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SENATE BILL 431

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Ben D. Altamirano

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING A PARTIAL CREDIT AGAINST
COMPENSATING TAX OWED WITH RESPECT TO ELECTRIC GENERATING
FACILITIES ON THE NAVAJO NATION.

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

Section 1. A new Section 7-29C-3 NMSA 1978 is enacted to
read:

"7-29C-3. [NEW MATERIAL] INTERGOVERNMENTAL TAX CREDIT--
COMPENSATING TAX.--

A. A taxpayer who is liable for the payment of the
compensating tax with respect to the ownership, construction,
maintenance or operation of a qualified generating facility
located on Navajo Nation land is entitled to a credit to be
computed pursuant to this section and to be deducted from the
payment of the compensating tax otherwise due. The credit

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1 provided by this section is intended to reduce the economic
2 burden caused by the dual Navajo Nation and New Mexico taxation
3 with respect to that facility and may be referred to as the
4 "intergovernmental compensating tax credit".

5 B. Subject to the provisions of Subsections C and D
6 of this section, the intergovernmental compensating tax credit
7 shall be determined for each reporting period and shall be an
8 amount equal to eighty-five percent of the compensating tax due
9 for that reporting period by the taxpayer with respect to the
10 ownership, construction, maintenance or operation of the
11 qualified generating facility.

12 C. The aggregate amount of intergovernmental
13 compensating tax credit that may be claimed with respect to a
14 qualified generating facility during its construction and
15 operational life shall not exceed eighty-five million dollars
16 (\$85,000,000).

17 D. Beginning one year from the date a taxpayer
18 first claims the intergovernmental compensating tax credit with
19 respect to a qualified generating facility and annually
20 thereafter, the taxpayer shall report to the taxation and
21 revenue department evidence of the cumulative amount of Navajo
22 Nation taxes it has paid with respect to that facility and the
23 cumulative amount of intergovernmental compensating tax credit
24 it has claimed with respect to that facility. If the
25 department determines that as of December 31, 2020, or as of

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1 December 31 of any subsequent year, all taxpayers have claimed,
2 with respect to that facility, a greater cumulative amount in
3 intergovernmental compensating tax credits than all taxpayers
4 have paid, with respect to that facility, in cumulative Navajo
5 Nation taxes, the taxpayer who has made the greatest cumulative
6 claim for intergovernmental compensating tax credits, as
7 determined by the department, shall be obligated to remit the
8 difference to the department on or before December 31 of the
9 following year, without interest or penalty. In addition, no
10 taxpayer shall thereafter be entitled to claim the
11 intergovernmental compensating tax credit with respect to that
12 facility.

13 E. The burden of showing entitlement to the
14 intergovernmental compensating tax credit is on the taxpayer
15 claiming it. The taxpayer shall furnish, in the manner
16 determined by the taxation and revenue department, proof of
17 payment of any Navajo Nation taxes it has paid with respect to
18 the qualified generating facility and any other information the
19 department deems necessary to administer the credit.

20 F. The taxation and revenue department shall
21 administer and interpret the provisions of this section in
22 accordance with the provisions of the Tax Administration Act.

23 G. For the purposes of this section:

24 (1) "Navajo Nation land" means land in New
25 Mexico that on July 1, 2007, was located within the exterior

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1 boundaries of the Navajo Nation reservation;

2 (2) "Navajo Nation taxes" means the sum of:

3 (a) the amount of possessory interest
4 tax, business activity tax and ad valorem tax imposed by the
5 Navajo Nation with respect to the qualified generating facility
6 and paid by the taxpayer; and

7 (b) the amount paid by the taxpayer
8 pursuant to an agreement under which the Navajo Nation grants
9 the taxpayer an exemption from taxation with respect to the
10 qualified generating facility in exchange for annual payments;
11 and

12 (3) "qualified generating facility" means a
13 coal-fired electric generating facility, the construction of
14 which commences after January 1, 2007 but no later than
15 December 31, 2008."

16 Section 2. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2007.