexico is eligible to claim
11 the credit pursuant to the Advanced Energy Product
12 Manufacturers Tax Credit Act if there is at least a fifty
13 thousand dollar (\$50,000) increase in the taxpayer's annual
14 payroll expense for that facility for every one million dollars
15 (\$1,000,000) in qualified expenditures claimed by the taxpayer
16 in a taxable year.

17 Section 6. CLAIMING THE CREDIT.--

18 A. A taxpayer may apply for approval of a credit
19 within one year following the end of the calendar year in which
20 the qualified expenditure was made.

21 B. A taxpayer having applied for and been granted
22 approval for a credit by the department pursuant to the
23 Advanced Energy Product Manufacturers Tax Credit Act may claim
24 the amount of the approved credit against the taxpayer's
25 personal income tax or corporate income tax due the state of

.150661.4GR

1 New Mexico; provided that:

2 (1) no taxpayer may claim an amount of
3 approved credit for any reporting period that exceeds the
4 amount of the taxpayer's personal income tax or corporate
5 income tax due for that reporting period; and

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

10 C. Any amount of approved credit not claimed
11 against the taxpayer's personal income tax or corporate income
12 tax in a reporting period may be claimed in subsequent
13 reporting periods. In the case of an advanced energy business
14 that is operating as a pass-through entity, the business may
15 pass through its credits to its owners, which may claim the
16 credits against their personal income tax or corporate income
17 tax liability. A pass-through entity may take the credit based
18 on its percentage of ownership in the business.

19 Section 7. RECAPTURE.--If the taxpayer or a successor in
20 the business of the taxpayer ceases operations in New Mexico
21 for at least one hundred eighty consecutive days within a two-
22 year period after the taxpayer has claimed the credit, the
23 department shall grant no further credit to the taxpayer
24 pursuant to the Advanced Energy Product Manufacturers Tax
25 Credit Act with respect to that facility. In addition, any

.150661.4GR

1 amount of the approved credit not claimed against the
2 taxpayer's income tax or corporate income tax shall be
3 extinguished, and within thirty days after the one hundred
4 eightieth day of cessation of operations, the taxpayer shall
5 pay the amount of income tax or corporate income tax against
6 which an approved credit was taken. For purposes of this
7 section, a taxpayer shall not be deemed to have ceased
8 operations during reasonable periods for maintenance or
9 retooling or for the repair or replacement of facilities
10 damaged or destroyed or during the continuance of labor
11 disputes.

12 Section 8. CREDIT CLAIM FORMS.--The department shall
13 provide credit claim forms. A credit claim form shall
14 accompany any return in which the taxpayer claims a credit, and
15 the claim shall specify the amount of credit intended to apply
16 to each return.

17 Section 9. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2004.

19 - 7 -
20
21
22
23
24
25