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SENATE BILL 237

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

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF CHAPTER 7 NMSA 1978 TO PROVIDE FOR A TAX CREDIT FOR INTERESTS IN GEOTHERMAL, SOLAR THERMAL AND SOLAR PHOTOVOLTAIC ELECTRIC GENERATING FACILITIES.

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

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

"7-9G-2. ADVANCED ENERGY TAX CREDIT--GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX--PERSONAL INCOME TAX--CORPORATE INCOME TAX.--

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

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1 B. As used in this section:

2 (1) "department" means the taxation and
3 revenue department;

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

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

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

24 (5) "interest in a qualified generating
25 facility" means title to a qualified generating facility; a

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

9 (6) "name plate capacity" means the maximum
10 rated output of the facility measured as alternating current or
11 the equivalent direct current measurement;

12 [~~(3)~~] (7) "qualified generating facility"
13 means a new solar [~~thermal~~] electric generating facility that
14 may include an associated renewable energy storage facility; a
15 new geothermal electric generating facility; or a recycled
16 energy [~~projects that~~] project if that facility or project
17 begins construction no later than December 31, 2015 [~~or~~].

18 "Qualified generating facility" also includes a new or re-
19 powered coal-based electric generating unit and an associated
20 coal gasification facility, if any, that begins construction no
21 later than December 31, 2015 that meets the following
22 specifications:

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

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

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

14 (d) all infrastructure required for
15 sequestration is in place by the later of January 1, 2017 or
16 eighteen months after the commercial operation date of the
17 qualified generating facility;

18 (e) includes methods and procedures to
19 monitor the disposition of the carbon dioxide captured and
20 sequestered from the facility; and

21 (f) does not exceed seven hundred net
22 megawatts name plate capacity;

23 [~~4~~] (8) "recycled energy" means energy
24 produced by a generation unit with a name plate capacity of not
25 more than fifteen megawatts that converts the otherwise lost

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1 energy from the exhaust stacks or pipes to electricity without
2 combustion of additional fossil fuel; [~~and~~

3 ~~(5)]~~ (9) "sequester" means to store, or
4 chemically convert, carbon dioxide in a manner that prevents
5 its release into the atmosphere and may include the use of
6 geologic formations and enhanced oil, coalbed methane or
7 natural gas recovery techniques; and

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

15 C. Subject to the limit imposed in Subsection H of
16 this section, the advanced energy tax credit shall equal no
17 more than six percent of the eligible generation plant costs of
18 a qualified generating facility.

19 D. A taxpayer may apply for the advanced energy tax
20 credit by submitting to the taxation and revenue department a
21 certificate issued by the department of environment pursuant to
22 Subsection I of this section, documentation showing the
23 taxpayer's interest in the qualified generating facility
24 identified in the certificate and other information the
25 taxation and revenue department requests to determine the

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1 amount of tax credit due to the taxpayer.

2 E. A taxpayer having applied for and been granted
3 approval for a credit by the department pursuant to this
4 section may claim an amount of available credit against the
5 taxpayer's personal income tax, corporate income tax, gross
6 receipts tax, compensating tax or withholding tax due to the
7 state.

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

17 G. If the amount of the tax credit claimed exceeds
18 the taxpayer's liability, the excess may be carried forward for
19 up to [~~five~~] ten years.

20 H. The aggregate amount of tax credit that may be
21 claimed with respect to each qualified generating facility
22 shall not exceed sixty million dollars (\$60,000,000).

23 I. An entity that holds [~~title to~~] an interest in
24 a qualified generating facility may request a certificate of
25 eligibility from the department of environment to enable the

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1 requester to apply for the advanced energy 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 rules governing the procedure
15 for administering the provisions of this subsection and
16 Subsection J of this section;

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

19 (c) deposit fees collected pursuant to
20 this paragraph in the state air quality permit fund created
21 pursuant to Section 74-2-15 NMSA 1978; and

22 (5) shall report annually to the appropriate
23 interim legislative committee information that will allow the
24 legislative committee to analyze the effectiveness of the
25 advanced energy tax credit, including the identity of qualified

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1 generating facilities, the energy production means used, the
2 amount of emissions identified in this section reduced and
3 removed by those qualified generating facilities and whether
4 any requests for certificates of eligibility could not be
5 approved due to program limits.

6 J. If the department of environment issues a
7 certificate of eligibility to a taxpayer stating that the
8 taxpayer [~~is~~] holds an interest in a qualified generating
9 facility and the taxpayer does not sequester or control carbon
10 dioxide emissions to the extent required by this section by
11 the later of January 1, 2017 or eighteen months after the
12 commercial operation date of the qualified generating
13 facility, the taxpayer's certification as a qualified
14 generating facility shall be revoked by the department of
15 environment and the taxpayer shall refund to the state tax
16 credits granted pursuant to this section; provided that if the
17 taxpayer demonstrates to the department of environment that
18 the taxpayer made every effort to sequester or control carbon
19 dioxide emissions to the extent feasible and the facility's
20 inability to meet the sequestration requirements of a
21 qualified generating facility was beyond the facility's
22 control, in which case the department of environment shall
23 determine, after a public hearing, the amount of the tax
24 credit that should be refunded. The department of
25 environment, in its determination, shall consider the

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1 environmental performance of the facility and the extent to
2 which the inability to meet the sequestration requirements of
3 a qualified generating facility was in the control of the
4 taxpayer. The refund as determined by the department of
5 environment shall be paid within one hundred eighty days
6 following a final order by the department of environment.

7 K. Expenditures for which a taxpayer claims a
8 credit pursuant to this section are ineligible for credits
9 pursuant to the provisions of the Investment Credit Act or any
10 other credit against personal income tax, corporate income
11 tax, compensating tax, gross receipts tax or withholding tax.

12 L. A taxpayer shall apply for approval for a
13 credit within one year following the end of the calendar year
14 in which the eligible generation plant costs are incurred."