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HOUSE BILL 128

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

INTRODUCED BY

Nick L. Salazar

AN ACT

RELATING TO TAXATION; ENACTING THE ADVANCED ENERGY PRODUCT
MANUFACTURERS TAX CREDIT ACT.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Advanced Energy Product Manufacturers Tax Credit Act".

Section 2. DEFINITIONS.--As used in the Advanced Energy
Product Manufacturers Tax Credit Act:

A. "advanced energy product" means an advanced
energy vehicle, fuel cell system, renewable energy system or
any component of an advanced energy vehicle, fuel cell system
or renewable energy system or components for integrated
gasification combined cycle coal facilities and equipment
related to the sequestration of carbon from integrated
gasification combined cycle plants;

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

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

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

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

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

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

23 (a) electrolyzers that use renewable
24 energy; and

25 (b) reformers that use natural gas as

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1 the feedstock;

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

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

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

21 I. "modified combined tax liability" means the
22 total liability for the reporting period for the gross receipts
23 tax imposed by Section 7-9-4 NMSA 1978 together with any tax
24 collected at the same time and in the same manner as that gross
25 receipts tax, such as the compensating tax, the withholding

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

9 J. "pass-through entity" means a business
10 association other than:

- 11 (1) a sole proprietorship;
12 (2) an estate or trust;
13 (3) a corporation, limited liability company,
14 partnership or other entity that is not a sole proprietorship
15 taxed as a corporation for federal income tax purposes for the
16 taxable year; or
17 (4) a partnership that is organized as an
18 investment partnership in which the partner's income is derived
19 solely from interest, dividends and sales of securities;

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

23 L. "renewable energy" means energy from solar heat,
24 solar light, wind, geothermal energy, landfill gas or biomass
25 either singly or in combination that produces low or zero

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1 emissions and has substantial long-term production potential;

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

8 (a) photovoltaic energy system;

9 (b) solar-thermal energy system;

10 (c) biomass energy system;

11 (d) wind energy system;

12 (e) hydrogen production system; or

13 (f) battery cell energy system; and

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

19 Section 3. ADMINISTRATION.--The department shall
20 administer the Advanced Energy Product Manufacturers Tax Credit
21 Act pursuant to the Tax Administration Act.

22 Section 4. ADVANCED ENERGY PRODUCT MANUFACTURERS TAX
23 CREDIT.--

24 A. A tax credit to be known as the "advanced energy
25 product manufacturers tax credit" may be claimed by a taxpayer

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1 in an amount:

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

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

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

13 Section 5. ELIGIBILITY REQUIREMENTS--EMPLOYMENT.--

14 A. To be eligible to claim a credit pursuant to the
15 Advanced Energy Product Manufacturers Tax Credit Act, the
16 taxpayer shall employ:

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

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

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1 (a) five hundred thousand dollars
2 (\$500,000), or a portion of that amount, of qualified
3 expenditures claimed by the taxpayer in a taxable year in the
4 same claim, up to a value of thirty million dollars
5 (\$30,000,000); and

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

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

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

19 (2) the employee is hired with respect to use
20 of manufacturing equipment.

21 Section 6. APPROVAL OF CREDIT--ISSUANCE AND DENIAL--
22 APPLICATION--DEADLINES.--

23 A. The department shall issue or deny approval for
24 an advanced energy product manufacturers tax credit in response
25 to a taxpayer's application for approval for the credit. The

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1 department shall issue approval for a credit claimed by a
2 taxpayer who satisfies the requirements of the Advanced Energy
3 Product Manufacturers Tax Credit Act.

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

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

16 Section 7. RECAPTURE.--If the taxpayer or a successor in
17 the business of the taxpayer ceases operations at a facility in
18 New Mexico for at least one hundred eighty consecutive days
19 within a two-year period after the taxpayer has claimed an
20 advanced energy product manufacturers tax credit, the
21 department shall not grant additional advanced energy product
22 manufacturers tax credits with respect to that facility. Any
23 amount of the approved credit with respect to that facility
24 that is not claimed against the taxpayer's modified combined
25 tax liability shall be extinguished, and within thirty days

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

8 Section 8. CREDIT CLAIM FORMS.--The department shall
9 provide credit claim forms and instructions. A credit claim
10 form shall accompany any return in which the taxpayer claims a
11 credit, and the claim shall specify the amount of credit
12 intended to apply to each return.

13 Section 9. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2006.