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HOUSE BILL 784

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO TAXATION; PROVIDING CORPORATE AND PERSONAL INCOME
TAX CREDITS FOR BIOGAS FUEL PRODUCTION FACILITIES.

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

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

"[NEW MATERIAL] BIOGAS FUEL PRODUCTION INCOME TAX
CREDIT.--

A. The tax credit that may be claimed pursuant to
this section may be referred to as the "biogas fuel production
income tax credit".

B. A taxpayer who holds an interest in a qualified
biogas fuel production facility and who files an individual New
Mexico income tax return may claim a biogas fuel production
income tax credit in an amount equal to no more than two

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1 dollars ninety-two cents (\$2.92) for every one million British
2 thermal units of biogas produced, subject to the limitations
3 imposed in this section.

4 C. To claim the biogas fuel production income tax
5 credit, a taxpayer shall submit with the taxpayer's New Mexico
6 income tax return a certificate of eligibility from the energy,
7 minerals and natural resources department stating that the
8 facility in which the taxpayer holds a proportionate interest
9 is a qualified biogas fuel production facility, the verifiable
10 production amount of the facility for the taxable year and that
11 the taxpayer may be eligible for biogas fuel production tax
12 credits. The energy, minerals and natural resources department
13 shall consider applications for certificates of eligibility in
14 the order received. The taxation and revenue department shall
15 determine the amount of the biogas fuel production income tax
16 credit for which the taxpayer may apply.

17 D. A taxpayer eligible for a biogas fuel production
18 income tax credit shall remain eligible to receive the credit
19 for ten consecutive years, beginning on the date the qualified
20 biogas fuel production facility begins producing biogas fuel.
21 Once a taxpayer has been granted a biogas fuel production
22 income tax credit for a given facility, that taxpayer shall be
23 allowed to keep the facility's original date of application for
24 tax credits for that facility until either the facility goes
25 out of production for six months or the facility's ten-year

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1 eligibility has expired.

2 E. A husband and wife who file separate returns for
3 a taxable year in which they could have filed a joint return
4 may each claim only one-half of the biogas fuel production
5 income tax credit that would have been allowed on a joint
6 return.

7 F. A taxpayer who otherwise qualifies and claims a
8 biogas fuel production income tax credit and who is a member of
9 a partnership or owns interest in an entity that is a qualified
10 biogas fuel production facility may claim the biogas fuel
11 production income tax credit only in relation to the taxpayer's
12 interest in the partnership or entity. The total biogas fuel
13 production income tax credit claimed by all members of the
14 partnership or all of the owners of the entity shall not exceed
15 the proportionate interest allowed by the department for that
16 partnership or entity. The total amount of all biogas fuel
17 production tax credits claimed shall not exceed the total
18 amount determined by the department to be allowable pursuant to
19 this section and the Corporate Income and Franchise Tax Act.

20 G. If the biogas fuel production income tax credit
21 exceeds the amount of the taxpayer's tax liabilities pursuant
22 to the Income Tax Act in the taxable year in which it is
23 claimed, the balance of the unpaid credit may be carried
24 forward for five years. The biogas fuel production income tax
25 credit is not refundable.

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1 H. A taxpayer claiming the biogas fuel production
2 income tax credit pursuant to this section is ineligible for
3 credits pursuant to any other credit that may be taken pursuant
4 to the Income Tax Act or the Corporate Income and Franchise Tax
5 Act for the same facility.

6 I. The aggregate amount of all biogas fuel
7 production tax credits that may be claimed with respect to all
8 qualified biogas fuel production facilities shall not exceed
9 five hundred thousand dollars (\$500,000) per taxable year.

10 J. As used in this section:

11 (1) "biogas" means a gas that is derived by
12 processing a qualified energy source and that contains at least
13 fifty percent methane;

14 (2) "biogas fuel production tax credit" means
15 the biogas fuel production income tax credit and the biogas
16 fuel production corporate income tax credit;

17 (3) "interest in a qualified biogas fuel
18 production facility" means title to a qualified biogas fuel
19 production facility; an ownership interest in a business or
20 entity that is taxed for federal income tax purposes as a
21 partnership that holds title to qualified biogas fuel
22 production facility; or an ownership interest, through one or
23 more intermediate entities that are each taxed for federal
24 income tax purposes as a partnership, in a business that holds
25 title to a qualified biogas fuel production facility;

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1 (4) "proportionate interest" means a
2 taxpayer's direct and indirect ownership of an interest in a
3 qualified biogas fuel production facility, provided that
4 the total of all interests of taxpayers claiming biogas fuel
5 production tax credits for the same qualified biogas fuel
6 production facility shall not exceed one hundred percent;

7 (5) "qualified biogas fuel production
8 facility" means a facility located in New Mexico that begins
9 production on or before January 1, 2013 and:

10 (a) uses anaerobic digesters,
11 gasification or other biological, chemical or thermal processes
12 to convert a qualified energy source into biogas; and

13 (b) the biogas output of which is: 1)
14 marketed through interconnection with a natural gas
15 distribution or transmission pipeline; or 2) reasonably
16 expected to be used in a quantity sufficient to offset the
17 consumption of five thousand million British thermal units
18 annually of commercially marketed fuel derived from coal, crude
19 oil, natural gas, propane or other fossil fuels;

20 (6) "qualified energy source" means:

21 (a) manure of agricultural livestock,
22 including litter, wood shavings, straw, rice hulls, bedding
23 material and other materials incidentally collected with the
24 manure; or

25 (b) any nonhazardous, cellulosic or

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1 other organic agricultural or food industry byproduct or waste
2 material that is derived from renewable biomass, wastes or
3 byproducts from fermentation processes, ethanol production,
4 biodiesel production, slaughter of agricultural livestock, food
5 production, food processing or food service, or other organic
6 wastes, byproducts or sources, but does not include methane
7 collected in or from landfills or landfill waste; and

8 (7) "renewable biomass" means feed grains,
9 other agricultural commodities, algae or waste material, such
10 as crop residue, animal waste and byproducts, including fats,
11 oils and greases, and food waste."

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

14 "[NEW MATERIAL] BIOGAS FUEL PRODUCTION CORPORATE INCOME
15 TAX CREDIT.--

16 A. The tax credit that may be claimed pursuant to
17 this section may be referred to as the "biogas fuel production
18 corporate income tax credit".

19 B. A taxpayer that holds an interest in a qualified
20 biogas fuel production facility and that files a New Mexico
21 corporate income tax return may claim a biogas fuel production
22 corporate income tax credit in an amount equal to no more than
23 two dollars ninety-two cents (\$2.92) for every one million
24 British thermal units of biogas produced, subject to the
25 limitations imposed in this section.

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1 C. To claim the biogas fuel production corporate
2 income tax credit, a taxpayer shall submit with the taxpayer's
3 New Mexico corporate income tax return a certificate of
4 eligibility from the energy, minerals and natural resources
5 department stating that the facility in which the taxpayer
6 holds a proportionate interest is a qualified biogas fuel
7 production facility, the verifiable production amount of the
8 facility for the taxable year and that the taxpayer may be
9 eligible for biogas fuel production tax credits. The energy,
10 minerals and natural resources department shall consider
11 applications for certificates of eligibility in the order
12 received. The taxation and revenue department shall determine
13 the amount of biogas fuel production corporate income tax
14 credit for which the taxpayer may apply.

15 D. A taxpayer eligible for a biogas fuel production
16 corporate income tax credit shall remain eligible to receive
17 the credit for ten consecutive years, beginning on the date the
18 qualified biogas fuel production facility begins producing
19 biogas fuel. Once a taxpayer has been granted a biogas fuel
20 production corporate income tax credit for a given facility,
21 that taxpayer shall be allowed to keep the facility's original
22 date of application for tax credits for that facility until
23 either the facility goes out of production for six months or
24 the facility's ten-year eligibility has expired.

25 E. A taxpayer that otherwise qualifies and claims a
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1 biogas fuel production corporate income tax credit and that is
2 a member of a partnership or owns interest in an entity that is
3 a qualified biogas fuel production facility may claim the
4 biogas fuel production corporate income tax credit only in
5 relation to the taxpayer's interest in the partnership or
6 entity. The total biogas fuel production corporate income tax
7 credit claimed by all members of the partnership or all of the
8 owners of the entity shall not exceed the proportionate
9 interest allowed by the department for that partnership or
10 entity. The total amount of all biogas fuel production tax
11 credits claimed shall not exceed the total amount determined by
12 the department to be allowable pursuant to this section and the
13 Income Tax Act.

14 F. If the biogas fuel production corporate income
15 tax credit exceeds the amount of the taxpayer's tax liabilities
16 pursuant to the Corporate Income and Franchise Tax Act in the
17 taxable year in which it is claimed, the balance of the unpaid
18 credit may be carried forward for five years. The biogas fuel
19 production corporate income tax credit is not refundable.

20 G. A taxpayer claiming the biogas fuel production
21 corporate income tax credit pursuant to this section is
22 ineligible for credits pursuant to any other credit that may be
23 taken pursuant to the Corporate Income and Franchise Tax Act or
24 Income Tax Act for the same facility.

25 H. The aggregate amount of all biogas fuel

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1 production tax credits that may be claimed with respect to all
2 qualified biogas fuel production facilities shall not exceed
3 five hundred thousand dollars (\$500,000) per taxable year.

4 I. As used in this section:

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6 processing a qualified energy source and that contains at least
7 fifty percent methane;

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9 the biogas fuel production income tax credit and the biogas
10 fuel production corporate income tax credit;

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12 production facility" means title to a qualified biogas fuel
13 production facility; an ownership interest in a business or
14 entity that is taxed for federal income tax purposes as a
15 partnership that holds title to a qualified biogas fuel
16 production facility; or an ownership interest, through one or
17 more intermediate entities that are each taxed for federal
18 income tax purposes as a partnership, in a business that holds
19 title to a qualified biogas fuel production facility;

20 (4) "proportionate interest" means a
21 taxpayer's direct and indirect ownership of an interest in a
22 qualified biogas fuel production facility, provided that
23 the total of all interests of taxpayers claiming biogas fuel
24 production tax credits for the same qualified biogas fuel
25 production facility shall not exceed one hundred percent;

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5 gasification or other biological, chemical or thermal processes
6 to convert a qualified energy source into biogas; and

7 (b) the biogas output of which is: 1)
8 marketed through interconnection with a natural gas
9 distribution or transmission pipeline; or 2) reasonably
10 expected to be used in a quantity sufficient to offset the
11 consumption of five thousand million British thermal units
12 annually of commercially marketed fuel derived from coal, crude
13 oil, natural gas, propane or other fossil fuels;

14 (6) "qualified energy source" means:

15 (a) manure of agricultural livestock,
16 including litter, wood shavings, straw, rice hulls, bedding
17 material and other materials incidentally collected with the
18 manure; or

19 (b) any nonhazardous, cellulosic or
20 other organic agricultural or food industry byproduct or waste
21 material that is derived from renewable biomass, wastes or
22 byproducts from fermentation processes, ethanol production,
23 biodiesel production, slaughter of agricultural livestock, food
24 production, food processing or food service, or other organic
25 wastes, byproducts or sources, but does not include methane

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1 collected in or from landfills or landfill waste; and

2 (7) "renewable biomass" means feed grains,
3 other agricultural commodities, algae or waste material, such
4 as crop residue, animal waste and byproducts, including fats,
5 oils and greases, and food waste."

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