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SENATE BILL 409

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO TAXATION; PROVIDING AN ADVANCED ENERGY DEDUCTION FOR THE LEASING OF TANGIBLE PERSONAL PROPERTY; EXTENDING THE PERIOD OF ALLOWABLE DEDUCTIONS TO TWENTY-FIVE YEARS.

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

**SECTION 1.** Section 7-9-114 NMSA 1978 (being Laws 2010, Chapter 77, Section 1 and Laws 2010, Chapter 78, Section 1) is amended to read:

"7-9-114. ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND COMPENSATING TAXES.--

A. Receipts from selling or leasing 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 the interest delivers an appropriate nontaxable

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

11 B. The value of eligible generation plant costs  
12 from the sale or lease of tangible personal property to a  
13 person that holds an interest in a qualified generating  
14 facility for which the department of environment has issued a  
15 certificate of eligibility pursuant to Subsection F of this  
16 section may be 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~~] twenty-five-year period from the year  
10 development of the qualified generating facility begins and  
11 expenditures are made for which nontaxable transaction  
12 certificates authorized pursuant to this section are submitted  
13 to sellers or lessors for eligible generation plant costs or  
14 deductions from the costs on which compensating tax are  
15 calculated are first taken for eligible 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~~  
15 ~~which case~~] the department of environment shall determine,  
16 after a public hearing, the amount of tax deduction that should  
17 be 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  
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 particulate in  
16 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 (2) "eligible generation plant costs" means  
12 expenditures for the development and construction of a  
13 qualified generating facility, including permitting; lease  
14 payments; site characterization and assessment; engineering;  
15 design; carbon dioxide capture, treatment, compression,  
16 transportation and sequestration; site and equipment  
17 acquisition; and fuel supply development used directly and  
18 exclusively in a qualified generating facility;

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

25 (4) "geothermal electric generating facility"

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1 means a facility with a name-plate capacity of one megawatt or  
2 more that uses geothermal energy to generate electricity,  
3 including a facility that captures and provides geothermal  
4 energy to a preexisting electric generating facility using  
5 other fuels in part;

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

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

16 (7) "qualified generating facility" means a  
17 facility that begins construction not later than December 31,  
18 2015 and is:

19 (a) a solar thermal electric generating  
20 facility that begins construction on or after July 1, 2010 and  
21 that may include an associated renewable energy storage  
22 facility;

23 (b) a solar photovoltaic electric  
24 generating facility that begins construction on or after July  
25 1, 2010 and that may include an associated renewable energy

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1 storage facility;

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

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

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

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

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

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

23 (11) "solar thermal electric generating  
24 facility" means an electric generating facility with a name-  
25 plate capacity of one megawatt or more that uses solar thermal

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1 energy to generate electricity, including a facility that  
2 captures and provides solar thermal energy to a preexisting  
3 electric generating facility using other fuels in part."

4 SECTION 2. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2011.

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