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HOUSE BILL 277

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

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS AND COMPENSATING  
TAX DEDUCTIONS FOR QUALIFIED GENERATING FACILITIES; 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 that are eligible generation plant  
costs that are from selling tangible personal property or  
services to a person that holds an interest in a qualified  
generating facility may be deducted from gross receipts if the  
holder of the interest delivers a nontaxable transaction  
certificate to the seller. The department shall issue a

1 nontaxable transaction certificate to a person that holds an  
2 interest in a qualified generating facility upon presentation  
3 to the department of a certificate of eligibility obtained from  
4 the department of environment pursuant to Subsection C of this  
5 section for the deduction created in this section. The  
6 deduction created in this section may be referred to as the  
7 "advanced energy deduction".

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

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

19 (1) determine if the facility is a qualified  
20 generating facility;

21 (2) require that the requester provide the  
22 department of environment with the information necessary to  
23 assess whether the requester's facility meets the criteria to  
24 be a qualified generating facility;

25 (3) issue a certificate to the requester

underscored material = new  
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1 stating that the facility is or is not a qualified generating  
2 facility within one hundred eighty days after receiving all  
3 information necessary to make a determination;

4 (4) issue:

5 (a) rules governing the procedures for  
6 administering the provisions of this subsection; and

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

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

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

21 D. The advanced energy deduction allowed pursuant  
22 to this section shall not be claimed for the same qualified  
23 expenses for which a taxpayer claims a credit pursuant to  
24 Section 7-9G-2 NMSA 1978 or a deduction pursuant to Section  
25 7-9-54.3 NMSA 1978.

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E. As used in this section:

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

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

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

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

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

(e) includes methods and procedures to

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1 monitor the disposition of the carbon dioxide captured and  
2 sequestered from the coal-based electric generating facility; and

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

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

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

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

23 (5) "interest in a qualified generating facility"  
24 means title to a qualified generating facility; a lessee's interest  
25 in a qualified generating facility; and a county or municipality's

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1 interest in a qualified generating facility when the county or  
2 municipality issues an industrial revenue bond for construction of  
3 the qualified generating facility;

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

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

10 (a) a solar thermal electric generating  
11 facility that begins construction on or after July 1, 2007 and that  
12 may include an associated renewable energy storage facility;

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

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

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

20 (e) a new or recovered coal-based electric  
21 generating facility and an associated coal gasification facility;

22 (8) "recycled energy" means energy produced by a  
23 generation unit with a name-plate capacity of not more than fifteen  
24 megawatts that converts the otherwise lost energy from the exhaust  
25 stacks or pipes to electricity without combustion of additional

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1 fossil fuel;

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

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

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

16 Section 2. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2010.

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