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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Nothing in this section shall be construed to

impose interest on interest or interest on the amount of [~~any~~] a penalty.

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

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

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

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

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

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

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

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

(2) the credit or refund is made within:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"7-1-71.2. PENALTY FOR INCORRECT REPORTING OF FOOD DEDUCTION OR HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--A taxpayer who claims a deduction pursuant to Section 7-9-92 or

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7-9-93 NMSA 1978 and fails to correctly report the amount of the deduction to which the taxpayer is entitled shall pay a penalty in the amount of the difference between the incorrect deduction amount and the correct deduction amount multiplied by [~~twice~~] the total local option tax rates in effect at the taxpayer's business location for which the deduction was claimed; [~~This~~] provided that the penalty shall not exceed ten thousand dollars ($10,000). The penalty shall be in addition to other applicable penalties."

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

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

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

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

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issued."

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

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

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

B. "base income":

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

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

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for that year;

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

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

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

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

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

D. "department" means the taxation and revenue

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

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

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

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

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

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

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

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

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

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

(1) compensation;

(2) net profit from business;

(3) gains from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;

(9) annuities;

(10) income from life insurance and endowment contracts;

(11) pensions;

(12) discharge of indebtedness;

(13) distributive share of partnership income;

(14) income in respect of a decedent;

(15) income from an interest in an estate or a trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

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(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" excludes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Z. "taxpayer" means any individual subject to the

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tax imposed by the Income Tax Act."

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

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

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

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

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

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

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

Modified gross income is:		And the total number of exemptions is:					
Over	But Not Over	1	2	3	4	5	6 or More
$ 0	$ 500	$ 120	$ 160	$ 200	$ 240	$ 280	$ 320
500	1,000	135	195	250	310	350	415
1,000	1,500	135	195	250	310	350	435
1,500	2,000	135	195	250	310	350	450

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. As used in this section:

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

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(2) "solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating."

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

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

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

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

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

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

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

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

D. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

C. As used in this section:

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

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

thousand five hundred feet or more below the surface.

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

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

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

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

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

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

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

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

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

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

E. As used in this section:

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

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

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

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

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

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

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

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

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

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

(a) solar light;

(b) solar heat;

(c) wind; or

(d) biomass.

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

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

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

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

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

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

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

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

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

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

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

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

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

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

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

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

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

Section 16. [NEW MATERIAL] 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

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

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

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

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

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

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

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

(a) electrolyzers that use renewable

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energy; and

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

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

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

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

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

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

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

(1) a sole proprietorship;

(2) an estate or trust;

(3) a corporation, limited liability company, partnership or other entity that is not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or

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

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

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

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

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

(a) photovoltaic energy system;

(b) solar-thermal energy system;

(c) biomass energy system;

(d) wind energy system;

(e) hydrogen production system; or

(f) battery cell energy system; and

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

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

Section 18. [NEW MATERIAL] ADVANCED ENERGY PRODUCT

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MANUFACTURERS TAX CREDIT.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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AND DENIAL--APPLICATION--DEADLINES.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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means a tool, utensil or instrument that is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. For the purposes of this section:

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

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

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

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

(3) "health care practitioner" means:

(a) a chiropractic physician licensed

pursuant to the provisions of the Chiropractic Physician Practice Act;

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

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

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

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

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

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

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

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

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

(k) a registered nurse or licensed

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

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

(m) a respiratory care practitioner licensed pursuant to the provisions of the Respiratory Care Act; [~~and~~]

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

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

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

(a) health maintenance organizations;

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(b) preferred provider organizations;

(c) individual practice associations;

(d) competitive medical plans;

(e) exclusive provider organizations;

(f) integrated delivery systems;

(g) independent physician-provider organizations;

(h) physician hospital-provider organizations; and

(i) managed care services organizations; and

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

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

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

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

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

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

C. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Receipts from the sale of a biomass boiler,

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

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

C. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. For the purposes of this section:

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

(a) commercial linen supply services;

(b) entertainment or recreational

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services;

(c) intrastate telephone and telegraph services;

(d) janitorial or cleaning services;

(e) landscaping services;

(f) repair and maintenance services;

(g) construction services;

(h) research and development services;

(i) sewer and solid waste disposal services; and

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

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

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

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

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or

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

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

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

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

(1) for a hospital located in a municipality:

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

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

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

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

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

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

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

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

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

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

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

A. "contractor" means an entity that has the

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

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

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

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

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

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

(1) employee salaries [~~and~~], wages, fringe

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benefits and employer payroll taxes;

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

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

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

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

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

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

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

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

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

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

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

A. the small business assistance is rendered to a small business located in New Mexico;

B. the small business assistance is completed; [~~and~~]

C. the small business certifies to the national laboratory that the small business assistance provided is not

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

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

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

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

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

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

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

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

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

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

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

C. Tax credits claimed pursuant to the Laboratory

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

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

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

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

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

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

"[NEW MATERIAL] REPORTING.--

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

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

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

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

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

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

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

(5) an economic impact study of jobs created,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

Section 45. APPLICABILITY.--

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

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

Section 46. EFFECTIVE DATE.--

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

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

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

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