

PROPOSED

SENATE TAX, BUSINESS AND TRANSPORTATION COMMITTEE SUBSTITUTE
FOR SENATE BILL 316

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
CREATING THE ADVANCED ENERGY EQUIPMENT INCOME TAX CREDIT AND
THE ADVANCED ENERGY EQUIPMENT CORPORATE INCOME TAX CREDIT.

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

SECTION 1. A new section of the Income Tax Act is enacted
to read:

"[NEW MATERIAL] ADVANCED ENERGY EQUIPMENT INCOME TAX
CREDIT.--

A. The tax credit provided by this section may be
referred to as the "advanced energy equipment income tax
credit". A taxpayer who is not a dependent of another
individual, who makes qualified expenditures for a qualified
manufacturing facility located in New Mexico and who files an
individual New Mexico income tax return for a taxable year

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underscoring material = new
[bracketed material] = delete

1 beginning on or after January 1, 2025, and prior to January 1,
2 2033, may claim the tax credit in the amount provided in
3 Subsection B of this section.

4 B. The amount of the tax credit shall be in an
5 amount equal to the lesser of twenty percent of the amount of
6 the qualified expenditures made by the taxpayer for a qualified
7 manufacturing facility or twenty-five million dollars
8 (\$25,000,000).

9 C. Prior to incurring a qualified expenditure, a
10 taxpayer shall apply for preliminary certification of
11 eligibility for the tax credit from the energy, minerals and
12 natural resources department on forms and in the manner
13 prescribed by that department. Such preliminary certification
14 shall be made in consultation with the economic development
15 department and shall be limited to confirming that the
16 qualified expenditures proposed to be made by the taxpayer will
17 in whole or in part be used to produce advanced energy products
18 and providing an estimate of the amount of tax credit for which
19 the taxpayer may be eligible. A taxpayer shall be eligible for
20 only one certificate of eligibility per qualified manufacturing
21 facility.

22 D. Within twelve months of commencement of
23 production of any advanced energy product, the taxpayer shall
24 seek final certification from the energy, minerals and natural
25 resources department. An application for final certification

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1 shall include information required by the energy, minerals and
2 natural resources department to determine eligibility for the
3 tax credit, including information substantiating qualified
4 expenditures. If, after consultation with the economic
5 development department, the energy, minerals and natural
6 resources department determines that the taxpayer meets the
7 requirements of this section, the energy, minerals and natural
8 resources department shall issue a dated certificate of
9 eligibility to the taxpayer providing the amount of tax credit
10 for which the taxpayer is eligible and the taxable years in
11 which the credit may be claimed. The energy, minerals and
12 natural resources department shall provide the department with
13 the certificates of eligibility issued pursuant to this
14 subsection in an electronic format at regularly agreed-upon
15 intervals. A certificate of eligibility for the tax credit may
16 be sold, exchanged or otherwise transferred to another
17 taxpayer. The parties to such a transaction shall notify the
18 department of the sale, exchange or transfer within ten days of
19 the sale, exchange or transfer in an electronic format
20 prescribed by the department.

21 E. A taxpayer allowed to claim the tax credit shall
22 claim the credit in a manner required by the department. The
23 tax credit shall be claimed within one taxable year of the end
24 of the calendar year in which the energy, minerals and natural
25 resources department provides final certification of the

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1 credit. Any portion of the tax credit that remains unused at
2 the end of the taxpayer's reporting period may be carried
3 forward for five years.

4 F. Married individuals filing separate returns for
5 a taxable year for which they could have filed a joint return
6 may each claim only one-half of the tax credit that would have
7 been claimed on a joint return.

8 G. A taxpayer may be allocated the right to claim
9 the tax credit in a proportion to the taxpayer's ownership
10 interest if the taxpayer owns an interest in a business entity
11 that is taxed for federal income tax purposes as a partnership
12 or limited liability company and that business entity has met
13 all of the requirements to be eligible for the credit. The
14 total credit claimed by all members of the partnership or
15 limited liability company shall not exceed the allowable credit
16 pursuant to this section.

17 H. If the taxpayer or a successor in the business
18 of the taxpayer ceases operations at the qualifying
19 manufacturing facility or ceases to produce advanced energy
20 products for at least one hundred eighty consecutive days
21 within a two-year period after the taxpayer has claimed the tax
22 credit, any amount of credit for which the taxpayer received
23 final certification with respect to that facility that is not
24 claimed against the taxpayer's tax liability shall be
25 extinguished, and within thirty days after the one hundred

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1 eightieth day of cessation of operations, the taxpayer shall
2 pay to the department the tax liability against which the
3 certified credit was claimed. For the purposes of this
4 section, a taxpayer shall not be deemed to have ceased
5 operations during reasonable periods for maintenance or
6 retooling, for the repair or replacement of facilities damaged
7 or destroyed or during labor disputes.

8 I. As used in this section:

9 (1) "advanced energy product" means a
10 technology, product, system or component eligible for a federal
11 tax credit under Section 45X of the federal Internal Revenue
12 Code;

13 (2) "essential" means directly necessary to
14 the production of an advanced energy products;

15 (3) "manufacturing equipment" means an
16 essential machine, mechanism or tool or a component of an
17 essential machine, mechanism or tool used directly and
18 exclusively in a taxpayer's qualified manufacturing facility
19 and that is subject to depreciation pursuant to the federal
20 Internal Revenue Code by the taxpayer carrying on the
21 manufacturing. "Manufacturing equipment" does not include a
22 vehicle that leaves the site of a manufacturing operation for
23 the purpose of transporting persons or property, including
24 property for which the taxpayer claims a credit pursuant to
25 Section 7-9-79 NMSA 1978;

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1 (4) "qualified expenditure" means an
2 expenditure made on or after January 1, 2025 and prior to
3 January 1, 2033 for the purchase of that portion of the costs
4 of manufacturing equipment dedicated to manufacturing advanced
5 energy products; and

6 (5) "qualified manufacturing facility" means a
7 facility located in New Mexico that employs personnel to
8 perform production tasks with manufacturing equipment not
9 previously existing at the facility to produce advanced energy
10 products."

11 SECTION 2. A new section of the Corporate Income and
12 Franchise Tax Act is enacted to read:

13 "[NEW MATERIAL] ADVANCED ENERGY EQUIPMENT CORPORATE INCOME
14 TAX CREDIT.--

15 A. The tax credit provided by this section may be
16 referred to as the "advanced energy equipment corporate income
17 tax credit". A taxpayer that makes qualified expenditures for
18 a qualified manufacturing facility located in New Mexico and
19 that files a corporate income tax return for a taxable year
20 beginning on or after January 1, 2025, and prior to January 1,
21 2033, may claim the tax credit in the amount provided in
22 Subsection B of this section.

23 B. The amount of the tax credit shall be in an
24 amount equal to the lesser of twenty percent of the amount of
25 the qualified expenditures made by the taxpayer for a qualified

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1 manufacturing facility or twenty-five million dollars
2 (\$25,000,000).

3 C. Prior to incurring a qualified expenditure, a
4 taxpayer shall apply for preliminary certification of
5 eligibility for the tax credit from the energy, minerals and
6 natural resources department on forms and in the manner
7 prescribed by that department. Such preliminary certification
8 shall be made in consultation with the economic development
9 department and shall be limited to confirming that the
10 qualified expenditures proposed to be made by the taxpayer will
11 in whole or in part be used to produce advanced energy products
12 and providing an estimate of the amount of tax credit for which
13 the taxpayer may be eligible. A taxpayer shall be eligible for
14 only one certificate of eligibility per qualified manufacturing
15 facility.

16 D. Within twelve months of commencement of
17 production of any advanced energy product, the taxpayer shall
18 seek final certification from the energy, minerals and natural
19 resources department. An application for final certification
20 shall include information required by the energy, minerals and
21 natural resources department to determine eligibility for the
22 tax credit, including information substantiating qualified
23 expenditures. If, after consultation with the economic
24 development department, the energy, minerals and natural
25 resources department determines that the taxpayer meets the

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1 requirements of this section, the energy, minerals and natural
2 resources department shall issue a dated certificate of
3 eligibility to the taxpayer providing the amount of tax credit
4 for which the taxpayer is eligible and the taxable years in
5 which the credit may be claimed. The energy, minerals and
6 natural resources department shall provide the department with
7 the certificates of eligibility issued pursuant to this
8 subsection in an electronic format at regularly agreed-upon
9 intervals. A certificate of eligibility for the tax credit may
10 be sold, exchanged or otherwise transferred to another
11 taxpayer. The parties to such a transaction shall notify the
12 department of the sale, exchange or transfer within ten days of
13 the sale, exchange or transfer in an electronic format
14 prescribed by the department.

15 E. A taxpayer allowed to claim the tax credit shall
16 claim the credit in a manner required by the department. The
17 tax credit shall be claimed within one taxable year of the end
18 of the calendar year in which the energy, minerals and natural
19 resources department provides final certification of the
20 credit. Any portion of the tax credit that remains unused at
21 the end of the taxpayer's reporting period may be carried
22 forward for five years.

23 F. If the taxpayer or a successor in the business
24 of the taxpayer ceases operations at the qualifying
25 manufacturing facility or ceases to produce advanced energy

1 products for at least one hundred eighty consecutive days
2 within a two-year period after the taxpayer has claimed the tax
3 credit, any amount of credit for which the taxpayer received
4 final certification with respect to that facility that is not
5 claimed against the taxpayer's tax liability shall be
6 extinguished, and within thirty days after the one hundred
7 eightieth day of cessation of operations, the taxpayer shall
8 pay to the department the tax liability against which the
9 certified credit was claimed. For the purposes of this
10 section, a taxpayer shall not be deemed to have ceased
11 operations during reasonable periods for maintenance or
12 retooling, for the repair or replacement of facilities damaged
13 or destroyed or during labor disputes.

14 G. As used in this section:

15 (1) "advanced energy product" means a
16 technology, product, system or component eligible for a federal
17 tax credit under Section 45X of the federal Internal Revenue
18 Code;

19 (2) "essential" means directly necessary to
20 the production of an advanced energy products;

21 (3) "manufacturing equipment" means an
22 essential machine, mechanism or tool or a component of an
23 essential machine, mechanism or tool used directly and
24 exclusively in a taxpayer's qualified manufacturing facility
25 and that is subject to depreciation pursuant to the federal

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1 Internal Revenue Code by the taxpayer carrying on the
2 manufacturing. "Manufacturing equipment" does not include a
3 vehicle that leaves the site of a manufacturing operation for
4 the purpose of transporting persons or property, including
5 property for which the taxpayer claims a credit pursuant to
6 Section 7-9-79 NMSA 1978;

7 (4) "qualified expenditure" means an
8 expenditure made on or after January 1, 2025 and prior to
9 January 1, 2033 for the purchase of that portion of the costs
10 of manufacturing equipment dedicated to manufacturing advanced
11 energy products; and

12 (5) "qualified manufacturing facility" means a
13 facility located in New Mexico that employs personnel to
14 perform production tasks with manufacturing equipment not
15 previously existing at the facility to produce advanced energy
16 products."

17 SECTION 3. DELAYED REPEAL.--Sections 1 and 2 of this act
18 are repealed effective January 1, 2034.

19 SECTION 4. APPLICABILITY.--The provisions of this act
20 apply to taxable years beginning on or after January 1, 2025.

21 SECTION 5. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is January 1, 2025.