

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS AND
COMPENSATING TAX DEDUCTIONS FOR QUALIFIED GENERATING
FACILITIES; CLARIFYING THE MEANING OF TERMS FOR THE DEDUCTION
FROM GROSS RECEIPTS FOR RECEIPTS FOR SELLING SOLAR AND WIND
GENERATION EQUIPMENT TO GOVERNMENTS; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

"ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND
COMPENSATING TAXES.--

A. Receipts from selling 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. 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 F 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 value of eligible generation plant costs from the sale 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 F of this section may be deducted in computing the compensating tax due.

C. 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.

D. 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.

E. The deductions allowed for a qualified generating facility pursuant to this section shall be

available for a ten-year period 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 for eligible generation plant costs or deductions from the costs on which compensating tax are calculated are first taken for eligible generation plant costs.

F. 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.

G. 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, in which case 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.

H. 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.

I. 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; 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, coaled 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. Section 7-9-54.3 NMSA 1978 (being Laws 2002, Chapter 37, Section 8) is amended to read:

"7-9-54.3. DEDUCTION--GROSS RECEIPTS TAX--WIND AND SOLAR GENERATION EQUIPMENT--SALES TO GOVERNMENTS.--

A. Receipts from selling wind generation equipment or solar generation equipment to a government for the purpose of installing a wind or solar electric generation facility may be deducted from gross receipts.

B. The deduction allowed pursuant to this section shall not be claimed for receipts from an expenditure for which a taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

C. As used in this section:

(1) "government" means the United States or the state or a governmental unit or a subdivision, agency, department or instrumentality of the federal government or the state;

(2) "related equipment" means transformers, circuit breakers and switching and metering equipment used to connect a wind or solar electric generation plant to the electric grid;

(3) "solar generation equipment" means solar thermal energy collection, concentration and heat transfer and conversion equipment; solar tracking hardware and software; photovoltaic panels and inverters; support structures; turbines and associated electrical generating equipment used to generate electricity from solar thermal energy; and related equipment; and

(4) "wind generation equipment" means wind

generation turbines, blades, nacelles, rotors and supporting structures used to generate electricity from wind and related equipment."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

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