

1 SENATE BILL 38

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

3 INTRODUCED BY

4 Carlos R. Cisneros

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10 AN ACT

11 RELATING TO TAXATION; AMENDING PROVISIONS OF THE RENEWABLE
12 ENERGY PRODUCTION TAX CREDIT IN THE INCOME TAX ACT AND THE
13 CORPORATE INCOME AND FRANCHISE TAX ACT; INCREASING THE ANNUAL
14 AGGREGATE CAP ON CERTIFICATION OF ELIGIBLE ENERGY GENERATORS.

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

17 Section 1. Section 7-2-18.18 NMSA 1978 (being Laws 2007,
18 Chapter 204, Section 2) is amended to read:

19 "7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

20 A. The tax credit provided in this section may be
21 referred to as the "renewable energy production tax credit".
22 The tax credit provided in this section may not be claimed with
23 respect to the same electricity production for which a tax
24 credit pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

25 B. A taxpayer who files an individual New Mexico

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1 income tax return and who is not a dependent of another
2 taxpayer is eligible for the renewable energy production tax
3 credit if the taxpayer:

4 (1) holds title to a qualified energy
5 generator that first produced electricity on or before
6 January 1, 2018; or

7 (2) leases property upon which a qualified
8 energy generator operates from a county or municipality under
9 authority of an industrial revenue bond and if the qualified
10 energy generator first produced electricity on or before
11 January 1, 2018.

12 C. The amount of the tax credit shall equal one
13 cent (\$.01) per kilowatt-hour of the first four hundred
14 thousand megawatt-hours of electricity produced by the
15 qualified energy generator in the taxable year using a wind- or
16 biomass-derived qualified energy resource; provided that the
17 total amount of tax credits claimed by all taxpayers for a
18 single qualified energy generator in a taxable year using a
19 wind- or biomass-derived qualified energy resource shall not
20 exceed one cent (\$.01) per kilowatt-hour of the first four
21 hundred thousand megawatt-hours of electricity produced by the
22 qualified energy generator.

23 D. The amount of the tax credit for electricity
24 produced by a qualified energy generator in the taxable year
25 using a solar-light-derived or solar-heat-derived qualified

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1 energy resource shall be at the amounts specified in Paragraphs
2 (1) through (10) of this subsection; provided that the total
3 amount of tax credits claimed for a taxable year by all
4 taxpayers for a single qualified energy generator using a
5 solar-light-derived or solar-heat-derived qualified energy
6 resource shall be limited to the first two hundred thousand
7 megawatt-hours of electricity produced by the qualified energy
8 generator in the taxable year:

9 (1) one and one-half cents (\$.015) per
10 kilowatt-hour in the first taxable year in which the qualified
11 energy generator produces electricity using a solar-light-
12 derived or solar-heat-derived qualified energy resource;

13 (2) two cents (\$.02) per kilowatt-hour in the
14 second taxable year in which the qualified energy generator
15 produces electricity using a solar-light-derived or solar-heat-
16 derived qualified energy resource;

17 (3) two and one-half cents (\$.025) per
18 kilowatt-hour in the third taxable year in which the qualified
19 energy generator produces electricity using a solar-light-
20 derived or solar-heat-derived qualified energy resource;

21 (4) three cents (\$.03) per kilowatt-hour in the
22 fourth taxable year in which the qualified energy generator
23 produces electricity using a solar-light-derived or
24 solar-heat-derived qualified energy resource;

25 (5) three and one-half cents (\$.035) per

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1 kilowatt-hour in the fifth taxable year in which the qualified
2 energy generator produces electricity using a solar-light-
3 derived or solar-heat-derived qualified energy resource;

4 (6) four cents (\$.04) per kilowatt-hour in the
5 sixth taxable year in which the qualified energy generator
6 produces electricity using a solar-light-derived or
7 solar-heat-derived qualified energy resource;

8 (7) three and one-half cents (\$.035) per
9 kilowatt-hour in the seventh taxable year in which the qualified
10 energy generator produces electricity using a
11 solar-light-derived or solar-heat-derived qualified energy
12 resource;

13 (8) three cents (\$.03) per kilowatt-hour in the
14 eighth taxable year in which the qualified energy generator
15 produces electricity using a solar-light-derived or
16 solar-heat-derived qualified energy resource;

17 (9) two and one-half cents (\$.025) per
18 kilowatt-hour in the ninth taxable year in which the qualified
19 energy generator produces electricity using a
20 solar-light-derived or solar-heat-derived qualified energy
21 resource; and

22 (10) two cents (\$.02) per kilowatt-hour in the
23 tenth taxable year in which the qualified energy generator
24 produces electricity using a solar-light-derived or
25 solar-heat-derived qualified energy resource.

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1 E. A taxpayer eligible for a renewable energy
2 production tax credit pursuant to Subsection B of this section
3 shall be eligible for the renewable energy production tax credit
4 for ten consecutive years, beginning on the date the qualified
5 energy generator begins producing electricity.

6 F. As used in this section:

7 (1) "biomass" means organic material that is
8 available on a renewable or recurring basis, including:

9 (a) forest-related materials, including
10 mill residues, logging residues, forest thinnings, slash, brush,
11 low-commercial-value materials or undesirable species, salt
12 cedar and other phreatophyte or woody vegetation removed from
13 river basins or watersheds and woody material harvested for the
14 purpose of forest fire fuel reduction or forest health and
15 watershed improvement;

16 (b) agricultural-related materials,
17 including orchard trees, vineyard, grain or crop residues,
18 including straws and stover, aquatic plants and agricultural
19 processed co-products and waste products, including fats, oils,
20 greases, whey and lactose;

21 (c) animal waste, including manure and
22 slaughterhouse and other processing waste;

23 (d) solid woody waste materials,
24 including landscape or right-of-way tree trimmings, rangeland
25 maintenance residues, waste pallets, crates and manufacturing,

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1 construction and demolition wood wastes, excluding pressure-
2 treated, chemically treated or painted wood wastes and wood
3 contaminated with plastic;

4 (e) crops and trees planted for the
5 purpose of being used to produce energy;

6 (f) landfill gas, wastewater treatment
7 gas and biosolids, including organic waste byproducts generated
8 during the wastewater treatment process; and

9 (g) segregated municipal solid waste,
10 excluding tires and medical and hazardous waste;

11 (2) "qualified energy generator" means a
12 facility with at least one megawatt generating capacity located
13 in New Mexico that produces electricity by means of a fluidized
14 bed technology or similar low-emissions technology or a
15 zero-emissions generation technology that has substantial
16 long-term production potential using a qualified energy resource
17 and that sells that electricity to an unrelated person; and

18 (3) "qualified energy resource" means: [~~a~~
19 ~~resource that generates electrical energy by means of a~~
20 ~~fluidized bed technology or similar low-emissions technology or~~
21 ~~a zero-emissions generation technology that has substantial~~
22 ~~long-term production potential and that uses only the following~~
23 ~~energy sources:~~

24 (a) ~~solar light;~~

25 (b) ~~solar heat;~~

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~~(c) wind; or~~

~~(d) biomass]~~ (a) solar light, solar heat or wind to which a qualified energy generator has the immediate right of access, procurement and use, pursuant to a binding lease, deed or other writing that gives the qualified energy generator the use and control of the land from which the solar light, solar heat or wind is harvested; or

(b) biomass that is available in sufficient quantities to supply a qualified energy generator for a minimum of three years from the date that the qualified energy generator begins producing electricity and over which the qualified energy generator has ownership or control and the immediate right of access, procurement and use, pursuant to a binding lease, contract or other writing.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified

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1 pursuant to this section and pursuant to Section 7-2A-19 NMSA
2 1978 will not exceed a total of two million megawatt-hours plus
3 an additional [~~five hundred thousand~~] one million megawatt-hours
4 produced by qualified energy generators using a solar-light-
5 derived or solar-heat-derived qualified energy resource.

6 Applications shall be considered in the order received. The
7 energy, minerals and natural resources department may estimate
8 the annual power-generating potential of a generating facility
9 for the purposes of this section. The energy, minerals and
10 natural resources department shall issue a certificate to the
11 applicant stating whether the facility is an eligible qualified
12 energy generator and the estimated annual production potential
13 of the generating facility, which shall be the limit of that
14 facility's energy production eligible for the tax credit for the
15 taxable year. The energy, minerals and natural resources
16 department may issue rules governing the procedure for
17 administering the provisions of this subsection and shall report
18 annually to the appropriate interim legislative committee
19 information that will allow the legislative committee to analyze
20 the effectiveness of the renewable energy production tax credit,
21 including the identity of qualified energy generators, the
22 energy production means used, the amount of energy produced by
23 those qualified energy generators and whether any applications
24 could not be approved due to program limits.

25 H. A taxpayer may be allocated all or a portion of

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1 the right to claim a renewable energy production tax credit
2 without regard to proportional ownership interest if:

3 (1) the taxpayer owns an interest in a business
4 entity that is taxed for federal income tax purposes as a
5 partnership;

6 (2) the business entity:

7 (a) would qualify for the renewable
8 energy production tax credit pursuant to Paragraph (1) or (2) of
9 Subsection B of this section;

10 (b) owns an interest in a business entity
11 that is also taxed for federal income tax purposes as a
12 partnership and that would qualify for the renewable energy
13 production tax credit pursuant to Paragraph (1) or (2) of
14 Subsection B of this section; or

15 (c) owns, through one or more
16 intermediate business entities that are each taxed for federal
17 income tax purposes as a partnership, an interest in the
18 business entity described in Subparagraph (b) of this paragraph;

19 (3) the taxpayer and all other taxpayers
20 allocated a right to claim the renewable energy production tax
21 credit pursuant to this subsection own collectively at least a
22 five percent interest in a qualified energy generator;

23 (4) the business entity provides notice of the
24 allocation and the taxpayer's interest to the energy, minerals
25 and natural resources department on forms prescribed by that

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1 department; and

2 (5) the energy, minerals and natural resources
3 department certifies the allocation in writing to the taxpayer.

4 I. Upon receipt of notice of an allocation of the
5 right to claim all or a portion of the renewable energy
6 production tax credit, the energy, minerals and natural
7 resources department shall promptly certify the allocation in
8 writing to the recipient of the allocation.

9 J. A husband and wife who file separate returns for
10 a taxable year in which they could have filed a joint return may
11 each claim only one-half of the credit that would have been
12 allowed on a joint return.

13 K. A taxpayer may claim the renewable energy
14 production tax credit by submitting to the taxation and revenue
15 department the certificate issued by the energy, minerals and
16 natural resources department, pursuant to Subsection G or H of
17 this section, documentation showing the taxpayer's interest in
18 the facility, documentation of the amount of electricity
19 produced by the facility in the taxable year and any other
20 information the taxation and revenue department may require to
21 determine the amount of the tax credit due the taxpayer.

22 L. If the requirements of this section have been
23 complied with, the department shall approve the renewable energy
24 production tax credit. The credit may be deducted from a
25 taxpayer's New Mexico income tax liability for the taxable year

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1 for which the credit is claimed. If the amount of tax credit
2 exceeds the taxpayer's income tax liability for the taxable
3 year:

4 (1) the excess may be carried forward for a
5 period of five taxable years; or

6 (2) if the tax credit was issued with respect
7 to a qualified energy generator that first produced electricity
8 using a qualified energy resource on or after October 1, 2007,
9 the excess shall be refunded to the taxpayer.

10 M. Once a taxpayer has been granted a renewable
11 energy production tax credit for a given facility, that taxpayer
12 shall be allowed to retain the facility's original date of
13 application for tax credits for that facility until either the
14 facility goes out of production for more than six consecutive
15 months in a year or until the facility's ten-year eligibility
16 has expired."

17 Section 2. Section 7-2A-19 NMSA 1978 (being Laws 2002,
18 Chapter 59, Section 1, as amended) is amended to read:

19 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
20 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

21 A. The tax credit provided in this section may be
22 referred to as the "renewable energy production tax credit".
23 The tax credit provided in this section may not be claimed with
24 respect to the same electricity production for which the
25 renewable energy production tax credit provided in the Income

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1 Tax Act has been claimed.

2 B. A person is eligible for the renewable energy
3 production tax credit if the person:

4 (1) holds title to a qualified energy generator
5 that first produced electricity on or before January 1, 2018; or

6 (2) leases property upon which a qualified
7 energy generator operates from a county or municipality under
8 authority of an industrial revenue bond and if the qualified
9 energy generator first produced electricity on or before January
10 1, 2018.

11 C. The amount of the tax credit shall equal one cent
12 (\$.01) per kilowatt-hour of the first four hundred thousand
13 megawatt-hours of electricity produced by the qualified energy
14 generator in the taxable year using a wind- or biomass-derived
15 qualified energy resource; provided that the total amount of tax
16 credits claimed by all taxpayers for a single qualified energy
17 generator in a taxable year using a wind- or biomass-derived
18 qualified energy resource shall not exceed one cent (\$.01) per
19 kilowatt-hour of the first four hundred thousand megawatt-hours
20 of electricity produced by the qualified energy generator.

21 D. The amount of the tax credit for electricity
22 produced by a qualified energy generator in the taxable year
23 using a solar-light-derived or solar-heat-derived qualified
24 energy resource shall be at the amounts specified in Paragraphs
25 (1) through (10) of this subsection; provided that the total

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1 amount of tax credits claimed for a taxable year by all
2 taxpayers for a single qualified energy generator using a solar-
3 light-derived or solar-heat-derived qualified energy resource
4 shall be limited to the first two hundred thousand megawatt-
5 hours of electricity produced by the qualified energy generator
6 in the taxable year:

7 (1) one and one-half cents (\$.015) per
8 kilowatt-hour in the first taxable year in which the qualified
9 energy generator produces electricity using a solar-light-
10 derived or solar-heat-derived qualified energy resource;

11 (2) two cents (\$.02) per kilowatt-hour in the
12 second taxable year in which the qualified energy generator
13 produces electricity using a solar-light-derived or solar-heat-
14 derived qualified energy resource;

15 (3) two and one-half cents (\$.025) per
16 kilowatt-hour in the third taxable year in which the qualified
17 energy generator produces electricity using a solar-light-
18 derived or solar-heat-derived qualified energy resource;

19 (4) three cents (\$.03) per kilowatt-hour in the
20 fourth taxable year in which the qualified energy generator
21 produces electricity using a solar-light-derived or solar-heat-
22 derived qualified energy resource;

23 (5) three and one-half cents (\$.035) per
24 kilowatt-hour in the fifth taxable year in which the qualified
25 energy generator produces electricity using a solar-light-

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1 derived or solar-heat-derived qualified energy resource;

2 (6) four cents (\$.04) per kilowatt-hour in the
3 sixth taxable year in which the qualified energy generator
4 produces electricity using a solar-light-derived or
5 solar-heat-derived qualified energy resource;

6 (7) three and one-half cents (\$.035) per
7 kilowatt-hour in the seventh taxable year in which the qualified
8 energy generator produces electricity using a solar-light-
9 derived or solar-heat-derived qualified energy resource;

10 (8) three cents (\$.03) per kilowatt-hour in the
11 eighth taxable year in which the qualified energy generator
12 produces electricity using a solar-light-derived or solar-heat-
13 derived qualified energy resource;

14 (9) two and one-half cents (\$.025) per
15 kilowatt-hour in the ninth taxable year in which the qualified
16 energy generator produces electricity using a solar-light-
17 derived or solar-heat-derived qualified energy resource; and

18 (10) two cents (\$.02) per kilowatt-hour in the
19 tenth taxable year in which the qualified energy generator
20 produces electricity using a solar-light-derived or
21 solar-heat-derived qualified energy resource.

22 E. A taxpayer eligible for a renewable energy
23 production tax credit pursuant to Subsection B of this section
24 shall be eligible for the renewable energy production tax credit
25 for ten consecutive years, beginning on the date the qualified

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1 energy generator begins producing electricity.

2 F. As used in this section:

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

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

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

17 (c) animal waste, including manure and
18 slaughterhouse and other processing waste;

19 (d) solid woody waste materials,
20 including landscape or right-of-way tree trimmings, rangeland
21 maintenance residues, waste pallets, crates and manufacturing,
22 construction and demolition wood wastes, excluding
23 pressure-treated, chemically treated or painted wood wastes and
24 wood contaminated with plastic;

25 (e) crops and trees planted for the

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1 purpose of being used to produce energy;

2 (f) landfill gas, wastewater treatment
3 gas and biosolids, including organic waste byproducts generated
4 during the wastewater treatment process; and

5 (g) segregated municipal solid waste,
6 excluding tires and medical and hazardous waste;

7 (2) "qualified energy generator" means a
8 facility with at least one megawatt generating capacity located
9 in New Mexico that produces electricity by means of a fluidized
10 bed technology or similar low-emissions technology or a
11 zero-emissions generation technology that has substantial
12 long-term production potential using a qualified energy resource
13 and that sells that electricity to an unrelated person; and

14 (3) "qualified energy resource" means: [~~a~~
15 ~~resource that generates electrical energy by means of a~~
16 ~~fluidized bed technology or similar low-emissions technology or~~
17 ~~a zero-emissions generation technology that has substantial~~
18 ~~long-term production potential and that uses only the following~~
19 ~~energy sources:~~

20 ~~(a) solar light;~~

21 ~~(b) solar heat;~~

22 ~~(c) wind; or~~

23 ~~(d) biomass]~~ (a) solar light, solar heat
24 or wind to which a qualified energy generator has the immediate
25 right of access, procurement and use, pursuant to a binding

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1 lease, deed or other writing that gives the qualified energy
2 generator the use and control of the land from which the solar
3 light, solar heat or wind is harvested; or

4 (b) biomass that is available in
5 sufficient quantities to supply a qualified energy generator for
6 a minimum of three years from the date that the qualified energy
7 generator begins producing electricity and over which the
8 qualified energy generator has ownership or control and the
9 immediate right of access, procurement and use, pursuant to a
10 binding lease, contract or other writing.

11 G. A person that holds title to a facility
12 generating electricity from a qualified energy resource or a
13 person that leases such a facility from a county or municipality
14 pursuant to an industrial revenue bond may request certification
15 of eligibility for the renewable energy production tax credit
16 from the energy, minerals and natural resources department,
17 which shall determine if the facility is a qualified energy
18 generator. The energy, minerals and natural resources
19 department may certify the eligibility of an energy generator
20 only if the total amount of electricity that may be produced
21 annually by all qualified energy generators that are certified
22 pursuant to this section and pursuant to the Income Tax Act will
23 not exceed a total of two million megawatt-hours plus an
24 additional [~~five hundred thousand~~] one million megawatt-hours
25 produced by qualified energy generators using a solar-light-

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1 derived or solar-heat-derived qualified energy resource.
2 Applications shall be considered in the order received. The
3 energy, minerals and natural resources department may estimate
4 the annual power-generating potential of a generating facility
5 for the purposes of this section. The energy, minerals and
6 natural resources department shall issue a certificate to the
7 applicant stating whether the facility is an eligible qualified
8 energy generator and the estimated annual production potential
9 of the generating facility, which shall be the limit of that
10 facility's energy production eligible for the tax credit for the
11 taxable year. The energy, minerals and natural resources
12 department may issue rules governing the procedure for
13 administering the provisions of this subsection and shall report
14 annually to the appropriate interim legislative committee
15 information that will allow the legislative committee to analyze
16 the effectiveness of the renewable energy production tax credit,
17 including the identity of qualified energy generators, the
18 energy production means used, the amount of energy produced by
19 those qualified energy generators and whether any applications
20 could not be approved due to program limits.

21 H. A taxpayer may be allocated all or a portion of
22 the right to claim a renewable energy production tax credit
23 without regard to proportional ownership interest if:

24 (1) the taxpayer owns an interest in a business
25 entity that is taxed for federal income tax purposes as a

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1 partnership;

2 (2) the business entity:

3 (a) would qualify for the renewable
4 energy production tax credit pursuant to Paragraph (1) or (2) of
5 Subsection B of this section;

6 (b) owns an interest in a business entity
7 that is also taxed for federal income tax purposes as a
8 partnership and that would qualify for the renewable energy
9 production tax credit pursuant to Paragraph (1) or (2) of
10 Subsection B of this section; or

11 (c) owns, through one or more
12 intermediate business entities that are each taxed for federal
13 income tax purposes as a partnership, an interest in the
14 business entity described in Subparagraph (b) of this paragraph;

15 (3) the taxpayer and all other taxpayers
16 allocated a right to claim the renewable energy production tax
17 credit pursuant to this subsection own collectively at least a
18 five percent interest in a qualified energy generator;

19 (4) the business entity provides notice of the
20 allocation and the taxpayer's interest to the energy, minerals
21 and natural resources department on forms prescribed by that
22 department; and

23 (5) the energy, minerals and natural resources
24 department certifies the allocation in writing to the taxpayer.

25 I. Upon receipt of notice of an allocation of the

1 right to claim all or a portion of the renewable energy
2 production tax credit, the energy, minerals and natural
3 resources department shall promptly certify the allocation in
4 writing to the recipient of the allocation.

5 J. A taxpayer may claim the renewable energy
6 production tax credit by submitting to the taxation and revenue
7 department the certificate issued by the energy, minerals and
8 natural resources department, pursuant to Subsection G or H of
9 this section, documentation showing the taxpayer's interest in
10 the facility, documentation of the amount of electricity
11 produced by the facility in the taxable year and any other
12 information the taxation and revenue department may require to
13 determine the amount of the tax credit due the taxpayer.

14 K. If the requirements of this section have been
15 complied with, the department shall approve the renewable energy
16 production tax credit. The credit may be deducted from a
17 taxpayer's New Mexico corporate income tax liability for the
18 taxable year for which the credit is claimed. If the amount of
19 tax credit exceeds the taxpayer's corporate income tax liability
20 for the taxable year:

21 (1) the excess may be carried forward for a
22 period of five taxable years; or

23 (2) if the tax credit was issued with respect
24 to a qualified energy generator that first produced electricity
25 using a qualified energy resource on or after October 1, 2007,

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1 the excess shall be refunded to the taxpayer.

2 L. Once a taxpayer has been granted a renewable
3 energy production tax credit for a given facility, that taxpayer
4 shall be allowed to retain the facility's original date of
5 application for tax credits for that facility until either the
6 facility goes out of production for more than six consecutive
7 months in a year or until the facility's ten-year eligibility
8 has expired."

9 Section 3. APPLICABILITY.--The provisions of this act
10 apply to taxable years beginning on or after January 1, 2010.