

AN ACT

RELATING TO TAXATION; PROVIDING AN ADVANCED ENERGY DEDUCTION FOR THE LEASING OF TANGIBLE PERSONAL PROPERTY; ESTABLISHING THE PERIOD OF ALLOWABLE DEDUCTIONS FOR LEASES AS 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 transaction certificate to the seller or lessor. The department shall issue nontaxable transaction certificates to a person that holds an interest in a qualified generating facility upon presentation to the department of a certificate of eligibility obtained from the department of environment pursuant to Subsection G of this section for the deduction created in this section or a certificate of eligibility pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

The deduction created in this section may be referred to as the "advanced energy deduction".

B. The purpose of the advanced energy deduction is to encourage the construction and development of qualified generating facilities in New Mexico and to sequester or control carbon dioxide emissions.

C. The value of eligible generation plant costs from the sale or lease of tangible personal property to a person that holds an interest in a qualified generating facility for which the department of environment has issued a certificate of eligibility pursuant to Subsection G of this section may be deducted in computing the compensating tax due.

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

E. Deductions taken pursuant to this section shall be reported separately on a form approved by the department. The nontaxable transaction certificates used to obtain tax-deductible tangible personal property or services shall display clearly a notice to the taxpayer that the deduction shall be reported separately from any other deductions claimed from gross receipts. A taxpayer deducting eligible generation

plant costs from the costs on which compensating tax is imposed shall report those eligible generation plant costs that are being deducted.

F. The deductions allowed for a qualified generating facility pursuant to this section shall be available for a ten-year period for purchases and a twenty-five-year period for leases from the year development of the qualified generating facility begins and expenditures are made for which nontaxable transaction certificates authorized pursuant to this section are submitted to sellers or lessors for eligible generation plant costs or deductions from the costs on which compensating tax are calculated are first taken for eligible generation plant costs.

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

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

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

(3) issue a certificate from sequentially

numbered certificates to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) issue:

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

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

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

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

H. The economic development department shall keep a record of temporary and permanent jobs at all qualified generating facilities in New Mexico. The economic development department and the taxation and revenue department shall

measure the amount of state revenue that is attributable to activity at each qualified generating facility in New Mexico. The economic development department shall coordinate with the department of environment to report annually to the appropriate interim legislative committee on the effectiveness of the advanced energy deduction. A taxpayer who claims an advanced energy deduction shall provide the economic development department, the department of environment and the taxation and revenue department with the information required to compile the report required by this section.

Notwithstanding any other section of law to the contrary, the economic development department, the department of environment and the taxation and revenue department may disclose the number of applicants for the advanced energy deduction, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

I. If the department of environment issues a certificate of eligibility to a taxpayer stating that the taxpayer holds an interest in a qualified generating facility and the taxpayer does not sequester or control carbon dioxide emissions to the extent required by this section by the later of January 1, 2017 or eighteen months after the commercial operation date of the qualified generating facility, the

taxpayer's certification as a qualified generating facility shall be revoked by the department of environment and the taxpayer shall repay to the state tax deductions granted pursuant to this section; provided that, if the taxpayer demonstrates to the department of environment that the taxpayer made every effort to sequester or control carbon dioxide emissions to the extent feasible and the facility's inability to meet the sequestration requirements of a qualified generating facility was beyond the facility's control, the department of environment shall determine, after a public hearing, the amount of tax deduction that should be repaid to the state. The department of environment, in its determination, shall consider the environmental performance of the facility and the extent to which the inability to meet the sequestration requirements of a qualified generating facility was in the control of the taxpayer. The repayment as determined by the department of environment shall be paid within one hundred eighty days following a final order by the department of environment.

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

K. An appropriate legislative committee shall

review the effectiveness of the advanced energy deduction every four years beginning in 2015.

L. As used in this section:

(1) "coal-based electric generating facility" means a new or repowered 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 monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

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

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

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

(4) "geothermal electric generating facility" means a facility with a name-plate capacity of one

megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

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

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

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

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

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

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

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

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

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

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

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

(11) "solar thermal electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that

captures and provides solar thermal energy to a preexisting electric generating facility using other fuels in part."

**SECTION 2. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2011.\_\_\_\_\_

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