

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 796

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

AN ACT

RELATING TO TAXATION; PROVIDING INCOME TAX CREDITS FOR  
INTERESTS IN BIOMASS, ANIMAL WASTE BIOMASS, GEOTHERMAL, SOLAR  
THERMAL, SOLAR PHOTOVOLTAIC AND COAL-BASED ELECTRIC GENERATING  
FACILITIES; CREATING THE ADVANCED ENERGY TAX CREDITS FOR  
PERSONS WITH LEASEHOLD OR PARTIAL INTERESTS IN CERTAIN ADVANCED  
ENERGY GENERATING 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] ADVANCED ENERGY INCOME TAX CREDIT.--

A. The tax credit that may be claimed pursuant to  
this section may be referred to as the "advanced energy income  
tax credit".

B. A taxpayer who holds an interest in a qualified

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1 generating facility located in New Mexico and who files an  
2 individual New Mexico income tax return may claim an advanced  
3 energy income tax credit in an amount equal to six percent of  
4 the eligible generation plant costs of a qualified generating  
5 facility, subject to the limitations imposed in this section.  
6 The tax credit claimed shall be verified and approved by the  
7 department.

8 C. An entity that holds an interest in a qualified  
9 generating facility may request a certificate of eligibility  
10 from the department of environment to enable the requester to  
11 apply for an advanced energy income tax credit. The department  
12 of environment:

13 (1) shall determine if the facility is a  
14 qualified generating facility;

15 (2) shall require that the requester provide  
16 the department of environment with the information necessary to  
17 assess whether the requester's facility meets the criteria to  
18 be a qualified generating facility;

19 (3) shall issue a certificate to the requester  
20 stating that the facility is or is not a qualified generating  
21 facility within one hundred eighty days after receiving all  
22 information necessary to make a determination;

23 (4) shall:

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

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1 (b) deposit fees collected pursuant to  
2 this paragraph in the state air quality permit fund created  
3 pursuant to Section 74-2-15 NMSA 1978; and

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

13 D. A taxpayer who holds an interest in a qualified  
14 generating facility may be allocated the right to claim the  
15 advanced energy income tax credit without regard to the  
16 taxpayer's relative interest in the qualified generating  
17 facility if:

18 (1) the business entity making the allocation  
19 provides notice of the allocation and the taxpayer's interest  
20 in the qualified generating facility to the department on forms  
21 prescribed by the department;

22 (2) allocations to the taxpayer and all other  
23 taxpayers allocated a right to claim the advanced energy tax  
24 credit shall not exceed one hundred percent of the advanced  
25 energy tax credit allowed for the qualified generating

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1 facility; and

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

6 E. To claim the advanced energy income tax credit,  
7 a taxpayer shall submit with the taxpayer's New Mexico income  
8 tax return a certificate of eligibility from the department of  
9 environment stating that the taxpayer may be eligible for  
10 advanced energy tax credits. The taxation and revenue  
11 department shall provide credit claims forms. A credit claim  
12 form shall accompany any return in which the taxpayer wishes to  
13 apply for an approved credit, and the claim shall specify the  
14 amount of credit intended to apply to each return. The  
15 taxation and revenue department shall determine the amount of  
16 advanced energy income tax credit for which the taxpayer may  
17 apply.

18 F. Upon receipt of the notice of an allocation of  
19 the right to claim all or a portion of the advanced energy  
20 income tax credit, the department shall verify the allocation  
21 due to the recipient.

22 G. A husband and wife who file separate returns for  
23 a taxable year in which they could have filed a joint return  
24 may each claim only one-half of the advanced energy income tax  
25 credit that would have been allowed on a joint return.

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1           H. The total amount of all advanced energy tax  
2 credits claimed shall not exceed the total amount determined by  
3 the department to be allowable pursuant to this section, the  
4 Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA  
5 1978.

6           I. Any balance of the advanced energy income tax  
7 credit that the taxpayer is approved to claim may be claimed by  
8 the taxpayer as an advanced energy combined reporting tax  
9 credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the  
10 advanced energy income tax credit exceeds the amount of the  
11 taxpayer's tax liabilities pursuant to the Income Tax Act and  
12 Section 7-9G-2 NMSA 1978 in the taxable year in which it is  
13 claimed, the balance of the unpaid credit may be carried  
14 forward for ten years and claimed as an advanced energy income  
15 tax credit or an advanced energy combined reporting tax credit.  
16 The advanced energy income tax credit is not refundable.

17           J. A taxpayer claiming the advanced energy income  
18 tax credit pursuant to this section is ineligible for credits  
19 pursuant to the Investment Credit Act or any other credit that  
20 may be taken pursuant to the Income Tax Act or credits that may  
21 be taken against the gross receipts tax, compensating tax or  
22 withholding tax for the same expenditures.

23           K. The aggregate amount of all advanced energy tax  
24 credits that may be claimed with respect to a qualified  
25 generating facility shall not exceed sixty million dollars

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1 (\$60,000,000).

2 L. As used in this section:

3 (1) "advanced energy tax credit" means the  
4 advanced energy income tax credit, the advanced energy  
5 corporate income tax credit and the advanced energy combined  
6 reporting tax credit;

7 (2) "animal waste biomass electric generating  
8 facility" means any generating facility providing electricity  
9 to a public utility that uses animal waste, including manure  
10 and slaughterhouse and other animal processing waste, as its  
11 primary fuel source and has a name-plate capacity of one  
12 megawatt or more;

13 (3) "biomass" means organic material that is  
14 available on a renewable and recurring basis, including:

15 (a) forest-related materials, including  
16 mill residues, logging residues, forest thinnings, slash,  
17 brush, low-commercial value materials or undesirable species,  
18 salt-cedar and other phreatophyte or woody vegetation removed  
19 from river basins or watersheds and woody material harvested  
20 for the purpose of forest fire fuel reduction or forest health  
21 and watershed improvement;

22 (b) agriculture-related materials,  
23 including orchard trees, vineyard, grain or crop residues,  
24 including straws and stover, aquatic plants and agricultural  
25 processed co-products and waste products, including fats, oils,

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1 greases, whey and lactose;

2 (c) solid woody waste material,  
3 including landscape or right-of-way tree trimmings; rangeland  
4 maintenance residues; waste pallets; and manufacturing,  
5 construction and demolition wood wastes, excluding  
6 pressure-treated, chemically treated or painted wood wastes and  
7 wood contaminated with plastic;

8 (d) crops and trees planted for the  
9 purpose of being used to produce energy;

10 (e) landfill gas, wastewater treatment  
11 gas and biosolids, including organic waste byproducts generated  
12 during the wastewater treatment process; and

13 (f) segregated municipal solid waste,  
14 excluding tires and medical and hazardous waste;

15 (4) "biomass electric generating facility"  
16 means any generating facility providing electricity to a public  
17 utility that uses biomass as its primary fuel source, has a  
18 name-plate capacity of one megawatt or more and emits the  
19 lesser of:

20 (a) what is achievable with the best  
21 available control technology; or

22 (b) thirty-five thousandths pound per  
23 million British thermal units of sulfur dioxide, twenty-five  
24 thousandths pound per million British thermal units of oxides  
25 of nitrogen and one hundredth pound per million British thermal

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1 units of total particulates in the flue gas;

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

6 (a) emits the lesser of: 1) what is  
7 achievable with the best available control technology; or 2)  
8 thirty-five thousandths pound per million British thermal units  
9 of sulfur dioxide, twenty-five thousandths pound per million  
10 British thermal units of oxides of nitrogen and one hundredth  
11 pound per million British thermal units of total particulates  
12 in the flue gas;

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

16 (c) captures and sequesters or controls  
17 carbon dioxide emissions so that by the later of January 1,  
18 2017 or eighteen months after the commercial operation date of  
19 the coal-based electric generating facility, no more than one  
20 thousand one hundred pounds per megawatt-hour of carbon dioxide  
21 is emitted into the atmosphere;

22 (d) all infrastructure required for  
23 sequestration is in place by the later of January 1, 2017 or  
24 eighteen months after the commercial operation date of the  
25 coal-based electric generating facility;

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1 (e) includes methods and procedures to  
2 monitor the disposition of the carbon dioxide captured and  
3 sequestered from the coal-based electric generating facility;  
4 and

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

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

15 (7) "entity" means an individual, estate,  
16 trust, receiver, cooperative association, club, corporation,  
17 company, firm, partnership, limited liability company, limited  
18 liability partnership, joint venture, syndicate or other  
19 association or a gas, water or electric utility owned or  
20 operated by a county or municipality;

21 (8) "geothermal electric generating facility"  
22 means a facility with a name-plate capacity of one megawatt or  
23 more that uses geothermal energy to generate electricity,  
24 including a facility that captures and provides geothermal  
25 energy to a preexisting electric generating facility using

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1 other fuels in part;

2 (9) "interest in a qualified generating  
3 facility" means title to a qualified generating facility; a  
4 leasehold interest in a qualified generating facility; an  
5 ownership interest in a business or entity that is taxed for  
6 federal income tax purposes as a partnership that holds title  
7 to or a leasehold interest in a qualified generating facility;  
8 or an ownership interest, through one or more intermediate  
9 entities that are each taxed for federal income tax purposes as  
10 a partnership, in a business that holds title to or a leasehold  
11 interest in a qualified generating facility;

12 (10) "name-plate capacity" means the maximum  
13 rated output of the facility measured as alternating current or  
14 the equivalent direct current measurement;

15 (11) "qualified generating facility" means a  
16 facility that begins construction not later than December 31,  
17 2015 and is:

18 (a) a solar thermal electric generating  
19 facility that begins construction on or after July 1, 2007 and  
20 that may include an associated renewable energy storage  
21 facility;

22 (b) a solar photovoltaic electric  
23 generating facility that begins construction on or after July  
24 1, 2009 and that may include an associated renewable energy  
25 storage facility;

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

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

5 (e) a new or repowered coal-based  
 6 electric generating facility and an associated coal  
 7 gasification facility;

8 (f) an animal waste biomass electric  
 9 generating facility that begins construction on or after July  
 10 1, 2009; or

11 (g) a biomass electric generating  
 12 facility that begins construction on or after July 1, 2009;

13 (12) "recycled energy" means energy produced  
 14 by a generation unit with a name-plate capacity of not more  
 15 than fifteen megawatts that converts the otherwise lost energy  
 16 from the exhaust stacks or pipes to electricity without  
 17 combustion of additional fossil fuel;

18 (13) "sequester" means to store, or  
 19 chemically convert, carbon dioxide in a manner that prevents  
 20 its release into the atmosphere and may include the use of  
 21 geologic formations and enhanced oil, coalbed methane or  
 22 natural gas recovery techniques;

23 (14) "solar photovoltaic electric generating  
 24 facility" means an electric generating facility with a name-  
 25 plate capacity of two hundred fifty kilowatts or more that uses

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1 solar photovoltaic energy to generate electricity; and  
2 (15) "solar thermal generating facility"  
3 means an electric generating facility with a name-plate  
4 capacity of one megawatt or more that uses solar thermal energy  
5 to generate electricity, including a facility that captures and  
6 provides solar energy to a preexisting electric generating  
7 facility using other fuels in part."

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

10 "[NEW MATERIAL] ADVANCED ENERGY CORPORATE INCOME TAX  
11 CREDIT.--

12 A. The tax credit that may be claimed pursuant to  
13 this section may be referred to as the "advanced energy  
14 corporate income tax credit".

15 B. A taxpayer that holds an interest in a qualified  
16 generating facility located in New Mexico and that files a New  
17 Mexico corporate income tax return may claim an advanced energy  
18 corporate income tax credit in an amount equal to six percent  
19 of the eligible generation plant costs of a qualified  
20 generating facility, subject to the limitations imposed in this  
21 section. The tax credit claimed shall be verified and approved  
22 by the department.

23 C. An entity that holds an interest in a qualified  
24 generating facility may request a certificate of eligibility  
25 from the department of environment to enable the requester to

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1 apply for an advanced energy corporate income tax credit. The  
2 department of environment:

3 (1) shall determine if the facility is a  
4 qualified generating facility;

5 (2) shall require that the requester provide  
6 the department of environment with the information necessary to  
7 assess whether the requester's facility meets the criteria to  
8 be a qualified generating facility;

9 (3) shall issue a certificate to the  
10 requester stating that the facility is or is not a qualified  
11 generating facility within one hundred eighty days after  
12 receiving all information necessary to make a determination;

13 (4) shall:

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

16 (b) deposit fees collected pursuant to  
17 this paragraph in the state air quality permit fund created  
18 pursuant to Section 74-2-15 NMSA 1978; and

19 (5) shall report annually to the appropriate  
20 interim legislative committee information that will allow the  
21 legislative committee to analyze the effectiveness of the  
22 advanced energy tax credits, including the identity of  
23 qualified generating facilities, the energy production means  
24 used, the amount of emissions identified in this section  
25 reduced and removed by those qualified generating facilities

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1 and whether any requests for certificates of eligibility could  
2 not be approved due to program limits.

3 D. A taxpayer that holds an interest in a qualified  
4 generating facility may be allocated the right to claim the  
5 advanced energy corporate income tax credit without regard to  
6 the taxpayer's relative interest in the qualified generating  
7 facility if:

8 (1) the business entity making the allocation  
9 provides notice of the allocation and the taxpayer's interest  
10 in the qualified generating facility to the department on forms  
11 prescribed by the department;

12 (2) allocations to the taxpayer and all other  
13 taxpayers allocated a right to claim the advanced energy tax  
14 credit shall not exceed one hundred percent of the advanced  
15 energy tax credit allowed for the qualified generating  
16 facility; and

17 (3) the taxpayer and all other taxpayers  
18 allocated a right to claim the advanced energy tax credits  
19 collectively own at least a five percent interest in the  
20 qualified generating facility.

21 E. Upon receipt of the notice of an allocation of  
22 the right to claim all or a portion of the advanced energy  
23 corporate income tax credit, the department shall verify the  
24 allocation due to the recipient.

25 F. To claim the advanced energy corporate income

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1 tax credit, a taxpayer shall submit with the taxpayer's New  
2 Mexico corporate income tax return a certificate of eligibility  
3 from the department of environment stating that the taxpayer  
4 may be eligible for advanced energy tax credits. The taxation  
5 and revenue department shall provide credit claim forms. A  
6 credit claim form shall accompany any return in which the  
7 taxpayer wishes to apply for an approved credit, and the claim  
8 shall specify the amount of credit intended to apply to each  
9 return. The taxation and revenue department shall determine  
10 the amount of advanced energy corporate income tax credit for  
11 which the taxpayer may apply.

12 G. The total amount of all advanced energy tax  
13 credits claimed shall not exceed the total amount determined by  
14 the department to be allowable pursuant to this section, the  
15 Income Tax Act and Section 7-9G-2 NMSA 1978.

16 H. Any balance of the advanced energy corporate  
17 income tax credit that the taxpayer is approved to claim may be  
18 claimed by the taxpayer as an advanced energy combined  
19 reporting tax credit allowed pursuant to Section 7-9G-2 NMSA  
20 1978. If the advanced energy corporate income tax credit  
21 exceeds the amount of the taxpayer's tax liabilities pursuant  
22 to the Corporate Income and Franchise Tax Act and Section  
23 7-9G-2 NMSA 1978 in the taxable year in which it is claimed,  
24 the balance of the unpaid credit may be carried forward for ten  
25 years and claimed as an advanced energy corporate income tax

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1 credit or an advanced energy combined reporting tax credit.  
2 The advanced energy corporate income tax credit is not  
3 refundable.

4 I. A taxpayer claiming the advanced energy  
5 corporate income tax credit pursuant to this section is  
6 ineligible for credits pursuant to the Investment Credit Act or  
7 any other credit that may be taken pursuant to the Corporate  
8 Income and Franchise Tax Act or credits that may be taken  
9 against the gross receipts tax, compensating tax or withholding  
10 tax for the same expenditures.

11 J. The aggregate amount of all advanced energy tax  
12 credits that may be claimed with respect to a qualified  
13 generating facility shall not exceed sixty million dollars  
14 (\$60,000,000).

15 K. As used in this section:

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

20 (2) "animal waste biomass electric generating  
21 facility" means any generating facility providing electricity  
22 to a public utility that uses animal waste, including manure  
23 and slaughterhouse and other animal processing waste, as its  
24 primary fuel source and has a name-plate capacity of one  
25 megawatt or more;

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1                   (3) "biomass" means organic material that is  
2 available on a renewable and recurring basis, including:

3                   (a) forest-related materials, including  
4 mill residues, logging residues, forest thinnings, slash,  
5 brush, low-commercial value materials or undesirable species,  
6 salt-cedar and other phreatophyte or woody vegetation removed  
7 from river basins or watersheds and woody material harvested  
8 for the purpose of forest fire fuel reduction or forest health  
9 and watershed improvement;

10                   (b) agriculture-related materials,  
11 including orchard trees, vineyard, grain or crop residues,  
12 including straws and stover, aquatic plants and agricultural  
13 processed co-products and waste products, including fats, oils,  
14 greases, whey and lactose;

15                   (c) solid woody waste material,  
16 including landscape or right-of-way tree trimmings; rangeland  
17 maintenance residues; waste pallets; and manufacturing,  
18 construction and demolition wood wastes, excluding  
19 pressure-treated, chemically treated or painted wood wastes and  
20 wood contaminated with plastic;

21                   (d) crops and trees planted for the  
22 purpose of being used to produce energy;

23                   (e) landfill gas, wastewater treatment  
24 gas and biosolids, including organic waste byproducts generated  
25 during the wastewater treatment process; and

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1 (f) segregated municipal solid waste,  
2 excluding tires and medical and hazardous waste;

3 (4) "biomass electric generating facility"  
4 means any generating facility providing electricity to a public  
5 utility that uses biomass as its primary fuel source, has a  
6 name-plate capacity of one megawatt or more and emits the  
7 lesser of:

8 (a) what is achievable with the best  
9 available control technology; or

10 (b) thirty-five thousandths pound per  
11 million British thermal units of sulfur dioxide, twenty-five  
12 thousandths pound per million British thermal units of oxides  
13 of nitrogen and one hundredth pound per million British thermal  
14 units of total particulates in the flue gas;

15 (5) "coal-based electric generating facility"  
16 means a new or repowered generating facility and an associated  
17 coal gasification facility, if any, that uses coal to generate  
18 electricity and that meets the following specifications:

19 (a) emits the lesser of: 1) what is  
20 achievable with the best available control technology; or 2)  
21 thirty-five thousandths pound per million British thermal units  
22 of sulfur dioxide, twenty-five thousandths pound per million  
23 British thermal units of oxides of nitrogen and one hundredth  
24 pound per million British thermal units of total particulates  
25 in the flue gas;

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

4 (c) captures and sequesters or controls  
5 carbon dioxide emissions so that by the later of January 1,  
6 2017 or eighteen months after the commercial operation date of  
7 the coal-based electric generating facility, no more than one  
8 thousand one hundred pounds per megawatt-hour of carbon dioxide  
9 is emitted into the atmosphere;

10 (d) all infrastructure required for  
11 sequestration is in place by the later of January 1, 2017 or  
12 eighteen months after the commercial operation date of the  
13 coal-based electric generating facility;

14 (e) includes methods and procedures to  
15 monitor the disposition of the carbon dioxide captured and  
16 sequestered from the coal-based electric generating facility;  
17 and

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

20 (6) "eligible generation plant costs" means  
21 expenditures for the development and construction of a  
22 qualified generating facility, including permitting; site  
23 characterization and assessment; engineering; design; carbon  
24 dioxide capture, treatment, compression, transportation and  
25 sequestration; site and equipment acquisition; and fuel supply

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1 development used directly and exclusively in a qualified  
2 generating facility;

3 (7) "entity" means an individual, estate,  
4 trust, receiver, cooperative association, club, corporation,  
5 company, firm, partnership, limited liability company, limited  
6 liability partnership, joint venture, syndicate or other  
7 association or a gas, water or electric utility owned or  
8 operated by a county or municipality;

9 (8) "geothermal electric generating facility"  
10 means a facility with a name-plate capacity of one megawatt or  
11 more that uses geothermal energy to generate electricity,  
12 including a facility that captures and provides geothermal  
13 energy to a preexisting electric generating facility using  
14 other fuels in part;

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

25 (10) "name-plate capacity" means the maximum

1 rated output of the facility measured as alternating current or  
 2 the equivalent direct current measurement;

3 (11) "qualified generating facility" means a  
 4 facility that begins construction not later than December 31,  
 5 2015 and is:

6 (a) a solar thermal electric generating  
 7 facility that begins construction on or after July 1, 2007 and  
 8 that may include an associated renewable energy storage  
 9 facility;

10 (b) a solar photovoltaic electric  
 11 generating facility that begins construction on or after July  
 12 1, 2009 and that may include an associated renewable energy  
 13 storage facility;

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

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

18 (e) a new or repowered coal-based  
 19 electric generating facility and an associated coal  
 20 gasification facility;

21 (f) an animal waste biomass electric  
 22 generating facility that begins construction on or after July  
 23 1, 2009; or

24 (g) a biomass electric generating  
 25 facility that begins construction on or after July 1, 2009;

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underscored material = new  
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1                   (12) "recycled energy" means energy produced  
2 by a generation unit with a name-plate capacity of not more  
3 than fifteen megawatts that converts the otherwise lost energy  
4 from the exhaust stacks or pipes to electricity without  
5 combustion of additional fossil fuel;

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

11                   (14) "solar photovoltaic electric generating  
12 facility" means an electric generating facility with a name-  
13 plate capacity of two hundred fifty kilowatts or more that uses  
14 solar photovoltaic energy to generate electricity; and

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

21                   Section 3. Section 7-9G-2 NMSA 1978 (being Laws 2007,  
22 Chapter 229, Section 1) is amended to read:

23                   "7-9G-2. ADVANCED ENERGY COMBINED REPORTING TAX CREDIT--  
24 GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--

25                   A. Except as otherwise provided in this section, a

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1 taxpayer that holds an interest in a qualified generating  
2 facility located in New Mexico may claim a credit to be  
3 computed pursuant to the provisions of this section. The  
4 credit provided by this section may be referred to as the  
5 "advanced energy combined reporting tax credit".

6 B. As used in this section:

7 (1) "advanced energy tax credit" means the  
8 advanced energy income tax credit, the advanced energy  
9 corporate income tax credit and the advanced energy combined  
10 reporting tax credit;

11 (2) "animal waste biomass electric generating  
12 facility" means any generating facility providing electricity  
13 to a public utility that uses animal waste, including manure  
14 and slaughterhouse and other animal processing waste, as its  
15 primary fuel source and has a name-plate capacity of one  
16 megawatt or more;

17 (3) "biomass" means organic material that is  
18 available on a renewable and recurring basis, including:

19 (a) forest-related materials, including  
20 mill residues, logging residues, forest thinnings, slash,  
21 brush, low-commercial value materials or undesirable species,  
22 salt-cedar and other phreatophyte or woody vegetation removed  
23 from river basins or watersheds and woody material harvested  
24 for the purpose of forest fire fuel reduction or forest health  
25 and watershed improvement;

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1                   (b) agriculture-related materials,  
2 including orchard trees, vineyard, grain or crop residues,  
3 including straws and stover, aquatic plants and agricultural  
4 processed co-products and waste products, including fats, oils,  
5 greases, whey and lactose;

6                   (c) solid woody waste material,  
7 including landscape or right-of-way tree trimmings; rangeland  
8 maintenance residues; waste pallets; and manufacturing,  
9 construction and demolition wood wastes, excluding  
10 pressure-treated, chemically treated or painted wood wastes and  
11 wood contaminated with plastic;

12                   (d) crops and trees planted for the  
13 purpose of being used to produce energy;

14                   (e) landfill gas, wastewater treatment  
15 gas and biosolids, including organic waste byproducts generated  
16 during the wastewater treatment process; and

17                   (f) segregated municipal solid waste,  
18 excluding tires and medical and hazardous waste;

19                   (4) "biomass electric generating facility"  
20 means any generating facility providing electricity to a public  
21 utility that uses biomass as its primary fuel source, has a  
22 name-plate capacity of one megawatt or more and emits the  
23 lesser of:

24                   (a) what is achievable with the best  
25 available control technology; or

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1                   (b) thirty-five thousandths pound per  
2 million British thermal units of sulfur dioxide, twenty-five  
3 thousandths pound per million British thermal units of oxides  
4 of nitrogen and one hundredth pound per million British thermal  
5 units of total particulates in the flue gas;

6                   (5) "coal-based electric generating facility"  
7 means a new or repowered generating facility and an associated  
8 coal gasification facility, if any, that uses coal to generate  
9 electricity and that meets the following specifications:

10                   (a) emits the lesser of: 1) what is  
11 achievable with the best available control technology; or 2)  
12 thirty-five thousandths pound per million British thermal units  
13 of sulfur dioxide, twenty-five thousandths pound per million  
14 British thermal units of oxides of nitrogen and one hundredth  
15 pound per million British thermal units of total particulates  
16 in the flue gas;

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

20                   (c) captures and sequesters or controls  
21 carbon dioxide emissions so that by the later of January 1,  
22 2017 or eighteen months after the commercial operation date of  
23 the coal-based electric generating facility, no more than one  
24 thousand one hundred pounds per megawatt-hour of carbon dioxide  
25 is emitted into the atmosphere;

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1                    (d) all infrastructure required for  
2                    sequestration is in place by the later of January 1, 2017 or  
3                    eighteen months after the commercial operation date of the  
4                    coal-based electric generating facility;

5                    (e) includes methods and procedures to  
6                    monitor the disposition of the carbon dioxide captured and  
7                    sequestered from the coal-based electric generating facility;  
8                    and

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

11                   ~~[(1)]~~ (6) "department" means the taxation and  
12                   revenue department, the secretary of taxation and revenue or  
13                   any employee of the department exercising authority lawfully  
14                   delegated to that employee by the secretary;

15                   ~~[(2)]~~ (7) "eligible generation plant costs"  
16                   means expenditures for the development and construction of a  
17                   qualified generating facility, including permitting; site  
18                   characterization and assessment; engineering; design; carbon  
19                   dioxide capture, treatment, compression, transportation and  
20                   sequestration; site and equipment acquisition; and fuel supply  
21                   development used directly and exclusively in a qualified  
22                   generating facility;

23                   ~~[(3)]~~ "~~qualified generating facility~~" means a  
24                   ~~new solar thermal electric generating facility that may include~~  
25                   ~~an associated renewable energy storage facility; or recycled~~

1 ~~energy projects that begins construction no later than December~~  
2 ~~31, 2015 or a new or re-powered coal-based electric generating~~  
3 ~~unit and an associated coal gasification facility, if any, that~~  
4 ~~begins construction no later than December 31, 2015 that meets~~  
5 ~~the following specifications:~~

6 ~~(a) emits the lesser of: 1) what is~~  
7 ~~achievable with the best available control technology; or 2)~~  
8 ~~thirty-five thousandths pound per million British thermal units~~  
9 ~~of sulfur dioxide, twenty-five thousandths pound per million~~  
10 ~~British thermal units of oxides of nitrogen and one hundredth~~  
11 ~~pound per million British thermal units of total particulates~~  
12 ~~in the flue gas;~~

13 ~~(b) removes the greater of: 1) what is~~  
14 ~~achievable with the best available control technology; or 2)~~  
15 ~~ninety percent of the mercury from the input fuel;~~

16 ~~(c) captures and sequesters or controls~~  
17 ~~carbon dioxide emissions so that by the later of January 1,~~  
18 ~~2017 or eighteen months after the commercial operation date of~~  
19 ~~the qualified generating facility, no more than one thousand~~  
20 ~~one hundred pounds per megawatt-hour of carbon dioxide is~~  
21 ~~emitted into the atmosphere;~~

22 ~~(d) all infrastructure required for~~  
23 ~~sequestration is in place by the later of January 1, 2017 or~~  
24 ~~eighteen months after the commercial operation date of the~~  
25 ~~qualified generating facility;~~

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1                   ~~(e) includes methods and procedures to~~  
2 ~~monitor the disposition of the carbon dioxide captured and~~  
3 ~~sequestered from the facility; and~~

4                   ~~(f) does not exceed seven hundred net~~  
5 ~~megawatts name-plate capacity;]~~

6                   (8) "entity" means an individual, estate,  
7 trust, receiver, cooperative association, club, corporation,  
8 company, firm, partnership, limited liability company, limited  
9 liability partnership, joint venture, syndicate or other  
10 association or a gas, water or electric utility owned or  
11 operated by a county or municipality;

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

18                   (10) "gross receipts tax due to the state"  
19 means the taxpayer's gross receipts liability for the reporting  
20 period that is:

21                   (a) determined by, if the taxpayer's  
22 business location is described in Subsection A of Section  
23 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross  
24 receipts for the reporting period by the difference between the  
25 gross receipts tax rate specified in Section 7-9-4 NMSA 1978

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1 and one and two hundred twenty-five thousandths percent; or

2 (b) equal to, if the taxpayer's business  
 3 location is not described in Subsection A of Section 7-1-6.4  
 4 NMSA 1978, the gross receipts tax rate specified in Section  
 5 7-9-4 NMSA 1978;

6 (11) "interest in a qualified generating  
 7 facility" means title to a qualified generating facility; a  
 8 leasehold interest in a qualified generating facility; an  
 9 ownership interest in a business or entity that is taxed for  
 10 federal income tax purposes as a partnership that holds title  
 11 to or a leasehold interest in a qualified generating facility;  
 12 or an ownership interest, through one or more intermediate  
 13 entities that are each taxed for federal income tax purposes as  
 14 a partnership, in a business that holds title to or a leasehold  
 15 interest in a qualified generating facility;

16 (12) "name-plate capacity" means the maximum  
 17 rated output of the facility measured as alternating current or  
 18 the equivalent direct current measurement;

19 (13) "qualified generating facility" means a  
 20 facility that begins construction not later than December 31,  
 21 2015 and is:

22 (a) a solar thermal electric generating  
 23 facility that begins construction on or after July 1, 2007 and  
 24 that may include an associated renewable energy storage  
 25 facility;

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 [bracketed material] = delete

1                    (b) a solar photovoltaic electric  
2 generating facility that begins construction on or after July  
3 1, 2009 and that may include an associated renewable energy  
4 storage facility;

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

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

9                    (e) a new or repowered coal-based  
10 electric generating facility and an associated coal  
11 gasification facility;

12                    (f) an animal waste biomass electric  
13 generating facility that begins construction on or after July  
14 1, 2009; or

15                    (g) a biomass electric generating  
16 facility that begins construction on or after July 1, 2009;

17                    ~~(4)~~ (14) "recycled energy" means energy  
18 produced by a generation unit with a name-plate capacity of not  
19 more than fifteen megawatts that converts the otherwise lost  
20 energy from the exhaust stacks or pipes to electricity without  
21 combustion of additional fossil fuel; ~~and~~

22                    ~~(5)~~ (15) "sequester" means to store, or  
23 chemically convert, carbon dioxide in a manner that prevents  
24 its release into the atmosphere and may include the use of  
25 geologic formations and enhanced oil, coalbed methane or

1 natural gas recovery techniques;

2 (16) "solar photovoltaic electric generating  
3 facility" means an electric generating facility with a name-  
4 plate capacity of two hundred fifty kilowatts or more that uses  
5 solar photovoltaic energy to generate electricity; and

6 (17) "solar thermal electric generating  
7 facility" means an electric generating facility with a name-  
8 plate capacity of one megawatt or more that uses solar thermal  
9 energy to generate electricity, including a facility that  
10 captures and provides solar energy to a preexisting electric  
11 generating facility using other fuels in part.

12 C. A taxpayer that holds an interest in a qualified  
13 generating facility may be allocated the right to claim the  
14 advanced energy combined reporting tax credit without regard to  
15 the taxpayer's relative interest in the qualified generating  
16 facility if:

17 (1) the business entity making the allocation  
18 provides notice of the allocation and the taxpayer's interest  
19 in the qualified generating facility to the department on forms  
20 prescribed by the department;

21 (2) allocations to the taxpayer and all other  
22 taxpayers allocated a right to claim the advanced energy tax  
23 credit shall not exceed one hundred percent of the advanced  
24 energy tax credit allowed for the qualified generating  
25 facility; and

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

5                   D. Upon receipt of the notice of an allocation of  
6 the right to claim all or a portion of the advanced energy  
7 combined reporting tax credit, the department shall verify the  
8 allocation due to the recipient.

9                   ~~[G.]~~ E. Subject to the limit imposed in Subsection  
10 [H] K of this section, the advanced energy combined reporting  
11 tax credit with respect to a qualified generating facility  
12 shall equal ~~[no more than]~~ six percent of the eligible  
13 generation plant costs of ~~[a]~~ the qualified generating  
14 facility. Taxpayers eligible to claim an advanced energy  
15 combined reporting tax credit holding less than one hundred  
16 percent of the interest in the qualified generating facility  
17 shall designate an individual to report annually to the  
18 department. That designated individual shall report the  
19 eligible generation plant costs incurred during the calendar  
20 year and the relative interest of those costs attributed to  
21 each eligible interest holder. The taxpayers shall submit a  
22 copy of the relative interests attributed to each interest  
23 holder to the department, and any change to the apportioned  
24 interests shall be submitted to the department. The designated  
25 person and the department may identify a mutually acceptable

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underscoring material = new  
[bracketed material] = delete

1 reporting schedule.

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

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

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

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

20           [G.] I. If the amount of the advanced energy tax  
21 credit [~~claimed~~] approved by the department exceeds the  
22 taxpayer's liability, the excess may be carried forward for up  
23 to [~~five~~] ten years.

24           [H.] J. The aggregate amount of advanced energy tax  
25 credit that may be claimed with respect to each qualified

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[bracketed material] = delete

1 generating facility shall not exceed sixty million dollars  
 2 (\$60,000,000).

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

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

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

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

18 (4) shall:

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

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

25 (c) deposit fees collected pursuant to

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1 this paragraph in the state air quality permit fund created  
2 pursuant to 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  
6 advanced energy tax [~~credit~~] credits, including the identity of  
7 qualified generating facilities, the energy production means  
8 used, the amount of emissions identified in this section  
9 reduced and removed by those qualified generating facilities  
10 and whether any requests for certificates of eligibility could  
11 not be approved due to program limits.

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

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

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

20 [~~L.~~] N. A taxpayer shall apply for approval for a  
 21 credit within one year following the end of the calendar year  
 22 in which the eligible generation plant costs are incurred."