

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
SENATE BILL 409

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

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

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underscored material = new
[bracketed material] = delete

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] G 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 purpose of the advanced energy deduction is
12 to encourage the construction and development of qualified
13 generating facilities in New Mexico and to sequester or control
14 carbon dioxide emissions.

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

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

1 ~~[D.]~~ E. Deductions taken pursuant to this section
2 shall be reported separately on a form approved by the
3 department. The nontaxable transaction certificates used to
4 obtain tax- deductible tangible personal property or services
5 shall display clearly a notice to the taxpayer that the
6 deduction shall be reported separately from any other
7 deductions claimed from gross receipts. A taxpayer deducting
8 eligible generation plant costs from the costs on which
9 compensating tax is imposed shall report those eligible
10 generation plant costs that are being deducted.

11 ~~[E.]~~ F. The deductions allowed for a qualified
12 generating facility pursuant to this section shall be available
13 for a ten-year period for purchases and a twenty-five-year
14 period for leases from the year development of the qualified
15 generating facility begins and expenditures are made for which
16 nontaxable transaction certificates authorized pursuant to this
17 section are submitted to sellers or lessors for eligible
18 generation plant costs or deductions from the costs on which
19 compensating tax are calculated are first taken for eligible
20 generation plant costs.

21 ~~[F.]~~ G. An entity that holds an interest in a
22 qualified generating facility may request a certificate of
23 eligibility from the department of environment to enable the
24 requester to obtain a nontaxable transaction certificate for
25 the advanced energy deduction. The department of environment

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1 shall:

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

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

8 (3) issue a certificate from sequentially
9 numbered certificates to the requester stating that the
10 facility is or is not a qualified generating facility within
11 one hundred eighty days after receiving all information
12 necessary to make a determination;

13 (4) issue:

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

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

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

21 (6) report annually to the appropriate interim
22 legislative committee information that will allow the
23 legislative committee to analyze the effectiveness of the
24 advanced energy deduction, including the identity of qualified
25 generating facilities, the energy production means used, the

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1 amount of emissions identified in this section reduced and
2 removed by those qualified generating facilities and whether
3 any requests for certificates of eligibility could not be
4 approved due to program limits.

5 H. The economic development department shall keep a
6 record of temporary and permanent jobs at all qualified
7 generating facilities in New Mexico. The economic development
8 department and the taxation and revenue department shall
9 measure the amount of state revenue that is attributable to
10 activity at each qualified generating facility in New Mexico.
11 The economic development department shall coordinate with the
12 department of environment to report annually to the appropriate
13 interim legislative committee on the effectiveness of the
14 advanced energy deduction. A taxpayer who claims an advanced
15 energy deduction shall provide the economic development
16 department, the department of environment and the taxation and
17 revenue department with the information required to compile the
18 report required by this section. Notwithstanding any other
19 section of law to the contrary, the economic development
20 department, the department of environment and the taxation and
21 revenue department may disclose the number of applicants for
22 the advanced energy deduction, the amount of the deduction
23 approved, the number of employees of the taxpayer and any other
24 information required by the legislature or the taxation and
25 revenue department to aid in evaluating the effectiveness of

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1 that deduction.

2 [~~G-~~] I. If the department of environment issues a
3 certificate of eligibility to a taxpayer stating that the
4 taxpayer holds an interest in a qualified generating facility
5 and the taxpayer does not sequester or control carbon dioxide
6 emissions to the extent required by this section by the later
7 of January 1, 2017 or eighteen months after the commercial
8 operation date of the qualified generating facility, the
9 taxpayer's certification as a qualified generating facility
10 shall be revoked by the department of environment and the
11 taxpayer shall repay to the state tax deductions granted
12 pursuant to this section; provided that, if the taxpayer
13 demonstrates to the department of environment that the taxpayer
14 made every effort to sequester or control carbon dioxide
15 emissions to the extent feasible and the facility's inability
16 to meet the sequestration requirements of a qualified
17 generating facility was beyond the facility's control, [~~in~~
18 ~~which case~~] the department of environment shall determine,
19 after a public hearing, the amount of tax deduction that should
20 be repaid to the state. The department of environment, in its
21 determination, shall consider the environmental performance of
22 the facility and the extent to which the inability to meet the
23 sequestration requirements of a qualified generating facility
24 was in the control of the taxpayer. The repayment as
25 determined by the department of environment shall be paid

.186917.1

1 within one hundred eighty days following a final order by the
2 department of environment.

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

8 K. An appropriate legislative committee shall
9 review the effectiveness of the advanced energy deduction every
10 four years beginning in 2015.

11 ~~[I.]~~ L. As used in this section:

12 (1) "coal-based electric generating facility"
13 means a new or repowered generating facility and an associated
14 coal gasification facility, if any, that uses coal to generate
15 electricity and that meets the following specifications:

16 (a) emits the lesser of: 1) what is
17 achievable with the best available control technology; or 2)
18 thirty-five thousandths pound per million British thermal units
19 of sulfur dioxide, twenty-five thousandths pound per million
20 British thermal units of oxides of nitrogen and one hundredth
21 pound per million British thermal units of total particulate in
22 the flue gas;

23 (b) removes the greater of: 1) what is
24 achievable with the best available control technology; or 2)
25 ninety percent of the mercury from the input fuel;

.186917.1

1 (c) captures and sequesters or controls
2 carbon dioxide emissions so that by the later of January 1,
3 2017 or eighteen months after the commercial operation date of
4 the coal-based electric generating facility, no more than one
5 thousand one hundred pounds per megawatt-hour of carbon dioxide
6 is emitted into the atmosphere;

7 (d) all infrastructure required for
8 sequestration is in place by the later of January 1, 2017 or
9 eighteen months after the commercial operation date of the
10 coal-based electric generating facility;

11 (e) includes methods and procedures to
12 monitor the disposition of the carbon dioxide captured and
13 sequestered from the coal-based electric generating facility;
14 and

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

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

25 (3) "entity" means an individual, estate,

1 trust, receiver, cooperative association, club, corporation,
2 company, firm, partnership, limited liability company, limited
3 liability partnership, joint venture, syndicate or other
4 association or a gas, water or electric utility owned or
5 operated by a county or municipality;

6 (4) "geothermal electric generating facility"
7 means a facility with a name-plate capacity of one megawatt or
8 more that uses geothermal energy to generate electricity,
9 including a facility that captures and provides geothermal
10 energy to a preexisting electric generating facility using
11 other fuels in part;

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

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

22 (7) "qualified generating facility" means a
23 facility that begins construction not later than December 31,
24 2015 and is:

25 (a) a solar thermal electric generating

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1 facility that begins construction on or after July 1, 2010 and
2 that may include an associated renewable energy storage
3 facility;

4 (b) a solar photovoltaic electric
5 generating facility that begins construction on or after July
6 1, 2010 and that may include an associated renewable energy
7 storage facility;

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

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

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

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

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

25 (10) "solar photovoltaic electric generating

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

4 (11) "solar thermal electric generating
5 facility" means an electric generating facility with a name-
6 plate capacity of one megawatt or more that uses solar thermal
7 energy to generate electricity, including a facility that
8 captures and provides solar thermal energy to a preexisting
9 electric generating facility using other fuels in part."

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