

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE BILLS 82, 128, 144, 295, 380, 390, 395, 424,  
440, 441, 448, 455, 465, 501, 603 and 674

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

AN ACT

RELATING TO TAXATION; PROVIDING FOR A DISTRIBUTION OF A PORTION  
OF GROSS RECEIPTS TAX REVENUES TO THE STATE AVIATION FUND FOR  
CERTAIN PURPOSES; INCREASING THE CAP ON A PENALTY IMPOSED FOR  
FAILURE TO PAY A TAX OR TO FILE A RETURN; CHANGING THE RATE OF  
INTEREST PAID ON AN UNDERPAYMENT OR OVERPAYMENT OF A TAX;  
ELIMINATING PENALTIES FOR FAILURE TO FILE A RETURN FOR A TAX  
THAT IS PAID IN FULL; PROVIDING FOR A MAXIMUM PENALTY FOR  
INCORRECT REPORTING OF GROSS RECEIPTS DEDUCTIONS FOR FOOD OR  
HEALTH CARE PRACTITIONER SERVICES; CHANGING DOCUMENTATION  
REQUIREMENTS FOR GROSS RECEIPTS TAX CREDIT CLAIMS INVOLVING  
SALES OF TANGIBLE PERSONAL PROPERTY OR LICENSES FOR RESALE;  
PROVIDING FOR GROSS RECEIPTS TAX CREDITS FOR CERTAIN BUSINESS-  
RELATED SERVICES AND FOR THE STATE PORTION OF GROSS RECEIPTS  
TAX FOR HOSPITALS LICENSED BY THE DEPARTMENT OF HEALTH;  
PROVIDING FOR A STATE INCOME TAX CREDIT EQUAL TO A CERTAIN

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1 PERCENTAGE OF A FEDERAL INCOME TAX CREDIT FOR EARNED INCOME FOR  
2 WHICH PERSONS WHO DO NOT CLAIM THE LOW-INCOME COMPREHENSIVE TAX  
3 REBATE ARE ELIGIBLE; PROVIDING FOR AN INCOME TAX CREDIT FOR  
4 PURCHASE AND INSTALLATION OF PHOTOVOLTAIC SYSTEMS AND SOLAR  
5 THERMAL SYSTEMS; PROVIDING FOR INCOME TAX AND CORPORATE INCOME  
6 TAX CREDITS FOR DELIVERING WATER PRODUCED FROM OIL AND GAS  
7 DRILLING AND PRODUCTION; EXPANDING A COMPENSATING TAX DEDUCTION  
8 FOR BIOMASS-RELATED EQUIPMENT AND BIOMASS MATERIAL; CHANGING  
9 THE DEFINITION OF "BIOMASS" FOR THE RENEWABLE ENERGY PRODUCTION  
10 TAX CREDIT; ENACTING THE ADVANCED ENERGY PRODUCT MANUFACTURERS  
11 TAX CREDIT ACT; EXPANDING THE SCOPE OF A GROSS RECEIPTS TAX  
12 DEDUCTION FOR SALES OF AGRICULTURAL IMPLEMENTS TO INCLUDE SALES  
13 OF UNDERGROUND IRRIGATION TOOLS, UTENSILS OR INSTRUMENTS;  
14 PROVIDING FOR DEDUCTIONS FROM GROSS RECEIPTS FOR PARTICULAR  
15 RECEIPTS FROM CERTAIN HEALTH CARE PRACTITIONERS, FOR CERTAIN  
16 SERVICES PROVIDED BY CERTAIN ACCREDITED CLINICAL LABORATORIES  
17 AND FOR SALES OF BIOMASS-RELATED EQUIPMENT AND BIOMASS  
18 MATERIAL; PROVIDING FOR INCREASED TAX CREDITS PURSUANT TO THE  
19 LABORATORY PARTNERSHIP WITH SMALL BUSINESS TAX CREDIT ACT;  
20 ADDING ELIGIBILITY REQUIREMENTS FOR THOSE TAX CREDITS;  
21 INCREASING ADMINISTRATIVE COSTS THAT MAY BE CLAIMED AS  
22 QUALIFIED EXPENDITURES FOR THE PURPOSE OF CLAIMING THOSE TAX  
23 CREDITS; PROVIDING FOR REPORTING REQUIREMENTS FOR NATIONAL  
24 LABORATORIES WITH RESPECT TO THOSE TAX CREDITS; PROVIDING FOR A  
25 DEDUCTION FROM THE GASOLINE TAX FOR GASOLINE USED TO PROPEL A

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1 SCHOOL BUS; PROVIDING FOR A REFUND OF GASOLINE TAX PAID ON  
2 GASOLINE USED TO PROPEL A SCHOOL BUS; PROVIDING A CREDIT  
3 AGAINST COMPENSATING TAX FOR PAYMENTS TO THE NAVAJO NATION WITH  
4 RESPECT TO ELECTRIC GENERATING FACILITIES; MAKING TECHNICAL  
5 CORRECTIONS; PROVIDING FOR ADJUSTED DISTRIBUTIONS; RECONCILING  
6 MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005;  
7 AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; REPEALING LAWS  
8 2005, CHAPTER 104, SECTION 7; MAKING APPROPRIATIONS.

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1994,  
12 Chapter 5, Section 2, as amended) is amended to read:

13 "7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

14 A. A distribution pursuant to Section 7-1-6.1 NMSA  
15 1978 shall be made to the state aviation fund in an amount  
16 equal to four and seventy-nine hundredths percent of the  
17 taxable gross receipts attributable to the sale of fuel  
18 specially prepared and sold for use in turboprop or jet-type  
19 engines as determined by the department.

20 B. A distribution pursuant to Section 7-1-6.1 NMSA  
21 1978 shall be made to the state aviation fund in an amount  
22 equal to twenty-six hundredths percent of gasoline taxes,  
23 exclusive of penalties and interest, collected pursuant to the  
24 Gasoline Tax Act.

25 C. From July 1, 2002 through June 30, 2007, a

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1 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
2 made to the state aviation fund in an amount equal to forty-six  
3 thousandths percent of the net receipts attributable to the  
4 gross receipts tax distributable to the general fund.

5 D. A distribution pursuant to Section 7-1-6.1 NMSA  
6 1978 shall be made to the state aviation fund from the net  
7 receipts attributable to the gross receipts tax distributable  
8 to the general fund in an amount equal to:

9 (1) eighty thousand dollars (\$80,000) monthly  
10 from July 1, 2006 through June 30, 2007;

11 (2) one hundred sixty-seven thousand dollars  
12 (\$167,000) monthly from July 1, 2007 through June 30, 2008; and

13 (3) two hundred fifty thousand dollars  
14 (\$250,000) monthly after July 1, 2008."

15 Section 2. Section 7-1-67 NMSA 1978 (being Laws 1965,  
16 Chapter 248, Section 68, as amended) is amended to read:

17 "7-1-67. INTEREST ON DEFICIENCIES.--

18 A. If a tax imposed is not paid on or before the  
19 day on which it becomes due, interest shall be paid to the  
20 state on that amount from the first day following the day on  
21 which the tax becomes due, without regard to any extension of  
22 time or installment agreement, until it is paid, except that:

23 (1) for income tax imposed on a member of the  
24 armed services of the United States serving in a combat zone  
25 under orders of the president of the United States, interest

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1 shall accrue only for the period beginning the day after any  
2 applicable extended due date if the tax is not paid;

3 (2) if the amount of interest due at the time  
4 payment is made is less than one dollar (\$1.00), [~~then no~~]  
5 interest shall not be due;

6 (3) if demand is made for payment of a tax,  
7 including accrued interest, and if the tax is paid within ten  
8 days after the date of the demand, [~~no~~] interest on the amount  
9 paid shall not be imposed for the period after the date of the  
10 demand;

11 (4) if a managed audit is completed by the  
12 taxpayer on or before the date required, as provided in the  
13 agreement for the managed audit, and payment of any tax found  
14 to be due is made in full within thirty days of the date the  
15 secretary has mailed or delivered an assessment for the tax to  
16 the taxpayer, [~~no~~] interest shall not be due on the assessed  
17 tax;

18 (5) when, as the result of an audit or a  
19 managed audit, an overpayment of a tax is credited against an  
20 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,  
21 interest shall accrue from the date the tax was due until the  
22 tax is deemed paid;

23 (6) if the department does not issue an  
24 assessment for the tax program and period within the time  
25 provided in Subsection D of Section 7-1-11.2 NMSA 1978,

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1 interest shall be paid from the first day following the day on  
2 which the tax becomes due until the tax is paid, excluding the  
3 period between either:

4 (a) the one hundred eightieth day after  
5 giving a notice of outstanding records or books of account and  
6 the date of the assessment of the tax; or

7 (b) the ninetieth day after the  
8 expiration of the additional time requested by the taxpayer to  
9 comply, if such request was granted, and the date of the  
10 assessment of the tax; and

11 (7) if the taxpayer was not provided with  
12 proper notices as required in Section 7-1-11.2 NMSA 1978,  
13 interest shall be paid from the first day following the day on  
14 which the tax becomes due until the tax is paid, excluding the  
15 period between one hundred eighty days prior to the date of  
16 assessment and the date of assessment.

17 B. Interest due to the state under Subsection A or  
18 D of this section shall be at the rate [~~of fifteen percent a~~  
19 ~~year~~] established for individuals pursuant to Section 6621 of  
20 the Internal Revenue Code, computed on a daily basis; provided  
21 that if a different rate is specified by a compact or other  
22 interstate agreement to which New Mexico is a party, that rate  
23 shall be applied to amounts due under the compact or other  
24 agreement.

25 C. Nothing in this section shall be construed to  
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1 impose interest on interest or interest on the amount of [any]  
2 a penalty.

3 D. If [any] a tax required to be paid in accordance  
4 with Section 7-1-13.1 NMSA 1978 is not paid in the manner  
5 required by that section, interest shall be paid to the state  
6 on the amount required to be paid in accordance with Section  
7 7-1-13.1 NMSA 1978. If interest is due under this subsection  
8 and is also due under Subsection A of this section, interest  
9 shall be due and collected only pursuant to Subsection A of  
10 this section."

11 Section 3. Section 7-1-68 NMSA 1978 (being Laws 1965,  
12 Chapter 248, Section 69, as amended by Laws 2003, Chapter 2,  
13 Section 1 and by Laws 2003, Chapter 439, Section 6) is amended  
14 to read:

15 "7-1-68. INTEREST ON OVERPAYMENTS.--

16 A. As provided in this section, interest shall be  
17 allowed and paid on the amount of tax overpaid by a person that  
18 is subsequently refunded or credited to that person.

19 B. Interest on overpayments of tax shall accrue and  
20 be paid at the rate [~~of fifteen percent a year~~] established for  
21 individuals pursuant to Section 6621 of the Internal Revenue  
22 Code, computed on a daily basis; provided that if a different  
23 rate is specified by a compact or other interstate agreement to  
24 which New Mexico is a party, that rate shall apply to amounts  
25 due under the compact or other agreement.

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1           C. Unless otherwise provided by this section,  
2 interest on an overpayment not arising from an assessment by  
3 the department shall be paid from the date of the claim for  
4 refund until a date preceding by not more than thirty days the  
5 date of the credit or refund to any person; interest on an  
6 overpayment arising from an assessment by the department shall  
7 be paid from the date of overpayment until a date preceding by  
8 not more than thirty days the date of the credit or refund to  
9 any person.

10           D. [~~No~~] Interest shall not be allowed or paid with  
11 respect to an amount credited or refunded if:

12                   (1) the amount of interest due is less than  
13 one dollar (\$1.00);

14                   (2) the credit or refund is made within:

15                           (a) fifty-five days of the date of the  
16 claim for refund of income tax, pursuant to either the Income  
17 Tax Act or the Corporate Income and Franchise Tax Act for the  
18 tax year immediately preceding the tax year in which the claim  
19 is made; or

20                           (b) seventy-five days of the date of the  
21 claim for refund of gasoline tax to users of gasoline off the  
22 highways;

23                   (3) the credit or refund is made within one  
24 hundred twenty days of the date of the claim for refund of  
25 income tax, pursuant to the Income Tax Act or the Corporate

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1 Income and Franchise Tax Act, for any tax year more than one  
2 year prior to the year in which the claim is made;

3 (4) Sections 6611(f) and 6611(g) of the  
4 Internal Revenue Code [~~as those sections may be amended or~~  
5 ~~renumbered~~] prohibit payment of interest for federal income tax  
6 purposes;

7 (5) the credit or refund is made within sixty  
8 days of the date of the claim for refund of any tax other than  
9 income tax;

10 (6) the credit results from overpayments found  
11 in an audit of multiple reporting periods and applied to  
12 underpayments found in that audit or refunded as a net  
13 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
14 1978;

15 (7) the department applies the credit or  
16 refund to an intercept program, to the taxpayer's estimated  
17 payment prior to the due date for the estimated payment or to  
18 offset prior liabilities of the taxpayer pursuant to Subsection  
19 E of Section 7-1-29 NMSA 1978; or

20 (8) the credit or refund results from  
21 overpayments the department finds pursuant to Subsection F of  
22 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the  
23 taxpayer on the return.

24 E. Nothing in this section shall be construed to  
25 require the payment of interest upon interest."

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1           Section 4. Section 7-1-69 NMSA 1978 (being Laws 1965,  
2 Chapter 248, Section 70, as amended) is amended to read:

3           "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A  
4 RETURN.--

5           A. Except as provided in Subsection C of this  
6 section, in the case of failure due to negligence or disregard  
7 of department rules and regulations, but without intent to  
8 evade or defeat a tax, to pay when due the amount of tax  
9 required to be paid, to pay in accordance with the provisions  
10 of Section 7-1-13.1 NMSA 1978 when required to do so or to file  
11 by the date required a return regardless of whether a tax is  
12 due, there shall be added to the amount assessed a penalty in  
13 an amount equal to the greater of:

14                   (1) two percent per month or any fraction of a  
15 month from the date the tax was due multiplied by the amount of  
16 tax due but not paid, not to exceed [~~ten~~] sixteen percent of  
17 the tax due but not paid;

18                   (2) two percent per month or any fraction of a  
19 month from the date the return was required to be filed  
20 multiplied by the tax liability established in the late return,  
21 not to exceed [~~ten~~] sixteen percent of the tax liability  
22 established in the late return; or

23                   (3) a minimum of five dollars (\$5.00), but the  
24 five-dollar (\$5.00) minimum penalty shall not apply to taxes  
25 levied under the Income Tax Act or taxes administered by the

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1 department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

2 B. ~~[No]~~ A penalty shall not be assessed against a  
3 taxpayer if the failure to pay an amount of tax when due  
4 results from a mistake of law made in good faith and on  
5 reasonable grounds.

6 C. If a different penalty is specified in a compact  
7 or other interstate agreement to which New Mexico is a party,  
8 the penalty provided in the compact or other interstate  
9 agreement shall be applied to amounts due under the compact or  
10 other interstate agreement at the rate and in the manner  
11 prescribed by the compact or other interstate agreement.

12 D. In the case of failure, with willful intent to  
13 evade or defeat a tax, to pay when due the amount of tax  
14 required to be paid, there shall be added to the amount fifty  
15 percent of the tax or a minimum of twenty-five dollars  
16 (\$25.00), whichever is greater, as penalty.

17 E. If demand is made for payment of a tax,  
18 including penalty imposed pursuant to this section, and if the  
19 tax is paid within ten days after the date of such demand, ~~[no]~~  
20 a penalty shall not be imposed for the period after the date of  
21 the demand with respect to the amount paid.

22 F. If a taxpayer makes electronic payment of a tax  
23 but the payment does not include all of the information  
24 required by the department pursuant to the provisions of  
25 Section 7-1-13.1 NMSA 1978 and if the department does not

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1 receive the required information within five business days from  
2 the later of the date a request by the department for that  
3 information is received by the taxpayer or the due date, the  
4 taxpayer shall be subject to a penalty of two percent per month  
5 or any fraction of a month from the fifth day following the  
6 date the request is received. If a penalty is imposed under  
7 Subsection A of this section with respect to the same  
8 transaction for the same period, ~~[no]~~ a penalty shall not be  
9 imposed under this subsection.

10 G. ~~[No]~~ A penalty shall not be imposed on:

11 (1) tax due in excess of tax paid in  
12 accordance with an approved estimated basis pursuant to Section  
13 7-1-10 NMSA 1978;

14 (2) tax due as the result of a managed audit;  
15 ~~[or]~~

16 (3) tax that is deemed paid by crediting  
17 overpayments found in an audit or managed audit of multiple  
18 periods pursuant to Section 7-1-29 NMSA 1978; or

19 (4) failure to file a return for a tax that is  
20 paid in full."

21 Section 5. Section 7-1-71.2 NMSA 1978 (being Laws 2004,  
22 Chapter 116, Section 3) is amended to read:

23 "7-1-71.2. PENALTY FOR INCORRECT REPORTING OF FOOD  
24 DEDUCTION OR HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--A  
25 taxpayer who claims a deduction pursuant to Section 7-9-92 or  
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1 7-9-93 NMSA 1978 and fails to correctly report the amount of  
2 the deduction to which the taxpayer is entitled shall pay a  
3 penalty in the amount of the difference between the incorrect  
4 deduction amount and the correct deduction amount multiplied by  
5 [~~twice~~] the total local option tax rates in effect at the  
6 taxpayer's business location for which the deduction was  
7 claimed; [~~This~~] provided that the penalty shall not exceed ten  
8 thousand dollars (\$10,000). The penalty shall be in addition  
9 to other applicable penalties."

10 Section 6. A new section of the Tax Administration Act is  
11 enacted to read:

12 "[NEW MATERIAL] DISTRIBUTION ADJUSTMENT--TAX  
13 ADMINISTRATION SUSPENSE FUND--CREDIT FOR RECEIPTS OF  
14 HOSPITALS.--Distributions from the tax administration suspense  
15 fund of revenue attributable to the gross receipts tax shall be  
16 adjusted for the full cost of credits issued pursuant to the  
17 Gross Receipts and Compensating Tax Act for receipts of  
18 hospitals licensed by the department of health."

19 Section 7. A new section of the Tax Administration Act is  
20 enacted to read:

21 "[NEW MATERIAL] DISTRIBUTION ADJUSTMENT--TAX  
22 ADMINISTRATION SUSPENSE FUND--BUSINESS SERVICES TAX CREDIT.--  
23 Distributions from the tax administration suspense fund of  
24 revenue attributable to the gross receipts tax shall be  
25 adjusted for the full cost of business services tax credits

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1 issued."

2 Section 8. Section 7-2-2 NMSA 1978 (being Laws 1986,  
3 Chapter 20, Section 26, as amended by Laws 2003, Chapter 13,  
4 Section 1 and by Laws 2003, Chapter 275, Section 1) is amended  
5 to read:

6 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax  
7 Act and unless the context requires otherwise:

8 A. "adjusted gross income" means adjusted gross  
9 income as defined in Section 62 of the Internal Revenue Code,  
10 as that section may be amended or renumbered;

11 B. "base income":

12 (1) means, for estates and trusts, that part  
13 of the estate's or trust's income defined as taxable income and  
14 upon which the federal income tax is calculated in the Internal  
15 Revenue Code for income tax purposes plus, for taxable years  
16 beginning on or after January 1, 1991, the amount of the net  
17 operating loss deduction allowed by Section 172(a) of the  
18 Internal Revenue Code, as that section may be amended or  
19 renumbered, and taken by the taxpayer for that year;

20 (2) means, for taxpayers other than estates or  
21 trusts, that part of the taxpayer's income defined as adjusted  
22 gross income plus, for taxable years beginning on or after  
23 January 1, 1991, the amount of the net operating loss deduction  
24 allowed by Section 172(a) of the Internal Revenue Code, as that  
25 section may be amended or renumbered, and taken by the taxpayer

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1 for that year;

2 (3) includes, for all taxpayers, any other  
3 income of the taxpayer not included in adjusted gross income  
4 but upon which a federal tax is calculated pursuant to the  
5 Internal Revenue Code for income tax purposes, except amounts  
6 for which a calculation of tax is made pursuant to Section 55  
7 of the Internal Revenue Code, as that section may be amended or  
8 renumbered; "base income" also includes interest received on a  
9 state or local bond; and

10 (4) includes, for all taxpayers, an amount  
11 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior  
12 taxable year if:

13 (a) such amount is transferred to  
14 another qualified tuition program, as defined in Section 529 of  
15 the Internal Revenue Code, not authorized in the Education  
16 Trust Act; or

17 (b) a distribution or refund is made for  
18 any reason other than: 1) to pay for qualified higher  
19 education expenses, as defined pursuant to Section 529 of the  
20 Internal Revenue Code; or 2) upon the beneficiary's death,  
21 disability or receipt of a scholarship;

22 C. "compensation" means wages, salaries,  
23 commissions and any other form of remuneration paid to  
24 employees for personal services;

25 D. "department" means the taxation and revenue

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1 department, the secretary or any employee of the department  
2 exercising authority lawfully delegated to that employee by the  
3 secretary;

4 E. "fiduciary" means a guardian, trustee, executor,  
5 administrator, committee, conservator, receiver, individual or  
6 corporation acting in any fiduciary capacity;

7 F. "filing status" means "married filing joint  
8 returns", "married filing separate returns", "head of  
9 household", "surviving spouse" and "single", as those terms are  
10 generally defined for federal tax purposes;

11 G. "fiscal year" means any accounting period of  
12 twelve months ending on the last day of any month other than  
13 December;

14 H. "head of household" means "head of household" as  
15 generally defined for federal income tax purposes;

16 I. "individual" means a natural person, an estate,  
17 a trust or a fiduciary acting for a natural person, trust or  
18 estate;

19 J. "Internal Revenue Code" means the United States  
20 Internal Revenue Code of 1986, as amended;

21 K. "lump-sum amount" means for the purpose of  
22 determining liability for federal income tax, an amount that  
23 was not included in adjusted gross income but upon which the  
24 five-year-averaging or the ten-year-averaging method of tax  
25 computation provided in Section 402 of the Internal Revenue

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1 Code, as that section may be amended or renumbered, was  
2 applied;

3 L. "modified gross income" means all income of the  
4 taxpayer and, if any, the taxpayer's spouse and dependents,  
5 undiminished by losses and from whatever source, including:

- 6 (1) compensation;
- 7 (2) net profit from business;
- 8 (3) gains from dealings in property;
- 9 (4) interest;
- 10 (5) net rents;
- 11 (6) royalties;
- 12 (7) dividends;
- 13 (8) alimony and separate maintenance payments;
- 14 (9) annuities;
- 15 (10) income from life insurance and endowment  
16 contracts;
- 17 (11) pensions;
- 18 (12) discharge of indebtedness;
- 19 (13) distributive share of partnership income;
- 20 (14) income in respect of a decedent;
- 21 (15) income from an interest in an estate or a  
22 trust;
- 23 (16) social security benefits;
- 24 (17) unemployment compensation benefits;
- 25 (18) workers' compensation benefits;

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1 (19) public assistance and welfare benefits;

2 (20) cost-of-living allowances; and

3 (21) gifts;

4 M. "modified gross income" excludes:

5 (1) payments for hospital, dental, medical or  
6 drug expenses to or on behalf of the taxpayer;

7 (2) the value of room and board provided by  
8 federal, state or local governments or by private individuals  
9 or agencies based upon financial need and not as a form of  
10 compensation;

11 (3) payments pursuant to a federal, state or  
12 local government program directly or indirectly to a third  
13 party on behalf of the taxpayer when identified to a particular  
14 use or invoice by the payer; or

15 (4) payments [~~pursuant to Sections 7-2-14,~~  
16 ~~7-2-18, 7-2-18.1 and~~] made for a credit pursuant to Section  
17 7-3-9 NMSA 1978 or for credits and rebates pursuant to the  
18 Income Tax Act;

19 N. "net income" means, for estates and trusts, base  
20 income adjusted to exclude amounts that the state is prohibited  
21 from taxing because of the laws or constitution of this state  
22 or the United States and means, for taxpayers other than  
23 estates or trusts, base income adjusted to exclude:

24 (1) an amount equal to the standard deduction  
25 allowed the taxpayer for the taxpayer's taxable year by Section

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1 63 of the Internal Revenue Code, as that section may be amended  
2 or renumbered;

3 (2) an amount equal to the itemized deductions  
4 defined in Section 63 of the Internal Revenue Code, as that  
5 section may be amended or renumbered, allowed the taxpayer for  
6 the taxpayer's taxable year less the amount excluded pursuant  
7 to Paragraph (1) of this subsection;

8 (3) an amount equal to the product of the  
9 exemption amount allowed for the taxpayer's taxable year by  
10 Section 151 of the Internal Revenue Code, as that section may  
11 be amended or renumbered, multiplied by the number of personal  
12 exemptions allowed for federal income tax purposes;

13 (4) income from obligations of the United  
14 States of America less expenses incurred to earn that income;

15 (5) other amounts that the state is prohibited  
16 from taxing because of the laws or constitution of this state  
17 or the United States;

18 (6) for taxable years that began prior to  
19 January 1, 1991, an amount equal to the sum of:

20 (a) net operating loss carryback  
21 deductions to that year from taxable years beginning prior to  
22 January 1, 1991 claimed and allowed, as provided by the  
23 Internal Revenue Code; and

24 (b) net operating loss carryover  
25 deductions to that year claimed and allowed; and

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1                   (7) for taxable years beginning on or after  
2 January 1, 1991, an amount equal to the sum of any net  
3 operating loss carryover deductions to that year claimed and  
4 allowed, provided that the amount of any net operating loss  
5 carryover from a taxable year beginning on or after January 1,  
6 1991 may be excluded only as follows:

7                   (a) in the case of a timely filed  
8 return, in the taxable year immediately following the taxable  
9 year for which the return is filed; or

10                   (b) in the case of amended returns or  
11 original returns not timely filed, in the first taxable year  
12 beginning after the date on which the return or amended return  
13 establishing the net operating loss is filed; and

14                   (c) in either case, if the net operating  
15 loss carryover exceeds the amount of net income exclusive of  
16 the net operating loss carryover for the taxable year to which  
17 the exclusion first applies, in the next four succeeding  
18 taxable years in turn until the net operating loss carryover is  
19 exhausted; in no event shall a net operating loss carryover be  
20 excluded in any taxable year after the fourth taxable year  
21 beginning after the taxable year to which the exclusion first  
22 applies;

23                   0. "net operating loss" means any net operating  
24 loss, as defined by Section 172(c) of the Internal Revenue  
25 Code, as that section may be amended or renumbered, for a

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1 taxable year as further increased by the income, if any, from  
2 obligations of the United States for that year less related  
3 expenses;

4 P. "net operating loss carryover" means the amount,  
5 or any portion of the amount, of a net operating loss for any  
6 taxable year that, pursuant to Paragraph (6) or (7) of  
7 Subsection N of this section, may be excluded from base income;

8 Q. "nonresident" means every individual not a  
9 resident of this state;

10 R. "person" means any individual, estate, trust,  
11 receiver, cooperative association, club, corporation, company,  
12 firm, partnership, limited liability company, joint venture,  
13 syndicate or other association; "person" also means, to the  
14 extent permitted by law, any federal, state or other  
15 governmental unit or subdivision or agency, department or  
16 instrumentality thereof;

17 S. "resident" means an individual who is domiciled  
18 in this state during any part of the taxable year or an  
19 individual who is physically present in this state for one  
20 hundred eighty-five days or more during the taxable year; but  
21 any individual, other than someone who was physically present  
22 in the state for one hundred eighty-five days or more during  
23 the taxable year, who, on or before the last day of the taxable  
24 year, changed his place of abode to a place without this state  
25 with the bona fide intention of continuing actually to abide

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1 permanently without this state is not a resident for the  
2 purposes of the Income Tax Act for periods after that change of  
3 abode;

4 T. "secretary" means the secretary of taxation and  
5 revenue or the secretary's delegate;

6 U. "state" means any state of the United States,  
7 the District of Columbia, the commonwealth of Puerto Rico, any  
8 territory or possession of the United States or any political  
9 subdivision of a foreign country;

10 V. "state or local bond" means a bond issued by a  
11 state other than New Mexico or by a local government other than  
12 one of New Mexico's political subdivisions, the interest from  
13 which is excluded from income for federal income tax purposes  
14 under Section 103 of the Internal Revenue Code, as that section  
15 may be amended or renumbered;

16 W. "surviving spouse" means "surviving spouse" as  
17 generally defined for federal income tax purposes;

18 X. "taxable income" means net income less any lump-  
19 sum amount;

20 Y. "taxable year" means the calendar year or fiscal  
21 year upon the basis of which the net income is computed under  
22 the Income Tax Act and includes, in the case of the return made  
23 for a fractional part of a year under the provisions of the  
24 Income Tax Act, the period for which the return is made; and

25 Z. "taxpayer" means any individual subject to the

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1 tax imposed by the Income Tax Act."

2 Section 9. Section 7-2-14 NMSA 1978 (being Laws 1972,  
3 Chapter 20, Section 2, as amended) is amended to read:

4 "7-2-14. LOW-INCOME COMPREHENSIVE TAX REBATE.--

5 A. Except as otherwise provided in Subsection B or  
6 C of this section, any resident who files an individual New  
7 Mexico income tax return and who is not a dependent of another  
8 individual may claim a tax rebate, to be known as the "low-  
9 income comprehensive tax rebate", for a portion of state and  
10 local taxes to which the resident has been subject during the  
11 taxable year for which the return is filed. The tax rebate may  
12 be claimed even though the resident has no income taxable under  
13 the Income Tax Act. A husband and wife who file separate  
14 returns for a taxable year in which they could have filed a  
15 joint return may each claim only one-half of the tax rebate  
16 that would have been allowed on a joint return.

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

23 C. The tax rebate provided in this section shall  
24 not be allowed a taxpayer who has claimed a working families  
25 tax credit for the taxable year.

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1           ~~[G-]~~ D. For the purposes of this section, the total  
 2 number of exemptions for which a tax rebate may be claimed or  
 3 allowed is determined by adding the number of federal  
 4 exemptions allowable for federal income tax purposes for each  
 5 individual included in the return who is domiciled in New  
 6 Mexico plus two additional exemptions for each individual  
 7 domiciled in New Mexico included in the return who is sixty-  
 8 five years of age or older plus one additional exemption for  
 9 each individual domiciled in New Mexico included in the return  
 10 who, for federal income tax purposes, is blind plus one  
 11 exemption for each minor child or stepchild of the resident who  
 12 would be a dependent for federal income tax purposes if the  
 13 public assistance contributing to the support of the child or  
 14 stepchild was considered to have been contributed by the  
 15 resident.

16           ~~[D-]~~ E. The tax rebate provided for in this section  
 17 may be claimed in the amount shown in the following table:

|    |                |         |                      |        |        |        |        |        |
|----|----------------|---------|----------------------|--------|--------|--------|--------|--------|
| 18 | Modified gross |         | And the total number |        |        |        |        |        |
| 19 | income is:     |         | of exemptions is:    |        |        |        |        |        |
| 20 |                | But Not |                      |        |        |        |        | 6 or   |
| 21 | Over           | Over    | 1                    | 2      | 3      | 4      | 5      | More   |
| 22 | \$ 0           | \$ 500  | \$ 120               | \$ 160 | \$ 200 | \$ 240 | \$ 280 | \$ 320 |
| 23 | 500            | 1,000   | 135                  | 195    | 250    | 310    | 350    | 415    |
| 24 | 1,000          | 1,500   | 135                  | 195    | 250    | 310    | 350    | 435    |
| 25 | 1,500          | 2,000   | 135                  | 195    | 250    | 310    | 350    | 450    |

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|    |        |        |     |     |     |     |     |     |
|----|--------|--------|-----|-----|-----|-----|-----|-----|
| 1  | 2,000  | 2,500  | 135 | 195 | 250 | 310 | 350 | 450 |
| 2  | 2,500  | 3,000  | 135 | 195 | 250 | 310 | 350 | 450 |
| 3  | 3,000  | 3,500  | 135 | 195 | 250 | 310 | 350 | 450 |
| 4  | 3,500  | 4,000  | 135 | 195 | 250 | 310 | 355 | 450 |
| 5  | 4,000  | 4,500  | 135 | 195 | 250 | 310 | 355 | 450 |
| 6  | 4,500  | 5,000  | 125 | 190 | 240 | 305 | 355 | 450 |
| 7  | 5,000  | 5,500  | 115 | 175 | 230 | 295 | 355 | 430 |
| 8  | 5,500  | 6,000  | 105 | 155 | 210 | 260 | 315 | 410 |
| 9  | 6,000  | 7,000  | 90  | 130 | 170 | 220 | 275 | 370 |
| 10 | 7,000  | 8,000  | 80  | 115 | 145 | 180 | 225 | 295 |
| 11 | 8,000  | 9,000  | 70  | 105 | 135 | 170 | 195 | 240 |
| 12 | 9,000  | 10,000 | 65  | 95  | 115 | 145 | 175 | 205 |
| 13 | 10,000 | 11,000 | 60  | 80  | 100 | 130 | 155 | 185 |
| 14 | 11,000 | 12,000 | 55  | 70  | 90  | 110 | 135 | 160 |
| 15 | 12,000 | 13,000 | 50  | 65  | 85  | 100 | 115 | 140 |
| 16 | 13,000 | 14,000 | 50  | 65  | 85  | 100 | 115 | 140 |
| 17 | 14,000 | 15,000 | 45  | 60  | 75  | 90  | 105 | 120 |
| 18 | 15,000 | 16,000 | 40  | 55  | 70  | 85  | 95  | 110 |
| 19 | 16,000 | 17,000 | 35  | 50  | 65  | 80  | 85  | 105 |
| 20 | 17,000 | 18,000 | 30  | 45  | 60  | 70  | 80  | 95  |
| 21 | 18,000 | 19,000 | 25  | 35  | 50  | 60  | 70  | 80  |
| 22 | 19,000 | 20,000 | 20  | 30  | 40  | 50  | 60  | 65  |
| 23 | 20,000 | 21,000 | 15  | 25  | 30  | 40  | 50  | 55  |
| 24 | 21,000 | 22,000 | 10  | 20  | 25  | 35  | 40  | 45. |

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25                    ~~[E.]~~ F. If a taxpayer's modified gross income is

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1 zero, the taxpayer may claim a credit in the amount shown in  
2 the first row of the table appropriate for the taxpayer's  
3 number of exemptions.

4 [F.] G. The tax rebates provided for in this section  
5 may be deducted from the taxpayer's New Mexico income tax  
6 liability for the taxable year. If the tax rebates exceed the  
7 taxpayer's income tax liability, the excess shall be refunded  
8 to the taxpayer.

9 [G.] H. For purposes of this section, "dependent"  
10 means "dependent" as defined by Section 152 of the Internal  
11 Revenue Code [~~of 1986, as that section may be amended or~~  
12 ~~renumbered~~], but also includes any minor child or stepchild of  
13 the resident who would be a dependent for federal income tax  
14 purposes if the public assistance contributing to the support  
15 of the child or stepchild was considered to have been  
16 contributed by the resident."

17 Section 10. A new section of the Income Tax Act is  
18 enacted to read:

19 "[NEW MATERIAL] WORKING FAMILIES TAX CREDIT.--

20 A. A person who files an individual New Mexico  
21 income tax return and who is not a dependent of another  
22 taxpayer may claim a credit in an amount equal to seven and  
23 one-half percent of a federal income tax credit for which that  
24 person is eligible pursuant to Section 32 of the Internal  
25 Revenue Code if the person does not claim a rebate for the

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1 taxable year pursuant to Section 7-2-14 NMSA 1978. The credit  
2 provided in this section may be referred to as the "working  
3 families tax credit".

4 B. A husband and wife who file separate returns for  
5 a taxable year in which they could have filed a joint return  
6 may each claim only one-half of the credit that would have been  
7 allowed on a joint return.

8 C. The working families tax credit may be deducted  
9 from the income tax liability of a person who claims the credit  
10 and qualifies for the credit pursuant to this section. If the  
11 credit exceeds the person's income tax liability for the  
12 taxable year, the excess shall be refunded to the person."

13 Section 11. A new section of the Income Tax Act is  
14 enacted to read:

15 "[NEW MATERIAL] SOLAR MARKET DEVELOPMENT TAX CREDIT--  
16 RESIDENTIAL AND SMALL BUSINESS SOLAR THERMAL AND PHOTOVOLTAIC  
17 MARKET DEVELOPMENT TAX CREDIT.--

18 A. Except as provided in Subsection B of this  
19 section, a taxpayer who files an individual New Mexico income  
20 tax return for a taxable year beginning on or after January 1,  
21 2006 and who purchases and installs after January 1, 2006 but  
22 before December 31, 2015 a solar thermal system or a  
23 photovoltaic system in a residence, business or agricultural  
24 enterprise in New Mexico owned by that taxpayer may apply for,  
25 and the department may allow, a solar market development tax

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1 credit of up to thirty percent of the purchase and installation  
2 costs of the system; provided that under no circumstances shall  
3 the federal and state tax credits allowed, when combined, total  
4 more than thirty percent of the purchase and installation cost  
5 of the system. To determine the amount of the state solar  
6 market development tax credit due pursuant to this section, the  
7 amount of the allowable federal tax credit, whether claimed or  
8 not claimed by the taxpayer, shall be deducted from thirty  
9 percent of the purchase and installation cost of the system.  
10 The total solar market development tax credit allowed for  
11 either a photovoltaic system or a solar thermal system shall  
12 not exceed nine thousand dollars (\$9,000). The department  
13 shall allow solar market development tax credits only for solar  
14 thermal systems and photovoltaic systems certified by the  
15 energy, minerals and natural resources department.

16 B. Solar market development tax credits may not be  
17 claimed or allowed for:

18 (1) a heating system for a swimming pool or a  
19 hot tub; or

20 (2) a commercial or industrial photovoltaic  
21 system other than an agricultural photovoltaic system on a farm  
22 or ranch that is not connected to an electric utility  
23 transmission or distribution system.

24 C. The department may allow a maximum annual  
25 aggregate of:

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1                   (1) two million dollars (\$2,000,000) in solar  
2 market development tax credits for solar thermal systems; and

3                   (2) three million dollars (\$3,000,000) in  
4 solar market development tax credits for photovoltaic systems.

5                   D. A portion of the solar market development tax  
6 credit that remains unused in a taxable year may be carried  
7 forward for a maximum of ten consecutive taxable years  
8 following the taxable year in which the credit originates until  
9 fully expended.

10                  E. Prior to July 1, 2006, the energy, minerals and  
11 natural resources department shall adopt rules establishing  
12 procedures to provide certification of solar thermal systems  
13 and photovoltaic systems for purposes of obtaining a solar  
14 market development tax credit. The rules shall address  
15 technical specifications and requirements relating to safety,  
16 code and standards compliance, solar collector orientation and  
17 sun exposure, minimum system sizes, system applications and  
18 lists of eligible components. The energy, minerals and natural  
19 resources department may modify the specifications and  
20 requirements as necessary to maintain a high level of system  
21 quality and performance.

22                  F. As used in this section:

23                         (1) "photovoltaic system" means an energy  
24 system that collects or absorbs sunlight for conversion into  
25 electricity; and

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underscoring material = new  
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1                   (2) "solar thermal system" means an energy  
2 system that collects or absorbs solar energy for conversion  
3 into heat for the purposes of space heating, space cooling or  
4 water heating."

5           Section 12. A new section of the Income Tax Act is  
6 enacted to read:

7           "[NEW MATERIAL] CREDIT FOR PRODUCED WATER.--

8           A. An operator who files an individual New Mexico  
9 income tax return who is not a dependent of another taxpayer  
10 may claim a tax credit in an amount equal to one thousand  
11 dollars (\$1,000) per acre-foot of produced water not to exceed  
12 four hundred thousand dollars (\$400,000) per year if the  
13 following conditions are met:

14                   (1) the operator delivers the water to the  
15 interstate stream commission at the Pecos river in compliance  
16 with the applicable requirements of New Mexico's Water Quality  
17 Act, New Mexico's water quality control commission regulations  
18 and federal clean water acts;

19                   (2) the operator delivers the water solely in  
20 a manner approved by the interstate stream commission to  
21 contribute to delivery obligations pursuant to the Pecos River  
22 Compact; and

23                   (3) upon delivery to the interstate stream  
24 commission at the Pecos river, title is transferred to the  
25 interstate stream commission.

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1           B. A husband and wife who file separate returns for  
2 a taxable year in which they could have filed a joint return  
3 may each claim only one-half of the credit that would have been  
4 allowed on a joint return.

5           C. The tax credit provided in this section may only  
6 be deducted from the operator's personal income tax liability.  
7 Any portion of the tax credit provided in this section that  
8 remains unused at the end of the operator's taxable year may be  
9 carried forward for three consecutive taxable years.

10           D. As used in this section:

11                   (1) "operator" means a person who operates an  
12 oil or gas well; and

13                   (2) "produced water" means water produced  
14 from oil or gas drilling and production from a depth of two  
15 thousand five hundred feet or more below the surface.

16           E. The interstate stream commission shall provide  
17 legal confirmation of receipt of the water from the operator,  
18 and the operator shall provide documentation to the department  
19 to prove eligibility for the tax credit provided in this  
20 section."

21           Section 13. A new section of the Corporate Income and  
22 Franchise Tax Act is enacted to read:

23           "NEW MATERIAL] CREDIT FOR PRODUCED WATER.--

24           A. An operator that files a New Mexico corporate  
25 income tax return may take a tax credit in an amount equal to

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1 one thousand dollars (\$1,000) per acre-foot of produced water  
2 not to exceed four hundred thousand dollars (\$400,000) per year  
3 if the following conditions are met:

4 (1) the operator delivers the water to the  
5 interstate stream commission at the Pecos river in compliance  
6 with the applicable requirements of New Mexico's Water Quality  
7 Act, New Mexico's water quality control commission regulations  
8 and federal clean water acts;

9 (2) the operator delivers the water solely in  
10 a manner approved by the interstate stream commission to  
11 contribute to delivery obligations pursuant to the Pecos River  
12 Compact; and

13 (3) upon delivery to the interstate stream  
14 commission at the Pecos river, title is transferred to the  
15 interstate stream commission.

16 B. The tax credit provided in this section may only  
17 be deducted from the operator's corporate income tax liability.  
18 Any portion of the tax credit provided in this section that  
19 remains unused at the end of the operator's taxable year may be  
20 carried forward for three consecutive taxable years.

21 C. As used in this section:

22 (1) "operator" means a person who operates an  
23 oil or gas well; and

24 (2) "produced water" means water produced  
25 from oil or gas drilling and production from a depth of two

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1 thousand five hundred feet or more below the surface.

2 D. The interstate stream commission shall provide  
3 legal confirmation of receipt of the water from the operator,  
4 and the operator shall provide documentation to the department  
5 to prove eligibility for the tax credit provided in this  
6 section."

7 Section 14. Section 7-2A-19 NMSA 1978 (being Laws 2002,  
8 Chapter 59, Section 1, as amended by Laws 2005, Chapter 104,  
9 Section 7 and by Laws 2005, Chapter 181, Section 1) is amended  
10 to read:

11 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
12 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

13 A. The tax credit provided in this section may be  
14 referred to as the "renewable energy production tax credit".

15 B. A person is eligible for the renewable energy  
16 production tax credit if the person:

17 (1) holds title to a qualified energy  
18 generator; or

19 (2) leases property upon which a qualified  
20 energy generator operates from a county or municipality under  
21 authority of an industrial revenue bond.

22 C. The amount of the tax credit shall equal one cent  
23 (\$.01) per kilowatt-hour of the first four hundred thousand  
24 megawatt-hours of electricity produced by the qualified energy  
25 generator in the taxable year, provided that the total amount

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1 of tax credits claimed by all taxpayers for a single qualified  
2 energy generator in a taxable year shall not exceed one cent  
3 (\$.01) per kilowatt-hour of the first four hundred thousand  
4 megawatt-hours of electricity produced by the qualified energy  
5 generator.

6 D. A taxpayer eligible for a renewable energy  
7 production tax credit pursuant to Subsection B of this section  
8 shall be eligible for the renewable energy production tax  
9 credit for ten consecutive years, beginning on the date the  
10 qualified energy generator begins producing electricity.

11 E. As used in this section:

12 (1) "biomass" means [~~agricultural or animal~~  
13 ~~waste; thinnings from trees less than fifteen inches in~~  
14 ~~diameter, slash and brush; lumbermill or sawmill residues; and~~  
15 ~~salt cedar and other phreatophytes removed from watersheds or~~  
16 ~~river basins]~~ organic material that is available on a renewable  
17 or recurring basis, including:

18 (a) forest-related materials, including  
19 mill residues, logging residues, forest thinnings from trees  
20 less than fifteen inches in diameter, slash, brush, low-  
21 commercial-value materials or undesirable species, salt cedar  
22 and other phreatophyte or woody vegetation removed from river  
23 basins or watersheds and woody material harvested for the  
24 purpose of forest fire fuel reduction or forest health and  
25 watershed improvement;

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1                   (b) agricultural-related materials,  
2 including orchard trees, vineyard, grain or crop residues,  
3 including straws and stover, aquatic plants and agricultural  
4 processed co-products and waste products, including fats, oils,  
5 greases, whey and lactose;

6                   (c) animal waste, including manure and  
7 slaughterhouse and other processing waste;

8                   (d) solid woody waste materials,  
9 including landscape or right-of-way tree trimmings, range land  
10 maintenance residues, waste pallets, crates and manufacturing,  
11 construction and demolition wood wastes, excluding pressure-  
12 treated, chemically treated or painted wood wastes and wood  
13 contaminated with plastic;

14                   (e) crops and trees planted for the  
15 purpose of being used to produce energy; and

16                   (f) landfill gas, wastewater treatment  
17 gas and biosolids, including organic waste byproducts generated  
18 during the wastewater treatment process;

19                   (2) "qualified energy generator" means a  
20 facility with at least ten megawatts generating capacity  
21 located in New Mexico that produces electricity using a  
22 qualified energy resource and that sells that electricity to an  
23 unrelated person; and

24                   (3) "qualified energy resource" means a  
25 resource that generates electrical energy by means of a

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1 fluidized bed technology or similar low-emissions technology or  
2 a zero-emissions generation technology that has substantial  
3 long-term production potential and that uses only the following  
4 energy sources:

5 (a) solar light;

6 (b) solar heat;

7 (c) wind; or

8 (d) biomass.

9 F. A person that holds title to a facility  
10 generating electricity from a qualified energy resource or  
11 ~~[one]~~ a person that leases such a facility from a county or  
12 municipality pursuant to an industrial revenue bond may request  
13 certification of eligibility for the renewable energy  
14 production tax credit from the energy, minerals and natural  
15 resources department, which shall determine if the facility is  
16 a qualified energy generator; provided that the department may  
17 certify the eligibility of an energy generator only if the  
18 total amount of electricity that may be produced annually by  
19 all qualified energy generators that are certified will not  
20 exceed two million megawatt-hours. Applications shall be  
21 considered in the order received. The energy, minerals and  
22 natural resources department may estimate the annual power-  
23 generating potential of a generating facility for the purposes  
24 of this section. The energy, minerals and natural resources  
25 department shall issue a certificate to the applicant stating

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1 whether the facility is an eligible qualified energy generator  
2 and the estimated annual production potential of the generating  
3 facility, which shall be the limit of that facility's energy  
4 production eligible for the tax credit for the taxable year.  
5 The energy, minerals and natural resources department may issue  
6 rules governing the procedure for administering the provisions  
7 of this subsection.

8 G. A taxpayer may be allocated all or a portion of  
9 the right to claim a renewable energy production tax credit  
10 without regard to proportional ownership interest if:

11 (1) the taxpayer owns an interest in a  
12 business entity that is taxed for federal income tax purposes  
13 as a partnership;

14 (2) the business entity:  
15 (a) would qualify for the renewable  
16 energy production tax credit pursuant to Paragraph (1) or (2)  
17 of Subsection B of this section;

18 (b) owns an interest in a business  
19 entity that is also taxed for federal income tax purposes as a  
20 partnership and that would qualify for the renewable energy  
21 production tax credit pursuant to Paragraph (1) or (2) of  
22 Subsection B of this section; or

23 (c) owns, through one or more  
24 intermediate business entities that are each taxed for federal  
25 income tax purposes as a partnership, an interest in the

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1 business entity described in Subparagraph (b) of this paragraph  
2 [~~(2) of this subsection~~];

3 (3) the taxpayer and all other taxpayers  
4 allocated a right to claim the renewable energy production tax  
5 credit pursuant to this subsection own collectively at least a  
6 five percent interest in a qualified energy generator;

7 (4) the business entity provides notice of  
8 the allocation and the taxpayer's interest to the energy,  
9 minerals and natural resources department on forms prescribed  
10 by that department; and

11 (5) the energy, minerals and natural  
12 resources department certifies the allocation in writing to the  
13 taxpayer.

14 H. Upon receipt of notice of an allocation of the  
15 right to claim all or a portion of the renewable energy  
16 production tax credit, the energy, minerals and natural  
17 resources department shall promptly certify the allocation in  
18 writing to the recipient of the allocation.

19 I. A taxpayer may claim the renewable energy  
20 production tax credit by submitting to the taxation and revenue  
21 department the certificate issued by the energy, minerals and  
22 natural resources department, pursuant to Subsection F or G of  
23 this section, documentation showing the taxpayer's interest in  
24 the facility, documentation of the amount of electricity  
25 produced by the facility in the taxable year and any other

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1 information the taxation and revenue department may require to  
2 determine the amount of the tax credit due the taxpayer.

3 J. Once a taxpayer has been granted a renewable  
4 energy production tax credit for a given facility, that  
5 taxpayer shall be allowed to retain the facility's original  
6 date of application for tax credits for that facility until  
7 either the facility goes out of production for more than six  
8 consecutive months in a year or until the facility's ten-year  
9 eligibility has expired.

10 K. The renewable energy production tax credit may be  
11 deducted from the taxpayer's New Mexico corporate income tax  
12 liability for a taxable year. If the amount of the tax credit  
13 claimed exceeds the taxpayer's corporate income tax liability,  
14 the excess may be carried forward for up to five consecutive  
15 taxable years."

16 Section 15. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 15  
17 through 22 of this act may be cited as the "Advanced Energy  
18 Product Manufacturers Tax Credit Act".

19 Section 16. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the  
20 Advanced Energy Product Manufacturers Tax Credit Act:

21 A. "advanced energy product" means an advanced  
22 energy vehicle, fuel cell system, renewable energy system or  
23 any component of an advanced energy vehicle, fuel cell system  
24 or renewable energy system or components for integrated  
25 gasification combined cycle coal facilities and equipment

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1 related to the sequestration of carbon from integrated  
2 gasification combined cycle plants;

3 B. "advanced energy vehicle" means a motor vehicle  
4 manufactured by an original equipment manufacturer that fully  
5 warrants and certifies that the motor vehicle meets the federal  
6 motor vehicle safety standards and is designed to be propelled  
7 in whole or in part by electricity; "advanced energy vehicle"  
8 includes a gasoline-electric hybrid motor vehicle exempt from  
9 the motor vehicle excise tax pursuant to Subsection F of  
10 Section 7-14-6 NMSA 1978;

11 C. "component" means a part, assembly of parts,  
12 material, ingredient or supply that is incorporated directly  
13 into an end product;

14 D. "department" means the taxation and revenue  
15 department, the secretary of taxation and revenue or an  
16 employee of the department exercising authority lawfully  
17 delegated to that employee by the secretary;

18 E. "fuel cell system" means a system that converts  
19 hydrogen, natural gas or waste gas to electricity without  
20 combustion, including:

21 (1) a fuel cell or a system used to generate  
22 or reform hydrogen for use in a fuel cell; or

23 (2) a system used to generate or reform  
24 hydrogen for use in a fuel cell, including:

25 (a) electrolyzers that use renewable

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1 energy; and

2 (b) reformers that use natural gas as  
3 the feedstock;

4 F. "manufacturing" means combining or processing  
5 components or materials to increase their value for sale in the  
6 ordinary course of business, but does not include construction,  
7 farming, power generation or processing natural resources;

8 G. "manufacturing equipment" means an essential  
9 machine, mechanism or tool or a component of an essential  
10 machine, mechanism or tool used directly and exclusively in a  
11 taxpayer's manufacturing operation and that is subject to  
12 depreciation pursuant to the Internal Revenue Code of 1986 by  
13 the taxpayer carrying on the manufacturing; provided that  
14 "manufacturing equipment" does not include a vehicle that  
15 leaves the site of a manufacturing operation for the purpose of  
16 transporting persons or property, including property for which  
17 the taxpayer claims a credit pursuant to Section 7-9-79 NMSA  
18 1978;

19 H. "manufacturing operation" means a plant employing  
20 personnel to perform production tasks, in conjunction with  
21 manufacturing equipment not previously existing at the site, to  
22 produce advanced energy products;

23 I. "modified combined tax liability" means the total  
24 liability for the reporting period for the gross receipts tax  
25 imposed by Section 7-9-4 NMSA 1978 together with any tax

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1 collected at the same time and in the same manner as that gross  
2 receipts tax, such as the compensating tax, the withholding  
3 tax, the interstate telecommunications gross receipts tax, the  
4 surcharge imposed by Section 63-9D-5 NMSA 1978 and the  
5 surcharge imposed by Section 63-9F-11 NMSA 1978, minus the  
6 amount of any credit other than the advanced energy product  
7 manufacturers tax credit applied against any or all of those  
8 taxes or surcharges; provided that "modified combined tax  
9 liability" excludes all amounts collected with respect to local  
10 option gross receipts taxes;

11 J. "pass-through entity" means a business  
12 association other than:

13 (1) a sole proprietorship;  
14 (2) an estate or trust;  
15 (3) a corporation, limited liability company,  
16 partnership or other entity that is not a sole proprietorship  
17 taxed as a corporation for federal income tax purposes for the  
18 taxable year; or

19 (4) a partnership that is organized as an  
20 investment partnership in which the partner's income is derived  
21 solely from interest, dividends and sales of securities;

22 K. "qualified expenditure" means an expenditure for  
23 the purchase of manufacturing equipment made after July 1, 2006  
24 by a taxpayer approved by the department;

25 L. "renewable energy" means energy from solar heat,

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1 solar light, wind, geothermal energy, landfill gas or biomass  
2 either singly or in combination that produces low or zero  
3 emissions and has substantial long-term production potential;

4 M. "renewable energy system" means a system using  
5 only renewable energy to produce hydrogen or to generate  
6 electricity, including related cogeneration systems that create  
7 mechanical energy or that produce heat or steam for space or  
8 water heating and agricultural or small industrial processes  
9 and includes a:

- 10 (a) photovoltaic energy system;
- 11 (b) solar-thermal energy system;
- 12 (c) biomass energy system;
- 13 (d) wind energy system;
- 14 (e) hydrogen production system; or
- 15 (f) battery cell energy system; and

16 N. "taxpayer" means a person, including a  
17 shareholder, member, partner or other owner of a pass-through  
18 entity, who is liable for payment of a tax or to whom an  
19 assessment has been made, if the assessment remains unabated or  
20 the amount thereof has not been paid.

21 Section 17. [NEW MATERIAL] ADMINISTRATION.--The  
22 department shall administer the Advanced Energy Product  
23 Manufacturers Tax Credit Act pursuant to the Tax Administration  
24 Act.

25 Section 18. [NEW MATERIAL] ADVANCED ENERGY PRODUCT

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1 MANUFACTURERS TAX CREDIT.--

2 A. A tax credit to be known as the "advanced energy  
3 product manufacturers tax credit" may be claimed by a taxpayer  
4 in an amount:

5 (1) for which the taxpayer has been granted  
6 approval by the department pursuant to the Advanced Energy  
7 Product Manufacturers Tax Credit Act; and

8 (2) not to exceed five percent of the  
9 taxpayer's qualified expenditures.

10 B. The advanced energy product manufacturers tax  
11 credit may only be deducted from the taxpayer's modified  
12 combined tax liability. Any portion of the advanced energy  
13 product manufacturers tax credit that remains unused at the end  
14 of the taxpayer's reporting period may be carried forward for  
15 three years.

16 Section 19. [NEW MATERIAL] ELIGIBILITY REQUIREMENTS--  
17 EMPLOYMENT.--

18 A. To be eligible to claim a credit pursuant to the  
19 Advanced Energy Product Manufacturers Tax Credit Act, the  
20 taxpayer shall employ:

21 (1) a full-time employee not included in the  
22 number of full-time employees whom the taxpayer claimed to  
23 employ for the purpose of claiming an advanced energy product  
24 manufacturers tax credit for a previous tax year; provided that  
25 the taxpayer claimed the credit during a previous year; and

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1 (2) except as otherwise provided in this  
2 section, a number of full-time employees equal to one full-time  
3 employee employed one year prior to the day on which the  
4 taxpayer applies for the credit for each:

5 (a) five hundred thousand dollars  
6 (\$500,000), or a portion of that amount, of qualified  
7 expenditures claimed by the taxpayer in a taxable year in the  
8 same claim, up to a value of thirty million dollars  
9 (\$30,000,000); and

10 (b) one million dollars (\$1,000,000), or  
11 a portion of that amount, in value of qualified expenditures  
12 over thirty million dollars (\$30,000,000) claimed by the  
13 taxpayer in a taxable year in the same claim.

14 B. In lieu of a full-time employee that the taxpayer  
15 is required to employ to claim an advanced energy product  
16 manufacturers tax credit pursuant to Paragraph (2) of  
17 Subsection A of this section, a taxpayer may employ a full-time  
18 employee employed earlier than one year prior to the day on  
19 which the taxpayer applies for the credit if:

20 (1) the employee is trained by the employer  
21 earlier than one year prior to the day on which the taxpayer  
22 applies for the credit; or

23 (2) the employee is hired with respect to use  
24 of manufacturing equipment.

25 Section 20. [NEW MATERIAL] APPROVAL OF CREDIT--ISSUANCE

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1 AND DENIAL--APPLICATION--DEADLINES.--

2 A. The department shall issue or deny approval for  
3 an advanced energy product manufacturers tax credit in response  
4 to a taxpayer's application for approval for the credit. The  
5 department shall issue approval for a credit claimed by a  
6 taxpayer who satisfies the requirements of the Advanced Energy  
7 Product Manufacturers Tax Credit Act.

8 B. The department may require a taxpayer who claims  
9 an advanced energy product manufacturers tax credit to produce  
10 evidence of the taxpayer's compliance with the Advanced Energy  
11 Product Manufacturers Tax Credit Act.

12 C. A taxpayer may apply for approval of an advanced  
13 energy product manufacturers tax credit on or before the last  
14 day of the year following the end of the calendar year in which  
15 the qualified expenditure is made. The department shall not  
16 issue approval for the advanced energy product manufacturers  
17 tax credit if the taxpayer applies for approval after the last  
18 day of the year following the end of the calendar year in which  
19 the qualified expenditure is made.

20 Section 21. [NEW MATERIAL] RECAPTURE.--If the taxpayer  
21 or a successor in the business of the taxpayer ceases  
22 operations at a facility in New Mexico for at least one hundred  
23 eighty consecutive days within a two-year period after the  
24 taxpayer has claimed an advanced energy product manufacturers  
25 tax credit, the department shall not grant additional advanced

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1 energy product manufacturers tax credits with respect to that  
 2 facility. Any amount of the approved credit with respect to  
 3 that facility that is not claimed against the taxpayer's  
 4 modified combined tax liability shall be extinguished, and  
 5 within thirty days after the one hundred eightieth day of  
 6 cessation of operations, the taxpayer shall pay the modified  
 7 income tax liability against which an approved credit was  
 8 taken. For the purposes of this section, a taxpayer shall not  
 9 be deemed to have ceased operations during reasonable periods  
 10 for maintenance or retooling, for the repair or replacement of  
 11 facilities damaged or destroyed or during labor disputes.

12 Section 22. [NEW MATERIAL] CREDIT CLAIM FORMS.--The  
 13 department shall provide credit claim forms and instructions.  
 14 A credit claim form shall accompany any return in which the  
 15 taxpayer claims a credit, and the claim shall specify the  
 16 amount of credit intended to apply to each return.

17 Section 23. Section 7-9-47 NMSA 1978 (being Laws 1969,  
 18 Chapter 144, Section 37, as amended) is amended to read:

19 "7-9-47. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL  
 20 GROSS RECEIPTS TAX--SALE OF TANGIBLE PERSONAL PROPERTY OR  
 21 LICENSES FOR RESALE.--Receipts from selling tangible personal  
 22 property or licenses may be deducted from gross receipts or  
 23 from governmental gross receipts if the sale is made to a  
 24 person who delivers to the seller a nontaxable transaction  
 25 certificate ~~[to the seller]~~ or other documentation in a form

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1 prescribed by the department. The buyer delivering the  
2 nontaxable transaction certificate or other documentation must  
3 resell the tangible personal property or license either by  
4 itself or in combination with other tangible personal property  
5 or licenses in the ordinary course of business."

6 Section 24. Section 7-9-62 NMSA 1978 (being Laws 1969,  
7 Chapter 144, Section 52, as amended) is amended to read:

8 "7-9-62. DEDUCTION--GROSS RECEIPTS TAX--AGRICULTURAL  
9 IMPLEMENTS--AIRCRAFT--VEHICLES THAT ARE NOT REQUIRED TO BE  
10 REGISTERED.--

11 A. Except for receipts deductible under Subsection B  
12 of this section, fifty percent of the receipts from selling  
13 agricultural implements, farm tractors, aircraft or vehicles  
14 that are not required to be registered under the Motor Vehicle  
15 Code may be deducted from gross receipts; provided that, with  
16 respect to agricultural implements, the sale is made to a  
17 person who states in writing that the person is regularly  
18 engaged in the business of farming or ranching. Any deduction  
19 allowed under Section 7-9-71 NMSA 1978 must be taken before the  
20 deduction allowed by this subsection is computed.

21 B. Receipts of an aircraft manufacturer from selling  
22 aircraft may be deducted from gross receipts. Any deduction  
23 allowed under Section 7-9-71 NMSA 1978 must be taken before the  
24 deduction allowed by this subsection is computed.

25 C. As used in this section, "agricultural implement"

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1 means a tool, utensil or instrument that is:

2 (1) designed to irrigate agricultural produce  
3 aboveground or belowground at the place where the produce is  
4 grown; or

5 [~~(1)~~] (2) designed primarily for use with a  
6 source of motive power, such as a tractor, in planting,  
7 growing, cultivating, harvesting or processing agricultural  
8 produce at the place where the produce is grown; in raising  
9 poultry or livestock; or in obtaining or processing food or  
10 fiber, such as eggs, milk, wool or mohair, from living poultry  
11 or livestock at the place where the poultry or livestock are  
12 kept for this purpose; and [~~(2)~~] that is depreciable for  
13 federal income tax purposes."

14 Section 25. Section 7-9-77.1 NMSA 1978 (being Laws 1998,  
15 Chapter 96, Section 1, as amended) is amended to read:

16 "7-9-77.1. DEDUCTION--GROSS RECEIPTS TAX--CERTAIN  
17 MEDICAL AND HEALTH CARE SERVICES.--

18 A. Receipts from payments by the United States  
19 government or any agency thereof for provision of medical and  
20 other health services by medical doctors, osteopathic  
21 physicians, doctors of oriental medicine, athletic trainers,  
22 chiropractic physicians, counselor and therapist practitioners,  
23 dentists, massage therapists, naprapaths, nurses,  
24 nutritionists, dietitians, occupational therapists,  
25 optometrists, pharmacists, physical therapists, psychologists,

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1 radiologic technologists, respiratory care practitioners,  
2 audiologists, speech-language pathologists and podiatrists or  
3 of medical, other health and palliative services by hospices or  
4 nursing homes to medicare beneficiaries pursuant to the  
5 provisions of Title 18 of the federal Social Security Act may  
6 be deducted from gross receipts.

7 B. Receipts from payments by a third-party  
8 administrator of the federal TRICARE program for provision of  
9 medical and other health services by medical doctors and  
10 osteopathic physicians to covered beneficiaries may be deducted  
11 from gross receipts.

12 C. Receipts from payments by the United States  
13 government or any agency thereof for medical services provided  
14 by a clinical laboratory to medicare beneficiaries pursuant to  
15 the provisions of Title 18 of the federal Social Security Act  
16 may be deducted from gross receipts [~~pursuant to the following~~  
17 ~~schedule:~~

18 ~~(1) from July 1, 2003 through June 30, 2004,~~  
19 ~~thirty-three and one-third percent of the receipts may be~~  
20 ~~deducted;~~

21 ~~(2) from July 1, 2004 through June 30, 2005,~~  
22 ~~sixty-six and two-thirds percent of the receipts may be~~  
23 ~~deducted; and~~

24 ~~(3) after June 30, 2005, one hundred percent~~  
25 ~~of the receipts may be deducted].~~

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1           D. Receipts from payments by the United States  
2 government or any agency thereof for medical, other health and  
3 palliative services provided by a home health agency to  
4 medicare beneficiaries pursuant to the provisions of Title 18  
5 of the federal Social Security Act may be deducted from gross  
6 receipts [~~pursuant to the following schedule:~~

7                     ~~(1) from July 1, 2003 through June 30, 2004,~~  
8 ~~thirty-three and one-third percent of the receipts may be~~  
9 ~~deducted;~~

10                    ~~(2) from July 1, 2004 through June 30, 2005,~~  
11 ~~sixty-six and two-thirds percent of the receipts may be~~  
12 ~~deducted; and~~

13                    ~~(3) after June 30, 2005, one hundred percent~~  
14 ~~of the receipts may be deducted].~~

15           E. For the purposes of this section:

16                    (1) "athletic trainer" means a person  
17 licensed as an athletic trainer pursuant to the provisions of  
18 Chapter 61, Article 14D NMSA 1978;

19                    (2) "chiropractic physician" means a person  
20 who practices chiropractic as defined in the Chiropractic  
21 Physician Practice Act;

22                    ~~[(1)]~~ (3) "clinical laboratory" means a  
23 laboratory accredited pursuant to 42 USCA 263a;

24                    (4) "counselor and therapist practitioner"  
25 means a person licensed to practice as a counselor or therapist

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1 pursuant to the provisions of Chapter 61, Article 9A NMSA 1978;

2 (5) "dentist" means a person licensed to  
3 practice as a dentist pursuant to the provisions of Chapter 61,  
4 Article 5A NMSA 1978;

5 (6) "doctor of oriental medicine" means a  
6 person licensed as a physician to practice acupuncture or  
7 oriental medicine pursuant to the provisions of Chapter 61,  
8 Article 14A NMSA 1978;

9 [~~2~~] (7) "home health agency" means a for-  
10 profit entity that is licensed by the department of health and  
11 certified by the federal centers for medicare and medicaid  
12 services as a home health agency and certified to provide  
13 medicare services;

14 [~~3~~] (8) "hospice" means a for-profit entity  
15 licensed by the department of health as a hospice and certified  
16 to provide medicare services;

17 (9) "massage therapist" means a person  
18 licensed to practice massage therapy pursuant to the provisions  
19 of Chapter 61, Article 12C NMSA 1978;

20 [~~4~~] (10) "medical doctor" means a person  
21 licensed as a physician to practice medicine pursuant to the  
22 provisions of the Medical Practice Act;

23 (11) "naprapath" means a person licensed as a  
24 naprapath pursuant to the provisions of Chapter 61, Article 12E  
25 NMSA 1978;

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1                    (12) "nurse" means a person licensed as a  
2 registered nurse pursuant to the provisions of Chapter 61,  
3 Article 3 NMSA 1978;

4                    [~~5~~] (13) "nursing home" means a for-profit  
5 entity licensed by the department of health as a nursing home  
6 and certified to provide medicare services;

7                    (14) "nutritionist" or "dietitian" means a  
8 person licensed as a nutritionist or dietitian pursuant to the  
9 provisions of Chapter 61, Article 7A NMSA 1978;

10                   (15) "occupational therapist" means a person  
11 licensed as an occupational therapist pursuant to the  
12 provisions of Chapter 61, Article 12A NMSA 1978;

13                   [~~6~~] (16) "osteopathic physician" means a  
14 person licensed as an osteopathic physician pursuant to the  
15 provisions of Chapter 61, Article 10 NMSA 1978;

16                   (17) "optometrist" means a person licensed to  
17 practice optometry pursuant to the provisions of Chapter 61,  
18 Article 2 NMSA 1978;

19                   (18) "pharmacist" means a person licensed as  
20 a pharmacist pursuant to the provisions of Chapter 61, Article  
21 11 NMSA 1978;

22                   (19) "physical therapist" means a person  
23 licensed as a physical therapist pursuant to the provisions of  
24 Chapter 61, Article 12D NMSA 1978;

25                   [~~7~~] (20) "podiatrist" means a person

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1 licensed as a podiatrist pursuant to the provisions of the  
2 Podiatry Act; [~~and~~]

3 (21) "psychologist" means a person licensed  
4 as a psychologist pursuant to the provisions of Chapter 61,  
5 Article 9 NMSA 1978;

6 (22) "radiologic technologist" means a person  
7 licensed as a radiologic technologist pursuant to the  
8 provisions of Chapter 61, Article 14E NMSA 1978;

9 (23) "respiratory care practitioner" means a  
10 person licensed as a respiratory care practitioner pursuant to  
11 the provisions of Chapter 61, Article 12B NMSA 1978;

12 (24) "speech-language pathologist" means a  
13 person licensed as a speech-language pathologist pursuant to  
14 the provisions of Chapter 61, Article 14B NMSA 1978; and

15 [~~(8)~~] (25) "TRICARE program" means the  
16 program defined in 10 U.S.C. 1072(7)."

17 Section 26. Section 7-9-93 NMSA 1978 (being Laws 2004,  
18 Chapter 116, Section 6) is amended to read:

19 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR  
20 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

21 A. Receipts from payments by a managed health care  
22 provider or health care insurer for commercial contract  
23 services or medicare part C services provided by a health care  
24 practitioner that are not otherwise deductible pursuant to  
25 another provision of the Gross Receipts and Compensating Tax

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1 Act may be deducted from gross receipts, provided that the  
2 services are within the scope of practice of the person  
3 providing the service. Receipts from fee-for-service payments  
4 by a health care insurer may not be deducted from gross  
5 receipts. The deduction provided by this section shall be  
6 separately stated by the taxpayer.

7 B. For the purposes of this section:

8 (1) "commercial contract services" means  
9 health care services performed by a health care practitioner  
10 pursuant to a contract with a managed health care provider or  
11 health care insurer other than those health care services  
12 provided for medicare patients pursuant to Title 18 of the  
13 federal Social Security Act or for medicaid patients pursuant  
14 to Title 19 or Title 21 of the federal Social Security Act;

15 (2) "health care insurer" means a person  
16 that:

17 (a) has a valid certificate of authority  
18 in good standing pursuant to the New Mexico Insurance Code to  
19 act as an insurer, health maintenance organization or nonprofit  
20 health care plan or prepaid dental plan; and

21 (b) contracts to reimburse licensed  
22 health care practitioners for providing basic health services  
23 to enrollees at negotiated fee rates;

24 (3) "health care practitioner" means:

25 (a) a chiropractic physician licensed

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1 pursuant to the provisions of the Chiropractic Physician  
2 Practice Act;

3 (b) a dentist or dental hygienist  
4 licensed pursuant to the Dental Health Care Act;

5 (c) a doctor of oriental medicine  
6 licensed pursuant to the provisions of the Acupuncture and  
7 Oriental Medicine Practice Act;

8 (d) an optometrist licensed pursuant to  
9 the provisions of the Optometry Act;

10 (e) an osteopathic physician licensed  
11 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978  
12 or an osteopathic physician's assistant licensed pursuant to  
13 the provisions of the Osteopathic Physicians' Assistants Act;

14 (f) a physical therapist licensed  
15 pursuant to the provisions of the Physical Therapy Act;

16 (g) a physician or physician assistant  
17 licensed pursuant to the provisions of Chapter 61, Article 6  
18 NMSA 1978;

19 (h) a podiatrist licensed pursuant to  
20 the provisions of the Podiatry Act;

21 (i) a psychologist licensed pursuant to  
22 the provisions of the Professional Psychologist Act;

23 (j) a registered lay midwife registered  
24 by the department of health;

25 (k) a registered nurse or licensed

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1 practical nurse licensed pursuant to the provisions of the  
2 Nursing Practice Act;

3 (l) a registered occupational therapist  
4 licensed pursuant to the provisions of the Occupational Therapy  
5 Act;

6 (m) a respiratory care practitioner  
7 licensed pursuant to the provisions of the Respiratory Care  
8 Act; ~~and~~

9 (n) a speech-language pathologist or  
10 audiologist licensed pursuant to the Speech-Language Pathology,  
11 Audiology and Hearing Aid Dispensing Practices Act; and

12 (o) a clinical laboratory that is  
13 accredited pursuant to 42 U.S.C. Section 263a but that is not a  
14 laboratory in a physician's office or in a hospital defined  
15 pursuant to 42 U.S.C. Section 1395x;

16 (4) "managed health care provider" means a  
17 person that provides for the delivery of comprehensive basic  
18 health care services and medically necessary services to  
19 individuals enrolled in a plan through its own employed health  
20 care providers or by contracting with selected or participating  
21 health care providers. "Managed health care provider" includes  
22 only those persons that provide comprehensive basic health care  
23 services to enrollees on a contract basis, including the  
24 following:

25 (a) health maintenance organizations;

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- 1 (b) preferred provider organizations;  
2 (c) individual practice associations;  
3 (d) competitive medical plans;  
4 (e) exclusive provider organizations;  
5 (f) integrated delivery systems;  
6 (g) independent physician-provider  
7 organizations;  
8 (h) physician hospital-provider  
9 organizations; and  
10 (i) managed care services organizations;  
11 and

12 (5) "medicare part C services" means services  
13 performed pursuant to a contract with a managed health care  
14 provider for medicare patients pursuant to Title 18 of the  
15 federal Social Security Act."

16 Section 27. Section 7-9-98 NMSA 1978 (being Laws 2005,  
17 Chapter 179, Section 1) is amended to read:

18 "7-9-98. DEDUCTION--COMPENSATING TAX--BIOMASS-RELATED  
19 EQUIPMENT--BIOMASS MATERIALS.--

20 A. The value of a biomass boiler, gasifier, furnace,  
21 turbine-generator, storage facility, [~~feedstock processing or~~  
22 ~~drying equipment~~] feedstock trailer, [~~or~~] interconnection  
23 transformer, feedstock processing or drying equipment,  
24 harvesting and transportation equipment, composting equipment  
25 or mulching equipment may be deducted in computing the

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1 compensating tax due; provided that the primary use of the  
2 equipment or facility is for the conversion of biomass material  
3 into energy.

4 B. The value of biomass materials used for  
5 processing into biopower, biofuels or biobased products may be  
6 deducted in computing the compensating tax due.

7 C. As used in this section:

8 (1) "biobased products" means products  
9 created from plant- or crop-based resources such as  
10 agricultural crops and crop residues, forestry, pastures and  
11 rangelands that are normally made from petroleum;

12 (2) "biofuels" means biomass material  
13 converted to liquid or gaseous fuels such as ethanol, methanol,  
14 methane and hydrogen;

15 (3) "biomass material" means organic material  
16 that is available on a renewable or recurring basis, including:

17 (a) forest-related materials, including  
18 mill residues, logging residues, forest thinnings, slash,  
19 brush, low-commercial-value materials or undesirable species,  
20 salt cedar and other phreatophyte or woody vegetation removed  
21 from river basins or watersheds and woody material harvested  
22 for the purpose of forest fire fuel reduction or forest health  
23 and watershed improvement;

24 (b) agricultural-related materials,  
25 including orchard trees, vineyard, grain or crop residues,

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1 including straws and stover, aquatic plants and agricultural  
2 processed co-products and waste products, including fats, oils,  
3 greases, whey and lactose;

4 (c) animal waste, including manure and  
5 slaughterhouse and other processing waste;

6 (d) solid woody waste materials,  
7 including landscape or right-of-way tree trimmings, range land  
8 maintenance residues, waste pallets, crates and manufacturing,  
9 construction and demolition wood wastes, excluding pressure-  
10 treated, chemically treated or painted wood wastes and wood  
11 contaminated with plastic;

12 (e) crops and trees planted for the  
13 purpose of being used to produce energy;

14 (f) landfill gas, wastewater treatment  
15 gas and biosolids, including organic waste byproducts generated  
16 during the wastewater treatment process; and

17 (g) segregated municipal solid waste,  
18 excluding tires and medical and hazardous waste; and

19 (4) "biopower" means biomass material  
20 converted to produce electrical and thermal energy."

21 Section 28. A new section of the Gross Receipts and  
22 Compensating Tax Act is enacted to read:

23 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--BIOMASS-  
24 RELATED EQUIPMENT--BIOMASS MATERIALS.--

25 A. Receipts from the sale of a biomass boiler,

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1 gasifier, furnace, turbine-generator, storage facility,  
2 feedstock trailer, interconnection transformer, feedstock  
3 processing or drying equipment, harvesting and transportation  
4 equipment, composting equipment or mulching equipment may be  
5 deducted from gross receipts; provided that the primary use of  
6 the equipment or facility is for the conversion of biomass  
7 material into energy.

8 B. Receipts from the sale of biomass materials used  
9 for processing into biopower, biofuels or biobased products may  
10 be deducted from gross receipts.

11 C. As used in this section:

12 (1) "biobased products" means products  
13 created from plant- or crop-based resources such as  
14 agricultural crops and crop residues, forestry, pastures and  
15 rangelands that are normally made from petroleum;

16 (2) "biofuels" means biomass material  
17 converted to liquid or gaseous fuels such as ethanol, methanol,  
18 methane and hydrogen;

19 (3) "biomass material" means organic material  
20 that is available on a renewable or recurring basis, including:

21 (a) forest-related materials, including  
22 mill residues, logging residues, forest thinnings from trees  
23 less than fifteen inches in diameter, slash, brush, low-  
24 commercial-value materials or undesirable species, salt cedar  
25 and other phreatophyte or woody vegetation removed from river

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1 basins or watersheds and woody material harvested for the  
2 purpose of forest fire fuel reduction or forest health and  
3 watershed improvement;

4 (b) agricultural-related materials,  
5 including orchard trees, vineyard, grain or crop residues,  
6 including straws and stover, aquatic plants and agricultural  
7 processed co-products and waste products, including fats, oils,  
8 greases, whey and lactose;

9 (c) animal waste, including manure and  
10 slaughterhouse and other processing waste;

11 (d) solid woody waste materials,  
12 including landscape or right-of-way tree trimmings, range land  
13 maintenance residues, waste pallets, crates and manufacturing,  
14 construction and demolition wood wastes, excluding pressure-  
15 treated, chemically treated or painted wood wastes and wood  
16 contaminated with plastic;

17 (e) crops and trees planted for the  
18 purpose of being used to produce energy; and

19 (f) landfill gas, wastewater treatment  
20 gas and biosolids, including organic waste byproducts generated  
21 during the wastewater treatment process; and

22 (4) "biopower" means biomass material  
23 converted to produce electrical and thermal energy."

24 Section 29. A new section of the Gross Receipts and  
25 Compensating Tax Act is enacted to read:

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1           "[NEW MATERIAL] BUSINESS SERVICES TAX CREDIT.--

2           A. The tax credit provided in this section may be  
3 referred to as the "business services tax credit". The purpose  
4 of the business services tax credit is to reduce the tax burden  
5 on businesses that results from multiple impositions of  
6 transactional taxes upon the sale or use of services that  
7 businesses purchase.

8           B. A qualified taxpayer that owns a business with  
9 gross receipts in the previous calendar year that do not exceed  
10 one million dollars (\$1,000,000) may apply for, and the  
11 department may allow, a business services tax credit for  
12 qualified expenditures made during a tax reporting period in an  
13 amount equal to:

14                   (1) three and seven hundred seventy-five  
15 thousandths percent of those qualified expenditures for the  
16 purchase of a service within a municipality; and

17                   (2) five percent of those qualified  
18 expenditures for the purchase of a service within an  
19 unincorporated area of a county.

20           C. Except as provided in Subsection D of this  
21 section, the business services tax credit may be claimed  
22 against the gross receipts tax or the compensating tax for  
23 which the taxpayer would be liable for a tax reporting period  
24 in which the qualified expenditure was paid or in later  
25 periods. In no case may the credit taken exceed the total

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1 gross receipts tax or compensating tax due for the reporting  
2 period. After the initial reporting period in which part of  
3 the credit for a qualified expenditure was claimed, any excess  
4 credit may be carried forward and used in future reporting  
5 periods for three years.

6 D. Gross receipts of entities that form a group of  
7 entities that, through one or more intermediaries, control, are  
8 controlled by or are under common control with other entities  
9 in that group shall be aggregated. Qualified expenditures of  
10 those entities shall be aggregated for the purposes of  
11 determining the aggregate business services tax credit for the  
12 group of entities. The aggregate business services tax credit  
13 may be claimed against the aggregate gross receipts taxes of  
14 the group of entities.

15 E. For the purposes of this section:

16 (1) "qualified expenditure" means the amount  
17 paid by a qualified taxpayer to purchase a service that is  
18 deductible for purposes of determining net income pursuant to  
19 Section 162 of the Internal Revenue Code and for which gross  
20 receipts from performance of that service are subject to the  
21 gross receipts tax and are not eligible for a deduction or  
22 exemption from the gross receipts tax, but does not include  
23 expenditures for:

- 24 (a) commercial linen supply services;
- 25 (b) entertainment or recreational

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1 services;

2 (c) intrastate telephone and telegraph  
3 services;

4 (d) janitorial or cleaning services;

5 (e) landscaping services;

6 (f) repair and maintenance services;

7 (g) construction services;

8 (h) research and development services;

9 (i) sewer and solid waste disposal

10 services; and

11 (j) services, the purchase price of  
12 which is the basis for any other New Mexico tax credit claimed  
13 and allowed either prior or subsequent to the business services  
14 tax credit; and

15 (2) "qualified taxpayer" means a person  
16 liable for payment of any tax or a person to whom an assessment  
17 has been made if the assessment remains unabated or the amount  
18 of the assessment has not been paid, but does not include:

19 (a) a federal, state, tribal or other  
20 governmental unit or subdivision or an agency, department,  
21 institution or instrumentality of a federal, state, tribal or  
22 other governmental unit or subdivision;

23 (b) a taxpayer that is a nonprofit  
24 entity and for which receipts are exempt from the gross  
25 receipts tax pursuant to Sections 7-9-16 and 7-9-29 NMSA 1978;

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1 or

2 (c) a taxpayer for which receipts are  
3 exempt from the gross receipts tax pursuant to Section 7-9-24  
4 NMSA 1978."

5 Section 30. A new section of the Gross Receipts and  
6 Compensating Tax Act is enacted to read:

7 "[NEW MATERIAL] CREDIT--GROSS RECEIPTS TAX--RECEIPTS OF  
8 CERTAIN HOSPITALS.--

9 A. A hospital licensed by the department of health  
10 may claim a credit for each reporting period against the gross  
11 receipts tax due for that reporting period as follows:

12 (1) for a hospital located in a municipality:

13 (a) on or after July 1, 2006 but before  
14 July 1, 2007, in an amount equal to one and eight hundred  
15 eighty-eight thousandths percent of the hospital's taxable  
16 gross receipts for that reporting period after all applicable  
17 deductions have been taken; and

18 (b) on or after July 1, 2007, in an  
19 amount equal to three and seven hundred seventy-five  
20 thousandths percent of the hospital's taxable gross receipts  
21 for that reporting period after all applicable deductions have  
22 been taken; and

23 (2) for a hospital located in the  
24 unincorporated area of a county:

25 (a) on or after July 1, 2006 but before

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1 July 1, 2007, in an amount equal to two and one-half percent of  
2 the hospital's taxable gross receipts for that reporting period  
3 after all applicable deductions have been taken; and

4 (b) on or after July 1, 2007, in an  
5 amount equal to five percent of the hospital's taxable gross  
6 receipts for that reporting period after all applicable  
7 deductions have been taken.

8 B. For the purposes of this section, "hospital"  
9 means a facility providing emergency or urgent care, inpatient  
10 medical care and nursing care for acute illness, injury,  
11 surgery or obstetrics and includes a facility licensed by the  
12 department of health as a critical access hospital, general  
13 hospital, long-term acute care hospital, psychiatric hospital,  
14 rehabilitation hospital, limited services hospital and special  
15 hospital."

16 Section 31. Section 7-9E-1 NMSA 1978 (being Laws 2000  
17 (2nd S.S.), Chapter 20, Section 1) is amended to read:

18 "7-9E-1. SHORT TITLE.--~~[This act]~~ Chapter 7, Article 9E  
19 NMSA 1978 may be cited as the "Laboratory Partnership with  
20 Small Business Tax Credit Act".

21 Section 32. Section 7-9E-3 NMSA 1978 (being Laws 2000  
22 (2nd S.S.), Chapter 20, Section 3) is amended to read:

23 "7-9E-3. DEFINITIONS.--As used in the Laboratory  
24 Partnership with Small Business Tax Credit Act:

25 A. "contractor" means an entity that has the

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1 capability to provide small business assistance, may enter into  
2 a contract with a national laboratory to provide small business  
3 assistance, and is:

4 (1) an individual, estate, trust, receiver,  
5 cooperative association, club, corporation, company, firm,  
6 partnership, limited liability company, limited liability  
7 partnership, joint venture, syndicate or other entity,  
8 including any gas, water or electric utility owned or operated  
9 by a county, municipality or other political subdivision of the  
10 state; or

11 (2) ~~any~~ a national, federal, state, Indian  
12 or other governmental unit or subdivision, or ~~any~~ an agency,  
13 department or instrumentality of any of the foregoing;

14 B. "department" means the taxation and revenue  
15 department, the secretary of taxation and revenue or ~~any~~ an  
16 employee of the department exercising authority lawfully  
17 delegated to that employee by the secretary;

18 C. "national laboratory" means a prime contractor  
19 designated as a national laboratory by act of congress that is  
20 operating a facility in New Mexico;

21 D. "qualified expenditure" means an expenditure by a  
22 national laboratory in providing small business assistance,  
23 limited to the following expenditures incurred in providing the  
24 assistance:

25 (1) employee salaries ~~and~~, wages, fringe

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1 benefits and employer payroll taxes;

2 (2) [~~fringe benefits, employer payroll taxes~~  
3 ~~and other~~] administrative costs related directly to the  
4 provision of small business assistance, the total of which is  
5 limited to forty-nine percent of employee salaries [~~and~~],  
6 wages, fringe benefits and employer payroll taxes;

7 (3) in-state travel expenses, including per  
8 diem and mileage at the internal revenue service standard  
9 rates; and

10 (4) supplies and services of contractors  
11 related to the provision of small business assistance;

12 E. "rural area" means [~~any~~] an area of the state  
13 other than a class A county that has a net taxable value for  
14 rate-setting purposes for any property tax year of more than  
15 seven billion dollars (\$7,000,000,000);

16 F. "small business" means a business in New Mexico  
17 that conforms to the definition of small business found in the  
18 federal Small Business Act (Public Law 85-536), as amended; and

19 G. "small business assistance" means assistance  
20 rendered by a national laboratory related to the transfer of  
21 technology, including software, manufacturing, mining, oil and  
22 gas, environmental, agricultural, information and solar and  
23 other alternative energy source technologies. "Small business  
24 assistance" [~~also~~] includes nontechnical assistance related to  
25 expanding the New Mexico base of suppliers, including training

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1 and mentoring individual small businesses; assistance in  
2 developing business systems to meet audit, reporting and  
3 quality [~~assistance~~] assurance requirements; and other supplier  
4 development initiatives for individual small businesses."

5 Section 33. Section 7-9E-4 NMSA 1978 (being Laws 2000  
6 (2nd S.S.), Chapter 20, Section 4) is amended to read:

7 "7-9E-4. ADMINISTRATION OF ACT.--The department shall  
8 administer the Laboratory Partnership with Small Business Tax  
9 Credit Act pursuant to the Tax Administration Act. The  
10 department shall track credits claimed by a national laboratory  
11 pursuant to the Laboratory Partnership with Small Business Tax  
12 Credit Act by specific small business assistance requested and  
13 provided to each small business to ensure that credits claimed  
14 are associated with specific small business assistance requests  
15 to the national laboratory."

16 Section 34. Section 7-9E-5 NMSA 1978 (being Laws 2000  
17 (2nd S.S.), Chapter 20, Section 5) is amended to read:

18 "7-9E-5. ELIGIBILITY REQUIREMENTS.--A national  
19 laboratory is eligible for a tax credit in an amount equal to  
20 qualified expenditures if:

- 21 A. the small business assistance is rendered to a  
22 small business located in New Mexico;  
23 B. the small business assistance is completed; [~~and~~]  
24 C. the small business certifies to the national  
25 laboratory that the small business assistance provided is not

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1 otherwise available to the small business at a reasonable cost  
2 through private industry;

3 D. the national laboratory mails written notice to  
4 each small business to which it is providing small business  
5 assistance of the option of the small business to obtain  
6 ownership of or license to tangible or intangible property  
7 developed from the small business assistance;

8 E. the national laboratory requires small businesses  
9 to which it is providing small business assistance to  
10 acknowledge that small business assistance is rendered only  
11 after the small business assistance is completed; and

12 F. the national laboratory provides forms for small  
13 business assistance requests and for completion of small  
14 business assistance that are in accordance with the Laboratory  
15 Partnership with Small Business Tax Credit Act and other  
16 applicable state and federal laws."

17 Section 35. Section 7-9E-7 NMSA 1978 (being Laws 2000  
18 (2nd S.S.), Chapter 20, Section 7) is amended to read:

19 "7-9E-7. TAX CREDITS--AMOUNTS.--Each tax credit provided  
20 [~~for~~] pursuant to the Laboratory Partnership with Small  
21 Business Tax Credit Act shall be an amount equal to the  
22 qualified expenditure incurred by the national laboratory for a  
23 given small business, not to exceed [~~five thousand dollars~~  
24 ~~(\$5,000)] ten thousand dollars (\$10,000) for each small  
25 business, located outside of a rural area, for which small~~

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1 business assistance is rendered in a calendar year or [~~ten~~  
2 ~~thousand dollars (\$10,000)] twenty thousand dollars (\$20,000)  
3 if the small business assistance was provided to a small  
4 business located in a rural area."~~

5 Section 36. Section 7-9E-8 NMSA 1978 (being Laws 2000  
6 (2nd S.S.), Chapter 20, Section 8) is amended to read:

7 "7-9E-8. CLAIMING THE TAX CREDIT--LIMITATION.--

8 A. A national laboratory eligible for the tax credit  
9 pursuant to the Laboratory Partnership with Small Business Tax  
10 Credit Act may claim the amount of each tax credit by crediting  
11 that amount against gross receipts taxes otherwise due pursuant  
12 to the Gross Receipts and Compensating Tax Act. The tax credit  
13 shall be taken on each monthly gross receipts tax return filed  
14 by the laboratory against gross receipts taxes due the state  
15 and shall not impact any local government tax distribution. In  
16 no event shall the tax credits taken by an individual national  
17 laboratory exceed [~~one million eight hundred thousand dollars~~  
18 ~~(\$1,800,000)] two million four hundred thousand dollars  
19 (\$2,400,000) in a given calendar year.~~

20 B. Tax credits claimed pursuant to the Laboratory  
21 Partnership with Small Business Tax Credit Act by all national  
22 laboratories in the aggregate for qualified expenditures for  
23 any given small business not located in a rural area shall not  
24 exceed ten thousand dollars (\$10,000).

25 C. Tax credits claimed pursuant to the Laboratory

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1 Partnership with Small Business Tax Credit Act by all national  
2 laboratories in the aggregate for qualified expenditures for  
3 any given small business located in a rural area shall not  
4 exceed twenty thousand dollars (\$20,000)."

5 Section 37. A new section of the Laboratory Partnership  
6 with Small Business Tax Credit Act is enacted to read:

7 "[NEW MATERIAL] COORDINATION AMONG NATIONAL  
8 LABORATORIES.--If more than one national laboratory is eligible  
9 for a tax credit pursuant to the Laboratory Partnership with  
10 Small Business Tax Credit Act, a national laboratory shall not  
11 file a tax credit claim pursuant to the Laboratory Partnership  
12 with Small Business Tax Credit Act until:

13 A. a coordination function is formed among each  
14 national laboratory providing small business assistance  
15 pursuant to the Laboratory Partnership with Small Business Tax  
16 Credit Act, which includes a joint small business assistance  
17 operational plan and a plan to ensure that the small business  
18 assistance provided by a national laboratory suits small  
19 business needs and challenges; and

20 B. a written copy of each plan formed pursuant to  
21 this section is provided to the department."

22 Section 38. A new section of the Laboratory Partnership  
23 with Small Business Tax Credit Act is enacted to read:

24 "[NEW MATERIAL] REPORTING.--

25 A. By October 15 of the calendar year, a national

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1 laboratory that claims a tax credit pursuant to the Laboratory  
2 Partnership with Small Business Tax Credit Act, within three  
3 hundred sixty-five days before that date, shall submit an  
4 annual report to the department. By October 15 of the calendar  
5 year, if more than one national laboratory claims a tax credit  
6 pursuant to the Laboratory Partnership with Small Business Tax  
7 Credit Act within three hundred sixty-five days before that  
8 date, those laboratories shall jointly submit an annual report  
9 to the department, the economic development department and an  
10 appropriate legislative interim committee.

11 B. An annual report required pursuant to this  
12 section shall summarize activities related to and the results  
13 of the small business assistance programs of the national  
14 laboratory and shall include:

15 (1) a summary of the program results and the  
16 number of small businesses assisted in each county;

17 (2) a description of the projects involving  
18 multiple small businesses;

19 (3) results of surveys of small businesses to  
20 which small business assistance is provided;

21 (4) the total amount of the tax credits  
22 claimed pursuant to the Laboratory Partnership with Small  
23 Business Tax Credit Act for the calendar year on which the  
24 report is based; and

25 (5) an economic impact study of jobs created,

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1 jobs retained, cost savings and increased sales generated by  
2 small businesses for which small business assistance is  
3 provided.

4 C. At any time after receipt of a report from a  
5 national laboratory eligible for a tax credit authorized  
6 pursuant to the Laboratory Partnership with Small Business Tax  
7 Credit Act, the department may provide written instructions to  
8 the national laboratory related to future improvements in the  
9 laboratory's small business assistance program for which it  
10 receives that tax credit."

11 Section 39. Section 7-13-4 NMSA 1978 (being Laws 1991,  
12 Chapter 9, Section 32, as amended) is amended to read:

13 "7-13-4. DEDUCTIONS--GASOLINE TAX.--In computing the  
14 gasoline tax due, the following amounts of gasoline may be  
15 deducted from the total amount of gasoline received in New  
16 Mexico during the tax period, provided satisfactory proof  
17 thereof is furnished to the department:

18 A. gasoline received in New Mexico, but exported  
19 from this state by a rack operator, distributor or wholesaler  
20 other than in the fuel supply tank of a motor vehicle or sold  
21 for export by a rack operator or distributor; provided that, in  
22 either case:

23 (1) the person exporting the gasoline is  
24 registered in or licensed by the destination state to pay that  
25 state's gasoline or equivalent fuel tax;

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1                   (2) proof is submitted that the destination  
2 state's gasoline or equivalent fuel tax has been paid or is not  
3 due with respect to the gasoline; or

4                   (3) the destination state's gasoline or  
5 equivalent fuel tax is paid to New Mexico in accordance with  
6 the terms of an agreement entered into pursuant to Section  
7 9-11-12 NMSA 1978 with the destination state;

8                   B. gasoline received in New Mexico sold to the  
9 United States or [~~any~~] an agency or instrumentality thereof for  
10 the exclusive use of the United States or [~~any~~] an agency or  
11 instrumentality thereof. Gasoline sold to the United States  
12 includes gasoline delivered into the supply tank of a  
13 government-licensed vehicle of the United States;

14                   C. gasoline received in New Mexico sold to an Indian  
15 nation, tribe or pueblo or [~~any~~] a political subdivision,  
16 agency or instrumentality of that Indian nation, tribe or  
17 pueblo for the exclusive use of the Indian nation, tribe or  
18 pueblo or [~~any~~] a political subdivision, agency or  
19 instrumentality thereof. Gasoline sold to an Indian nation,  
20 tribe or pueblo includes gasoline delivered into the supply  
21 tank of a government-licensed vehicle of the Indian nation,  
22 tribe or pueblo;

23                   D. gasoline received in New Mexico, dyed in  
24 accordance with department regulations and used in [~~any~~] a  
25 manner other than for propulsion of motor vehicles on the

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1 highways of this state or motorboats or activities ancillary to  
2 that propulsion;

3 E. gasoline received in New Mexico and sold at  
4 retail by a registered Indian tribal distributor if:

5 (1) the sale occurs on the Indian  
6 reservation, pueblo grant or trust land of the distributor's  
7 Indian nation, tribe or pueblo;

8 (2) the gasoline is placed into the fuel  
9 supply tank of a motor vehicle on that reservation, pueblo  
10 grant or trust land; and

11 (3) the Indian nation, tribe or pueblo has  
12 certified to the department that it has in effect an excise,  
13 privilege or similar tax on the gasoline; provided that the  
14 volume of gasoline deducted pursuant to this subsection shall  
15 be the total gallons sold in accordance with the provisions of  
16 this subsection multiplied by a fraction the numerator of which  
17 is the rate of the tribal tax certified to the department by  
18 the Indian nation, tribe or pueblo and the denominator of which  
19 is the rate of the gasoline tax imposed pursuant to the  
20 Gasoline Tax Act, but if the fraction exceeds one, it shall be  
21 one for purposes of determining the deduction; ~~and~~

22 F. gasoline received in New Mexico and sold by a  
23 registered Indian tribal distributor from a nonmobile storage  
24 container located within that distributor's Indian reservation,  
25 pueblo grant or trust land for resale outside that

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1 distributor's Indian reservation, pueblo grant or trust land;  
2 provided the department certifies that the distributor claiming  
3 the deduction sold no less than one million gallons of gasoline  
4 from a nonmobile storage container located within that  
5 distributor's Indian reservation, pueblo grant or trust land  
6 for resale outside that distributor's Indian reservation,  
7 pueblo grant or trust land during the period of May through  
8 August 1998; and provided further that the amount of gasoline  
9 deducted by a registered Indian tribal distributor pursuant to  
10 this subsection shall not exceed two million five hundred  
11 thousand gallons per month, calculated as a monthly average  
12 during the calendar year. Volumes deducted pursuant to  
13 Subsection E of this section shall not be deducted pursuant to  
14 this subsection; and

15 G. gasoline received in New Mexico and used to  
16 propel a vehicle authorized by contract with the public  
17 education department or with a school district as a school  
18 bus."

19 Section 40. A new section of the Gasoline Tax Act is  
20 enacted to read:

21 "[NEW MATERIAL] CLAIM FOR REFUND OF GASOLINE TAX PAID ON  
22 GASOLINE FOR A PUBLIC SCHOOL BUS.--

23 A. Upon submission of proof satisfactory to the  
24 department, a user of gasoline may claim, and the department  
25 may allow, a refund of tax paid on gasoline used to propel a

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1 vehicle authorized by contract with the public education  
2 department or with a school district as a school bus.

3 B. A person shall not submit a claim for refund  
4 pursuant to the provisions of this section more frequently than  
5 quarterly. A claim for refund may not be submitted or allowed  
6 on less than one hundred gallons.

7 C. The department may prescribe the documents  
8 necessary to support a claim for refund pursuant to the  
9 provisions of this section. The department may prescribe the  
10 use of types of monitoring and measuring equipment.

11 D. This section applies to gasoline purchased on or  
12 after July 1, 2006."

13 Section 41. A new Section 7-29C-3 NMSA 1978 is enacted  
14 to read:

15 "7-29C-3. [NEW MATERIAL] INTERGOVERNMENTAL TAX CREDIT--  
16 COMPENSATING TAX.--

17 A. A taxpayer who is liable for the payment of the  
18 compensating tax with respect to the construction or operation  
19 of a qualified generating facility located on Navajo Nation  
20 land is entitled to a credit to be computed pursuant to this  
21 section and to be deducted from the payment of the compensating  
22 tax. The credit provided by this section is intended to  
23 partially offset the amount of Navajo Nation taxes the taxpayer  
24 will pay with respect to that facility and may be referred to  
25 as the "intergovernmental compensating tax credit".

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1           B. Subject to the provisions of Subsections C and D  
2 of this section, the intergovernmental compensating tax credit  
3 shall be determined for each reporting period and shall be an  
4 amount equal to eighty-five percent of the compensating tax due  
5 for that reporting period by the taxpayer with respect to the  
6 construction or operation of the qualified generating facility.

7           C. The aggregate amount of intergovernmental  
8 compensating tax credit that may be claimed with respect to a  
9 qualified generating facility during its construction and  
10 operational life shall not exceed sixty million dollars  
11 (\$60,000,000).

12           D. Beginning one year from the date the taxpayer  
13 first claims the intergovernmental compensating tax credit with  
14 respect to a qualified generating facility and annually  
15 thereafter, the taxpayer shall report to the taxation and  
16 revenue department evidence of the cumulative amount of Navajo  
17 Nation taxes it has paid with respect to that facility and the  
18 cumulative amount of intergovernmental compensating tax credit  
19 it has claimed with respect to that facility. If the  
20 department determines that as of December 31, 2015, or as of  
21 December 31 of any subsequent year, the taxpayer has claimed,  
22 with respect to that facility, a greater cumulative amount in  
23 intergovernmental compensating tax credits than it has paid in  
24 cumulative Navajo Nation taxes, the taxpayer shall be obligated  
25 to remit the difference to the department. In addition, the

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1 taxpayer shall no longer be entitled to claim the  
2 intergovernmental compensating tax credit with respect to that  
3 facility.

4 E. The burden of showing entitlement to the  
5 intergovernmental compensating tax credit is on the taxpayer  
6 claiming it. The taxpayer shall furnish, in the manner  
7 determined by the taxation and revenue department, proof of  
8 payment of any Navajo Nation taxes it has paid with respect to  
9 the qualified generating facility and any other information the  
10 department deems necessary to administer the credit.

11 F. The taxation and revenue department shall  
12 administer and interpret the provisions of this section in  
13 accordance with the provisions of the Tax Administration Act.

14 G. For the purposes of this section:

15 (1) "Navajo Nation land" means land in New  
16 Mexico that on July 1, 2006, was located within the exterior  
17 boundaries of the Navajo Nation reservation;

18 (2) "Navajo Nation taxes" means the amount of  
19 possessory interest tax, business activity tax and ad valorem  
20 tax imposed by the Navajo Nation with respect to the qualified  
21 generating facility and paid by the taxpayer or the amount paid  
22 by the taxpayer pursuant to an agreement under which the Navajo  
23 Nation grants the taxpayer an exemption from taxation with  
24 respect to the qualified generating facility in exchange for  
25 payment of a fixed annual amount; and

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1                   (3) "qualified generating facility" means a  
2 coal-fired electric generating facility, the construction of  
3 which commenced no later than December 31, 2007."

4                   Section 42. Section 64-1-15 NMSA 1978 (being Laws 1963,  
5 Chapter 314, Section 7, as amended) is amended to read:

6                   "64-1-15. EARMARKED TAXES--APPROPRIATION.--

7                   A. There is created in the state treasury the "state  
8 aviation fund". ~~[The state treasurer shall credit to the state  
9 aviation fund all unrefunded taxes collected on the sale of  
10 motor fuel sold for use in aircraft.]~~ All income to the state  
11 aviation fund is appropriated to the division. ~~[The amounts  
12 distributed to the state aviation fund pursuant to Subsection A  
13 of Section 7-1-6.7 NMSA 1978 shall be used for planning,  
14 construction and maintenance of a system of airports,  
15 navigation aids and related facilities serving New Mexico.]~~

16                   B. The amounts distributed to the state aviation  
17 fund pursuant to Subsection C of Section 7-1-6.7 NMSA 1978  
18 shall be used for the air service assistance program. All  
19 other amounts distributed to the state aviation fund,  
20 collections by the division for aircraft registration pursuant  
21 to the Aircraft Registration Act, payments to the division  
22 pursuant to Sections 64-1-13 and 64-1-19 NMSA 1978 and  
23 reimbursements to the division from federal aviation  
24 administration funds or from any other source shall be used for  
25 planning and program administration, construction, equipment,

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1 materials and maintenance of a system of airports, navigation  
2 aids and related facilities. All expenditures shall be made in  
3 accordance with budgets approved by the department of [~~finance~~  
4 ~~and administration~~] transportation. Balances in the state  
5 aviation fund shall not be transferred and shall not revert to  
6 any other fund."

7 Section 43. DELAYED REPEAL.--Sections 12 and 13 of this  
8 act are repealed effective January 1, 2010.

9 Section 44. REPEAL.--Laws 2005, Chapter 104, Section 7  
10 is repealed.

11 Section 45. APPLICABILITY.--

12 A. The provisions of Sections 8 through 22 of this  
13 act apply to taxable years beginning on or after January 1,  
14 2006.

15 B. The provisions of Section 30 of this act apply to  
16 reporting periods beginning on or after July 1, 2006.

17 Section 46. EFFECTIVE DATE.--

18 A. The effective date of the provisions of Sections  
19 1, 5 through 7, 23, 25, 27, 28, 31 through 42 and 44 of this  
20 act is July 1, 2006.

21 B. The effective date of the provisions of Section  
22 29 of this act is January 1, 2007.

23 C. The effective date of the provisions of Sections  
24 2 through 4, 24 and 26 of this act is July 1, 2007.