HOUSE FLOOR SUBSTITUTE FOR
HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 291

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO TAXATION; ENACTING THE RENEWABLE ENERGY PRODUCTION
TAX ACT; IMPOSING AN EXCISE TAX ON ELECTRICITY GENERATED FROM
RENEWABLE ENERGY RESOURCES; INCREASING AND INDEXING THE
LOW-INCOME COMPREHENSIVE TAX REBATE; INCREASING THE AMOUNT OF
THE WORKING FAMILIES TAX CREDIT; EXPANDING THE CREDIT TO
CERTAIN RESIDENTS WHO ARE INELIGIBLE FOR THE FEDERAL EARNED
INCOME TAX CREDIT ON WHICH THE WORKING FAMILIES TAX CREDIT IS
BASED; PROVIDING A THREE PERCENT LIMITATION ON INCREASES IN
VALUATION OF RESIDENTIAL PROPERTY TO PROPERTY THAT IS OCCUPIED
BY THE OWNER AS THE OWNER'S PRINCIPAL PLACE OF RESIDENCE;
PROVIDING A TEN PERCENT LIMITATION ON INCREASES IN VALUATION OF
RESIDENTIAL PROPERTY THAT IS NOT OCCUPIED BY THE OWNER AS THE
OWNER'S PRINCIPAL PLACE OF RESIDENCE.

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

.220440.1
SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Renewable Energy Production Tax Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Renewable Energy Production Tax Act:

A. "department" means the taxation and revenue department;

B. "generating facility" means a facility that produces electricity by the use of renewable energy resources; and

C. "renewable energy resource" means solar, wind, hydropower, geothermal or biomass used as an energy resource. As used in this subsection, "biomass" includes agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically digested waste biomass.

SECTION 3. [NEW MATERIAL] IMPOSITION OF TAX--RATE--TAXABLE VALUE--DENOMINATION AS "RENEWABLE ENERGY PRODUCTION TAX".--

A. For the privilege of generating electricity from renewable energy resources, there is imposed on a generating facility an excise tax on the taxable value of electricity generated from renewable energy resources in this state.

B. The rate of the renewable energy production tax

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shall be one dollar ($1.00) on each megawatt-hour, or portion thereof, of electricity generated from renewable energy resources in this state by a generating facility.

C. The taxable value for electricity generated from renewable energy resources shall be the wholesale value of electricity established by the United States energy information administration for the southwest regional wholesale market. The taxable event occurs when the electricity is generated. The wholesale value shall be the monthly average wholesale price for the month in which the taxable event occurs.

D. The tax imposed by this section shall be known as the "renewable energy production tax".

SECTION 4. [NEW MATERIAL] EXEMPTIONS.--

A. Exempted from the renewable energy production tax is electricity produced from renewable energy resources by:

(1) the United States or any agency, department or instrumentality thereof;

(2) the state of New Mexico or any political subdivision thereof;

(3) any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory; or

(4) any foreign nation or agency, instrumentality or political subdivision thereof, but only when required by a treaty in force to which the United States is a

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party.

B. Exempted from the renewable energy production
tax is electricity produced from renewable energy resources for
the personal consumption of the producer, including any excess
production of electricity not consumed by the producer that
does not exceed five hundred kilowatt-hours in a twenty-four-
hour period.

SECTION 5. [NEW MATERIAL] DATE PAYMENT DUE.--The tax
imposed by the Renewable Energy Production Tax Act is to be
paid on or before the twenty-fifth day of the month following
the month in which the taxable event occurs.

SECTION 6. Section 7-1-2 NMSA 1978 (being Laws 1965,
Chapter 248, Section 2, as amended by Laws 2019, Chapter 47,
Section 1 and by Laws 2019, Chapter 53, Section 10 and also by
Laws 2019, Chapter 270, Section 1) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act
applies to and governs:

A. the administration and enforcement of the
following taxes or tax acts as they now exist or may hereafter
be amended:

(1) Income Tax Act;

(2) Withholding Tax Act;

(3) Oil and Gas Proceeds and Pass-Through

Entity Withholding Tax Act;

(4) Gross Receipts and Compensating Tax Act,

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Interstate Telecommunications Gross Receipts Tax Act and Leased
Vehicle Gross Receipts Tax Act;

(5) Liquor Excise Tax Act;
(6) Local Liquor Excise Tax Act;
(7) any municipal local option gross receipts
tax or municipal compensating tax;
(8) any county local option gross receipts tax
or county compensating tax;
(9) Special Fuels Supplier Tax Act;
(10) Gasoline Tax Act;
(11) petroleum products loading fee, which fee
shall be considered a tax for the purpose of the Tax
Administration Act;
(12) Alternative Fuel Tax Act;
(13) Cigarette Tax Act;
(14) Estate Tax Act;
(15) Railroad Car Company Tax Act;
(16) Investment Credit Act, rural job tax
credit, Laboratory Partnership with Small Business Tax Credit
Act, Technology Jobs and Research and Development Tax Credit
Act, Film Production Tax Credit Act, Affordable Housing Tax
Credit Act and high-wage jobs tax credit;
(17) Corporate Income and Franchise Tax Act;
(18) Uniform Division of Income for Tax
Purposes Act;
(19) Multistate Tax Compact;
(20) Tobacco Products Tax Act;
(21) the telecommunications relay service
surcharge imposed by Section 63-9F-11 NMSA 1978, which
surcharge shall be considered a tax for the purposes of the Tax
Administration Act; [and]
(22) the Insurance Premium Tax Act;
(23) the Health Care Quality Surcharge Act;
and
(24) the Renewable Energy Production Tax Act;

B. the administration and enforcement of the
following taxes, surtaxes, advanced payments or tax acts as
they now exist or may hereafter be amended:
(1) Resources Excise Tax Act;
(2) Severance Tax Act;
(3) any severance surtax;
(4) Oil and Gas Severance Tax Act;
(5) Oil and Gas Conservation Tax Act;
(6) Oil and Gas Emergency School Tax Act;
(7) Oil and Gas Ad Valorem Production Tax Act;
(8) Natural Gas Processors Tax Act;
(9) Oil and Gas Production Equipment Ad
Valorem Tax Act;
(10) Copper Production Ad Valorem Tax Act;
(11) any advance payment required to be made
by any act specified in this subsection, which advance payment
shall be considered a tax for the purposes of the Tax
Administration Act;
(12) Enhanced Oil Recovery Act;
(13) Natural Gas and Crude Oil Production
Incentive Act; and
(14) intergovernmental production tax credit
and intergovernmental production equipment tax credit;
C. the administration and enforcement of the
following taxes, surcharges, fees or acts as they now exist or
may hereafter be amended:
(1) Weight Distance Tax Act;
(2) the workers' compensation fee authorized
by Section 52-5-19 NMSA 1978, which fee shall be considered a
tax for purposes of the Tax Administration Act;
(3) Uniform Unclaimed Property Act (1995);
(4) 911 emergency surcharge and the network
and database surcharge, which surcharges shall be considered
taxes for purposes of the Tax Administration Act;
(5) the solid waste assessment fee authorized
by the Solid Waste Act, which fee shall be considered a tax for
purposes of the Tax Administration Act;
(6) the water conservation fee imposed by
Section 74-1-13 NMSA 1978, which fee shall be considered a tax
for the purposes of the Tax Administration Act; and

(7) the gaming tax imposed pursuant to the Gaming Control Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."

SECTION 7. Section 7-2-14 NMSA 1978 (being Laws 1972, Chapter 20, Section 2, as amended) is amended to read:

"7-2-14. LOW-INCOME COMPREHENSIVE TAX REBATE.--

A. Except as otherwise provided in Subsection B of this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another individual may claim a tax rebate for a portion of state and local taxes to which the resident has been subject during the taxable year for which the return is filed. The tax rebate may be claimed even though the resident has no income taxable under the Income Tax Act. [A husband and wife] Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

B. No claim for the tax rebate provided in this section shall be filed by a resident who was an inmate of a public institution for more than six months during the taxable year for which the tax rebate could be claimed or who was not
physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

C. For the purposes of this section, the total number of exemptions for which a tax rebate may be claimed or allowed is determined by adding the number of federal exemptions allowable for federal income tax purposes for each individual included in the return who is domiciled in New Mexico plus two additional exemptions for each individual domiciled in New Mexico included in the return who is sixty-five years of age or older plus one additional exemption for each individual domiciled in New Mexico included in the return who, for federal income tax purposes, is blind plus one exemption for each minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

D. Except as provided in Subsection F of this section, the tax rebate provided for in this section may be claimed in the amount shown in the following table:

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E. If a taxpayers modified gross income is zero, the taxpayer may claim a credit in the amount shown in the first row of the table appropriate for the taxpayers number of exemptions as adjusted by the provisions of Subsection F of this section.

F. For the 2022 taxable year and each subsequent taxable year, the amount of rebate shown in the table in Subsection D of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of rebate by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending in tax year 2021. The result of the multiplication shall be rounded down to the nearest one dollar ($1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.

G. The tax rebates provided for in this section may be deducted from the taxpayers New Mexico income tax liability for the taxable year. If the tax rebates exceed the taxpayers income tax liability, the excess shall be refunded to the taxpayer.

H. For purposes of this section:

(1) "consumer price index" means the consumer price index for all urban consumers published by the United
States department of labor for the month ending September 30:

and

(2) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code [as of 1986], as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident."

SECTION 8. Section 7-2-18.15 NMSA 1978 (being Laws 2007, Chapter 45, Section 9, as amended) is amended to read:

"7-2-18.15. WORKING FAMILIES TAX CREDIT.--

A. A taxpayer who is a resident and who files an individual New Mexico income tax return may claim a credit in an amount equal to [seventeen] twenty percent of the federal earned income tax credit for which that [individual] taxpayer is eligible for the same taxable year [pursuant to Section 32 of the Internal Revenue Code] or would have been eligible but for the identification number requirement pursuant to 26 U.S.C. 32(m), as that section may be amended or renumbered.

B. A taxpayer who is a resident and who files an individual New Mexico tax return may claim a credit in an amount equal to twenty percent of the federal earned income tax credit for which that taxpayer would have been eligible for the
same taxable year but for the age requirement pursuant to
26 U.S.C. 32(c)(l)(A)(ii)(II), as that section may be amended
or renumbered; provided that the taxpayer is at least eighteen
years of age but has not reached the age of twenty-five.

C. The credit provided in this section may be
referred to as the "working families tax credit".

[D] The working families tax credit may be
deducted from the income tax liability of an individual who
claims the credit and qualifies for the credit pursuant to this
section. If the credit exceeds the individual's income tax
liability for the taxable year, the excess shall be refunded to
the individual.

E. As used in this section, "federal earned income
tax credit" means the tax credit allowed pursuant to 26 U.S.C.
32, as that section may be amended or renumbered."

SECTION 9. Section 7-36-21.2 NMSA 1978 (being Laws 2000,
Chapter 10, Section 2, as amended) is amended to read:

"7-36-21.2. LIMITATION ON INCREASES IN VALUATION OF
RESIDENTIAL PROPERTY.--

A. Except as provided in Subsections B through D of
this section, residential property shall be valued at its
current and correct value in accordance with the provisions of
the Property Tax Code. [provided that]

B. For the 2001 [and subsequent] through 2023 tax
years, the value of a property in any tax year shall not exceed
the higher of one hundred three percent of the value in the tax
year prior to the tax year in which the property is being
valued or one hundred six and one-tenth percent of the value in
the tax year two years prior to the tax year in which the
property is being valued. [This limitation]

C. For the 2024 and subsequent tax years, the value
of a residential property that is occupied by the owner as the
owner's principal place of residence in any tax year shall not
exceed the higher of one hundred three percent of the value in
the tax year prior to the tax year in which the property is
being valued or one hundred six and one-tenth percent of the
value in the tax year two years prior to the tax year in which
the property is being valued.

D. For the 2024 and subsequent tax years, the value
of a residential property that is not occupied by the owner as
the owner's principal place of residence in any tax year shall
not exceed the higher of one hundred ten percent of the value
in the tax year prior to the tax year in which the property is
being valued or one hundred twenty-one percent of the value in
the tax year two years prior to the tax year in which the
property is being valued.

E. The limitations on increases in value [does]
pursuant to Subsections B through D of this section shall not
apply to:

(1) a residential property in the first tax
year that it is valued for property taxation purposes;

(2) any physical improvements, except for
solar energy system installations, made to the property during
the year immediately prior to the tax year or omitted in a
prior tax year; or

(3) valuation of a residential property in any
tax year in which:

(a) a change of ownership of the
property occurred in the year immediately prior to the tax year
for which the value of the property for property taxation
purposes is being determined; or

(b) the use or zoning of the property
has changed in the year prior to the tax year.

If a change of ownership of residential
property occurred in the year immediately prior to the tax year
for which the value of the property for property taxation
purposes is being determined, the value of the property shall
be its current and correct value as determined pursuant to the
general valuation provisions of the Property Tax Code.

To assure that the values of residential
property for property taxation purposes are at current and
correct values in all counties prior to application of the
limitation in Subsection [A] B of this section, the department
shall determine for the 2000 tax year the sales ratio pursuant
to Section 7-36-18 NMSA 1978 or, if a sales ratio cannot be
determined pursuant to that section, conduct a sales-ratio
analysis using both independent appraisals by the department
and sales. If the sales ratio for a county for the 2000 tax
year is less than eighty-five, as measured by the median ratio
of value for property taxation purposes to sales price or
independent appraisal by the department, the county shall not
be subject to the limitations of Subsection [A] H of this
section and shall conduct a reassessment of residential
property in the county so that, by the 2003 tax year, the sales
ratio is at least eighty-five. After such reassessment, the
limitation on increases in valuation in this section shall
apply in those counties in the earlier of the 2004 tax year or
the first tax year following the tax year that the county has a
sales ratio of eighty-five or higher, as measured by the median
ratio of value for property taxation purposes to sales value or
independent appraisal by the department. Thereafter, the
limitation on increases in valuation of residential property
for property taxation purposes in this section shall apply to
subsequent tax years in all counties.

[D-] H. The provisions of this section do not apply
to residential property for any tax year in which the property
is subject to the valuation limitation in Section 7-36-21.3
NMSA 1978.

[E-] I. As used in this section:

(1) "change of ownership" means a transfer to
a transferee by a transferor of all or any part of the
transferor's legal or equitable ownership interest in
residential property except for a transfer:

[(++) (a) to a trustee for the
beneficial use of the spouse of the transferor or the surviving
spouse of a deceased transferor;

[(++) (b) to the spouse of the
transferor that takes effect upon the death of the transferor;

[(++) (c) that creates, transfers or
terminates, solely between spouses, any co-owner's interest;

[(++) (d) to a child of the transferor,
who occupies the property as that person's principal residence
at the time of transfer; provided that the first subsequent tax
year in which that person does not qualify for the head of
household exemption on that property, a change of ownership
shall be deemed to have occurred;

[(++) (e) that confirms or corrects a
previous transfer made by a document that was recorded in the
real estate records of the county in which the real property is
located;

[(++) (f) for the purpose of quieting
the title to real property or resolving a disputed location of
a real property boundary;

[(++) (g) to a revocable trust by the
transferor with the transferor's spouse or a
child of the transferor as beneficiary; or

[(□)] (h) from a revocable trust

described in [Paragraph (7) of this subsection] Subparagraph

(g) of this paragraph back to the settlor or trustor or to the

beneficiaries of the trust; and

[F. As used in this section]

(2) "solar energy system installation" means

an installation that is used to provide space heat, hot water

or electricity to the property in which it is installed and is:

[(□)] (a) an installation that uses

solar panels that are not also windows;

[(□)] (b) a dark-colored water tank

exposed to sunlight; or

[(□)] (c) a non-vented trombe wall."

SECTION 10. APPLICABILITY.--

A. The provisions of Sections 1 through 5 of this

act apply to the production of electricity from renewable

energy resources beginning on or after January 1, 2022.

B. The provisions of Sections 7 and 8 of this act

apply to taxable years beginning on or after January 1, 2021.

SECTION 11. EFFECTIVE DATE.--The effective date of the

provisions of Sections 1 through 5 of this act is January 1,

2022.