

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 261 & 277

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS AND COMPENSATING
TAX DEDUCTIONS FOR QUALIFIED GENERATING FACILITIES; CLARIFYING
THE MEANING OF TERMS FOR THE DEDUCTION FROM GROSS RECEIPTS FOR
RECEIPTS FOR SELLING SOLAR AND WIND GENERATION EQUIPMENT TO
GOVERNMENTS; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

"[NEW MATERIAL] ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS
AND COMPENSATING TAXES.--

A. Receipts from selling tangible personal property
or services that are eligible generation plant costs to a
person that holds an interest in a qualified generating
facility may be deducted from gross receipts if the holder of

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underscored material = new
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1 the interest delivers an appropriate nontaxable transaction
2 certificate to the seller. The department shall issue
3 nontaxable transaction certificates to a person that holds an
4 interest in a qualified generating facility upon presentation
5 to the department of a certificate of eligibility obtained from
6 the department of environment pursuant to Subsection F of this
7 section for the deduction created in this section or a
8 certificate of eligibility pursuant to Section 7-2-18.25,
9 7-2A-25 or 7-9G-2 NMSA 1978. The deduction created in this
10 section may be referred to as the "advanced energy deduction".

11 B. The value of eligible generation plant costs
12 from the sale of tangible personal property to a person that
13 holds an interest in a qualified generating facility for which
14 the department of environment has issued a certificate of
15 eligibility pursuant to Subsection F of this section may be
16 deducted in computing the compensating tax due.

17 C. The maximum tax benefit allowed for all eligible
18 generation plant costs from a qualified generating facility
19 shall be sixty million dollars (\$60,000,000) total for eligible
20 generation plant costs deducted or claimed pursuant to this
21 section or Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

22 D. Deductions taken pursuant to this section shall
23 be reported separately on a form approved by the department.
24 The nontaxable transaction certificates used to obtain tax-
25 deductible tangible personal property or services shall display

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1 clearly a notice to the taxpayer that the deduction shall be
2 reported separately from any other deductions claimed from
3 gross receipts. A taxpayer deducting eligible generation plant
4 costs from the costs on which compensating tax is imposed shall
5 report those eligible generation plant costs that are being
6 deducted.

7 E. The deductions allowed for a qualified
8 generating facility pursuant to this section shall be available
9 for a ten-year period from the year development of the
10 qualified generating facility begins and expenditures are made
11 for which nontaxable transaction certificates authorized
12 pursuant to this section are submitted to sellers for eligible
13 generation plant costs or deductions from the costs on which
14 compensating tax are calculated are first taken for eligible
15 generation plant costs.

16 F. An entity that holds an interest in a qualified
17 generating facility may request a certificate of eligibility
18 from the department of environment to enable the requester to
19 obtain a nontaxable transaction certificate for the advanced
20 energy deduction. The department of environment shall:

21 (1) determine if the facility is a qualified
22 generating facility;

23 (2) require that the requester provide the
24 department of environment with the information necessary to
25 assess whether the requester's facility meets the criteria to

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1 be a qualified generating facility;

2 (3) issue a certificate from sequentially
3 numbered certificates to the requester stating that the
4 facility is or is not a qualified generating facility within
5 one hundred eighty days after receiving all information
6 necessary to make a determination;

7 (4) issue:

8 (a) rules governing the procedures for
9 administering the provisions of this subsection; and

10 (b) a schedule of fees in which no fee
11 exceeds one hundred fifty thousand dollars (\$150,000);

12 (5) deposit fees collected pursuant to this
13 subsection in the state air quality permit fund created
14 pursuant to Section 74-2-15 NMSA 1978; and

15 (6) report annually to the appropriate interim
16 legislative committee information that will allow the
17 legislative committee to analyze the effectiveness of the
18 advanced energy deduction, including the identity of qualified
19 generating facilities, the energy production means used, the
20 amount of emissions identified in this section reduced and
21 removed by those qualified generating facilities and whether
22 any requests for certificates of eligibility could not be
23 approved due to program limits.

24 G. If the department of environment issues a
25 certificate of eligibility to a taxpayer stating that the

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1 taxpayer holds an interest in a qualified generating facility
2 and the taxpayer does not sequester or control carbon dioxide
3 emissions to the extent required by this section by the later
4 of January 1, 2017 or eighteen months after the commercial
5 operation date of the qualified generating facility, the
6 taxpayer's certification as a qualified generating facility
7 shall be revoked by the department of environment and the
8 taxpayer shall repay to the state tax deductions granted
9 pursuant to this section; provided that if the taxpayer
10 demonstrates to the department of environment that the taxpayer
11 made every effort to sequester or control carbon dioxide
12 emissions to the extent feasible and the facility's inability
13 to meet the sequestration requirements of a qualified
14 generating facility was beyond the facility's control, in which
15 case the department of environment shall determine, after a
16 public hearing, the amount of tax deduction that should be
17 repaid to the state. The department of environment, in its
18 determination, shall consider the environmental performance of
19 the facility and the extent to which the inability to meet the
20 sequestration requirements of a qualified generating facility
21 was in the control of the taxpayer. The repayment as
22 determined by the department of environment shall be paid
23 within one hundred eighty days following a final order by the
24 department of environment.

25 H. The advanced energy deduction allowed pursuant

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1 to this section shall not be claimed for the same qualified
2 expenses for which a taxpayer claims a credit pursuant to
3 Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction
4 pursuant to Section 7-9-54.3 NMSA 1978.

5 I. As used in this section:

6 (1) "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 of
13 sulfur dioxide, twenty-five thousandths pound per million British
14 thermal units of oxides of nitrogen and one hundredth pound per
15 million British thermal units of total particulate in the flue gas;

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

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

25 (d) all infrastructure required for

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1 sequestration is in place by the later of January 1, 2017 or
2 eighteen months after the commercial operation date of the
3 coal-based electric generating facility;

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

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

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

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

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

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1 preexisting electric generating facility using other fuels in part;

2 (5) "interest in a qualified generating facility"
3 means title to a qualified generating facility; a lessee's interest
4 in a qualified generating facility; and a county or municipality's
5 interest in a qualified generating facility when the county or
6 municipality issues an industrial revenue bond for construction of
7 the qualified generating facility;

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

11 (7) "qualified generating facility" means a
12 facility that begins construction not later than December 31, 2015
13 and is:

14 (a) a solar thermal electric generating
15 facility that begins construction on or after July 1, 2010 and that
16 may include an associated renewable energy storage facility;

17 (b) a solar photovoltaic electric generating
18 facility that begins construction on or after July 1, 2010 and that
19 may include an associated renewable energy storage facility;

20 (c) a geothermal electric generating
21 facility that begins construction on or after July 1, 2010;

22 (d) a recycled energy project if that
23 facility begins construction on or after July 1, 2010; or

24 (e) a new or repowered coal-based electric
25 generating facility and an associated coal gasification facility;

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

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

10 (10) "solar photovoltaic electric generating
11 facility" means an electric generating facility with a name-plate
12 capacity of one megawatt or more that uses solar photovoltaic
13 energy to generate electricity; and

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

20 Section 2. Section 7-9-54.3 NMSA 1978 (being Laws 2002,
21 Chapter 37, Section 8) is amended to read:

22 "7-9-54.3. DEDUCTION--GROSS RECEIPTS TAX--WIND [ENERGY] AND
23 SOLAR GENERATION EQUIPMENT--SALES TO [GOVERNMENT AGENCIES]
24 GOVERNMENTS.--

25 A. Receipts from selling wind generation [~~nacelles,~~

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1 ~~rotors or related equipment to the United States or New Mexico or~~
2 ~~any governmental unit or subdivision, agency, department or~~
3 ~~instrumentality thereof, if such equipment is installed on a~~
4 ~~supporting structure] equipment or solar generation equipment to a~~
5 ~~government for the purpose of installing a wind or solar electric~~
6 ~~generation facility may be deducted from gross receipts.~~

7 B. The deduction allowed pursuant to this section shall
8 not be claimed for receipts from an expenditure for which a
9 taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or
10 7-9G-2 NMSA 1978.

11 C. As used in this section:

12 (1) "government" means the United States or the
13 state or a governmental unit or a subdivision, agency, department
14 or instrumentality of the federal government or the state;

15 (2) "related equipment" means transformers,
16 circuit breakers and switching and metering equipment used to
17 connect a wind or solar electric generation plant to the electric
18 grid;

19 (3) "solar generation equipment" means solar
20 thermal energy collection, concentration and heat transfer and
21 conversion equipment; solar tracking hardware and software;
22 photovoltaic panels and inverters; support structures; turbines and
23 associated electrical generating equipment used to generate
24 electricity from solar thermal energy; and related equipment; and

25 (4) "wind generation equipment" means wind

1 generation turbines, blades, nacelles, rotors and supporting
2 structures used to generate electricity from wind and related
3 equipment."

4 Section 3. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2010.

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