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F I S C A L I M P A C T R E P O R T

		ORIGINAL DATE	02/15/11		
SPONSOR	Leavell	**LAST UPDATED**	03/17/11	**HB**	
SHORT TITLE	Advanced Energy Deduction for Certain Leases			**SB**	409/aSFC/aHBIC
				ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	**FY12**	**FY13**		
	$0.0*	$0.0*	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

(*) TRD notes a fiscal impact, but scores this the same as does LFC for FY12 and FY13. See Fiscal Implications sections for discussion.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	$4.0	$0.0 - $44.0	$0.0 - $44.0	$4.0 - $92.0	Recurring	TRD Operating (General Fund)

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Economic Development Department (EDD)
Environment Department (NMED)

SUMMARY

Synopsis of HBIC amendment

The House Business and Industry Committee amendment to Senate Bill 409 as amended adopts an amendment previously suggested by LFC. The amendment retains a 25-year duration for advanced energy property tax credit, while restoring the original 10-year duration for the tax credit for purchases.

The LFC question in the original bill review was:

> While it is clear why the bill adds "leasing" to "sale" to increase flexibility of financing options, why is it necessary to increase the 10-year effective life of the credit to 25-years now? Could we not wait and see if the credit will stimulate new plant construction in the shorter 10-year window and extend the sunset date only if companies are unable to plan, permit, finance and construct the plants within ten years?

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to Senate Bill 409 addresses two technical issues identified in the original fiscal impact report. These are that this bill modifies an "economic development tax incentive" as defined in Section 9-15-56 and that neither this bill nor the provisions of the act establishing the tax expenditure last year contain a purpose declaration or a requirement that the positive consequences of the tax expenditure be tracked. The SFC amendment describes the purpose of the advanced energy deduction:

> …encourage the construction and development of qualified generating facilities in New Mexico and to sequester or control carbon dioxide emissions."

Similarly, the amendment requires the Economic Development Department (EDD) track temporary (construction) and permanent (operating) jobs at all qualified facilities in the State. TRD is required to track revenue attributable to activity at each qualified generating facility in New Mexico. Any taxpayer who claims an advanced electrical energy generation gross receipts tax deduction must, as a condition of claiming the deduction, provide information to TRD, EDD and NMED necessary to allow preparation of a report detailing the costs and benefits to the state of the deduction. The bill also requires that a taxpayer claiming the credit implicitly waive the right of privacy concerning the number of applicants of the deduction, the amount of the deduction approved, the number of employees of the taxpayer and other information required by the legislature or TRD in order to evaluate the effectiveness of the deduction.

The amendment also directs the legislature to evaluate the deduction in 2017 and every six years thereafter.

Synopsis of Original Bill

Senate Bill 409 amends last year's advanced electrical energy generation gross receipts tax deduction to add "lease" of tangible property (equipment) to the "sale" of tangible property included last year. Subject to a $60 million limit per facility for all tax benefits claimed from this deduction, the sunset for claims is increased from 10 years in statute to 25 years pursuant to this bill.

FISCAL IMPLICATIONS

Last year's SB 201 & 202/SFCS/aSFl (Chapter 77) and the duplicate House Bill (HB 261 – Chapter 78) created the Advanced Energy Gross Receipts Tax Deduction for the sale of equipment for an advanced electrical generation facility. The maximum tax benefit allowed for all generation plant costs were limited to $60 million per facility. The revenue impact table last year was as follows:

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
NFI	($3,375.0) to ($1,1385.0)	($3,375.0) to ($11,385.0)	Recurring	General Fund
NFI	($657.0) to ($2216.0)	($657.0) to ($2,216.0)	Recurring	County Governments

However, this bill, by including "leases" as well as sales/purchases of eligible equipment will not increase this range. The portion of the bill should be viewed as a technical change more than a substantive change.

TRD notes the following:

> The Department has received information on one proposed new facility in the state that might benefit from the proposed changes to the statute. Other facilities might also benefit from the financing arrangements that are enabled by the proposal. Thus, the proposal could increase gross receipts tax (GRT) deductions and reduce state and local GRT revenue. However, the current consensus general fund revenue forecast has already included reduced GRT revenue to reflect new developments under the present law deduction. It now appears that those new developments will not occur as soon as previously anticipated. Thus, the proposal may not reduce general fund revenue below the current forecast. The renewable energy sector has been particularly hard hit by the recession so many projects have been delayed. However, the availability of federal incentives could revive interest in these developments if energy prices rise in the future. Under that scenario, the proposed deduction expansion has the potential to reduce general fund revenue in years to come.

SIGNIFICANT ISSUES

This bill amends 2010's Chapter 77 Electric Facility Gross Receipts Tax Deduction and Chapter 78 to add "leases" of tangible personal property. This was probably inadvertently left out of last year's bill.

The bill increases the 10-year sunset date on this bill to 25-years so that energy companies can benefit from the full $60 million available tax benefit. The timeline from proposal to operation of a plant can easily exceed 10 years, even if financing is available. Permitting any large-scale electrical generation facility is a lengthy process.

Any tax expenditure reduces revenue. This advanced energy GRT deduction is no exception. However, since this bill is really just a technical change to last year's enactment, the caution about good tax policy may be less appropriate than when considering other tax expenditures from scratch.

However, TRD notes:

> The maximum tax benefit allowed is capped at **$60 million** per facility for the combined total of (1) deductions claimed pursuant to the advanced energy deduction in Section 7-9-114 (which this bill expands), (2) the advanced energy income tax credit in Section 7-2-18.25, (3) the advanced energy corporate income tax credit in Section 7-2A-25 and (4) the advanced energy combined reporting tax credit in Section 7-9G-2.
>
> This bill will reduce the gross receipts tax base in order to achieve other public policy goals.

There may be a potential for double dipping with this deduction and other state or federal incentives.

The proposed deduction expansion will be added to a number of other state and federal policies designed to subsidize the development of renewable energy. These provisions raise the question of what public benefits are associated with these facilities that justify the reduction of state revenues, often termed a "tax expenditure." Proponents of renewable energy point to environmental concerns such as reducing the potential for global warming. Much of these benefits would not accrue to the residents of New Mexico. Although these benefits are not unimportant to public policy, they may be more appropriately targeted by national rather than state-level policies.

Meanwhile, to the extent that renewable energy generating facilities become a substitute for traditional power sources, the state's tax base is eroded by tax exclusions like the ones in this bill. Proponents of renewable energy argue that these benefits are only temporary and that the industry will eventually be able to compete without the subsidies. Nevertheless, the combination of all renewable energy incentives may have significant negative implications for the state's budget in the coming years. A sunset date may be prudent.

CONFLICTS, DUPLICATES AND COMPANIONS

HB 440 and SB 409 are duplicates.

SB 234 SOLAR ENERGY SYSTEM GROSS RECEIPTS is related.

TECHNICAL ISSUES

Both of these issues have been addressed by SFC amendment.
~~TRD reports that the deduction expanded by this bill meets the definition of an "economic development tax incentive" as defined in Section 9-15-56 but neither this bill nor the original deduction follow the guidelines required in that Section. The economic development tax incentive guidelines require that the enabling statute for an economic development tax incentive shall include: (1) a statement of purpose; and (2) a requirement that the economic development department track job creation.~~

~~LFC's tax policy guidelines imply that economic development tax incentives intended to develop a sustainable energy industry should carry sunset dates to encourage the industry to prosper because of beneficial economics and meeting a basic demand rather than encouraging non-economic activities to the detriment of the general fund.~~

ADMINISTRATIVE IMPACT

TRD reports that this bill further complicates the advanced energy deduction and its relation to the advanced energy tax credits under Sections 7-2-18.25, 7-2A-25 and 7-9G-2. The change also makes taking the deduction in place of the credit more attractive – when taking the deduction is more difficult and labor intensive to track for the Department. Tracking the deduction is difficult because the Taxation and Revenue Department must track the amount that is taken by the buyer, when the seller actually reports the deduction. The deduction as currently structured has a high potential for abuse and/or fraud.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Advanced energy companies might lose out on the tax benefits enacted last year because of the method of financing tangible generation and pollution reduction equipment. Also, without increasing the period over which all advanced energy producing plants could receive the deduction, there might be some portion of the total $60 million tax benefit left on the table.

POSSIBLE QUESTIONS

While it is clear why the bill adds "leasing" to "sale" to increase flexibility of financing options, why is it necessary to increase the 10-year effective life of the credit to 25-years now? Could we not wait and see if the credit will stimulate new plant construction in the shorter 10-year window and extend the sunset date only if companies are unable to plan, permit, finance and construct the plants within ten years?

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