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HOUSE BILL 193

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Daymon Ely

AN ACT

RELATING TO TAXATION; MAKING THE SOLAR MARKET DEVELOPMENT  
INCOME TAX CREDIT PERMANENT; COMBINING THE SOLAR MARKET SYSTEMS  
AND PHOTOVOLTAIC SYSTEMS AGGREGATE CAPS INTO ONE AGGREGATE CAP;  
CREATING THE SOLAR MARKET DEVELOPMENT CORPORATE INCOME TAX  
CREDIT.

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

SECTION 1. Section 7-2-18.14 NMSA 1978 (being Laws 2006,  
Chapter 93, Section 1, as amended) is amended to read:

"7-2-18.14. SOLAR MARKET DEVELOPMENT INCOME TAX CREDIT--  
~~[RESIDENTIAL AND SMALL BUSINESS SOLAR THERMAL AND PHOTOVOLTAIC  
MARKET DEVELOPMENT TAX CREDIT].--~~

A. ~~[Except as provided in Subsection C of this  
section]~~ A taxpayer who ~~[files an individual New Mexico income  
tax return for a taxable year beginning on or after January 1,~~

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1     2006] is not a dependent of another individual and who  
2     purchases and installs [~~after January 1, 2006 but before~~  
3     ~~December 31, 2016]~~ a solar thermal system or a photovoltaic  
4     system in a residence, business or agricultural enterprise in  
5     New Mexico owned by that taxpayer may apply for, and the  
6     department may allow, a [~~solar market development tax credit of~~  
7     ~~up to ten percent of the purchase and installation costs of the~~  
8     ~~system]~~ credit against the taxpayer's tax liability imposed  
9     pursuant to the Income Tax Act. The tax credit provided by  
10    this section may be referred to as the "solar market  
11    development income tax credit".

12             B. A solar market development income tax credit  
13    shall not exceed the following percentages of the purchase and  
14    installation costs of the system:

15                     (1) fifteen percent if the taxpayer whose  
16    taxable income in the taxable year prior to the taxable year  
17    for which the credit is claimed is less than forty-three  
18    thousand eight hundred seventy-one dollars (\$43,871); and

19                     (2) ten percent if the taxpayer whose taxable  
20    income in the taxable year prior to the taxable year for which  
21    the credit is claimed is forty-three thousand eight hundred  
22    seventy-one dollars (\$43,871) or more.

23             [~~B.~~] C. The total solar market development income  
24    tax credit allowed for [either] a photovoltaic system or a  
25    solar thermal system shall not exceed nine thousand dollars

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1 (\$9,000). [~~The department shall allow solar market development~~  
2 ~~tax credits only for solar thermal systems, and photovoltaic~~  
3 ~~systems certified by the energy, minerals and natural resources~~  
4 ~~department.~~]

5 D. A taxpayer may claim a solar market development  
6 income tax credit for the taxable year in which the taxpayer  
7 completes installation of a solar thermal system or a  
8 photovoltaic system. To receive the tax credit, the taxpayer  
9 shall apply to the department on forms and in the manner  
10 prescribed by the department. The application shall include a  
11 certification made pursuant to Subsection M of this section.

12 [~~G.~~] E. Solar market development income tax credits  
13 may not be claimed or allowed for:

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

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

20 [~~D.~~] F. The department [may] shall allow a maximum  
21 annual aggregate of

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

24 [~~(2) three million dollars (\$3,000,000)] five~~

25 million dollars (\$5,000,000) each calendar year in solar market

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1 development income tax credits [~~for photovoltaic systems~~].

2 [~~E.~~] G. A portion of the solar market development  
3 tax income credit that remains unused in a taxable year may be  
4 carried forward for a maximum of ten consecutive taxable years  
5 following the taxable year in which the credit originates until  
6 fully expended.

7 [~~F. Prior to July 1, 2006~~] H. Married individuals  
8 filing separate returns for a taxable year for which they could  
9 have filed a joint return may each claim only one-half of the  
10 solar market development income tax credit that would have been  
11 claimed on a joint return.

12 I. A taxpayer may be allocated the right to claim a  
13 solar market development income tax credit in proportion to the  
14 taxpayer's ownership interest if the taxpayer owns an interest  
15 in a business entity that is taxed for federal income tax  
16 purposes as a partnership and that business entity has met all  
17 of the requirements to be eligible for the credit. The total  
18 credit claimed by all members of the partnership or limited  
19 liability company shall not exceed the allowable credit  
20 pursuant to Subsection C of this section.

21 J. A taxpayer allowed a tax credit pursuant to this  
22 section shall report the amount of the credit to the department  
23 in a manner required by the department.

24 K. The department shall compile an annual report on  
25 the solar market development income tax credit that shall

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1 include the number of taxpayers approved by the department to  
2 receive the credit, the aggregate amount of credits approved  
3 and any other information necessary to evaluate the  
4 effectiveness of the credit. By December 15 of each year, the  
5 department shall compile and present the annual reports to the  
6 revenue stabilization and tax policy committee and the  
7 legislative finance committee with an analysis of the  
8 effectiveness and cost of the tax credit and whether the tax  
9 credit is performing the purpose for which it was created.

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

22 M. The energy, minerals and natural resources  
23 department may issue a certificate of eligibility only if the  
24 total amount of solar market development income tax credits  
25 represented by certificates of eligibility does not exceed in

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1 any calendar year an aggregate amount of five million dollars  
2 (\$5,000,000). If a taxpayer applies for a certificate of  
3 eligibility but is unable to receive the certificate because  
4 applications have exceeded the limitation provided in this  
5 subsection, the taxpayer shall be placed for the subsequent  
6 calendar year at the front of a queue of taxpayers submitting  
7 applications in the subsequent calendar year. Completed  
8 applications for a certificate of eligibility shall be  
9 considered in the order received by that department.

10 ~~[G.]~~ N. As used in this section:

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

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

18 **SECTION 2.** A new section of the Corporate Income and  
19 Franchise Tax Act is enacted to read:

20 "[NEW MATERIAL] SOLAR MARKET DEVELOPMENT CORPORATE INCOME  
21 TAX CREDIT.--

22 A. A taxpayer that files a New Mexico corporate  
23 income tax return that purchases and installs a solar thermal  
24 system or a photovoltaic system in a facility in New Mexico may  
25 apply for, and the department may allow, a credit against the

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1 taxpayer's tax liability imposed pursuant to the Corporate  
2 Income and Franchise Tax Act. The tax credit provided by this  
3 section may be referred to as the "solar market development  
4 corporate income tax credit".

5 B. A solar market development corporate income tax  
6 credit shall not exceed ten percent of the purchase and  
7 installation costs of the system.

8 C. The total solar market development corporate  
9 income tax credit allowed for a solar thermal system or a  
10 photovoltaic system shall not exceed fifty thousand dollars  
11 (\$50,000).

12 D. A taxpayer may claim a solar market development  
13 corporate income tax credit for the taxable year in which the  
14 taxpayer completes installation of a solar thermal system or a  
15 photovoltaic system. To receive the tax credit, the taxpayer  
16 shall apply to the department on forms and in the manner  
17 prescribed by the department. The application shall include a  
18 certification made pursuant to Subsection K of this section.

19 E. Solar market development corporate income tax  
20 credits may not be claimed or allowed for a heating system for  
21 a swimming pool or a hot tub.

22 F. The department shall allow a maximum annual  
23 aggregate of twenty million dollars (\$20,000,000) each calendar  
24 year in solar market development corporate income tax credits.

25 G. A portion of the solar market development

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1 corporate income tax credit that remains unused in a taxable  
2 year may be carried forward for a maximum of ten consecutive  
3 taxable years following the taxable year in which the credit  
4 originates until fully expended.

5 H. A taxpayer allowed a tax credit pursuant to this  
6 section shall report the amount of the credit to the department  
7 in a manner required by the department.

8 I. The department shall compile an annual report on  
9 the solar market development corporate income tax credit that  
10 shall include the number of taxpayers approved by the  
11 department to receive the credit, the aggregate amount of  
12 credits approved and any other information necessary to  
13 evaluate the effectiveness of the credit. By December 15 of  
14 each year, the department shall compile and present the annual  
15 reports to the revenue stabilization and tax policy committee  
16 and the legislative finance committee with an analysis of the  
17 effectiveness and cost of the tax credit and whether the tax  
18 credit is performing the purpose for which it was created.

19 J. The energy, minerals and natural resources  
20 department shall adopt rules establishing procedures to certify  
21 the eligibility of solar thermal systems and photovoltaic  
22 systems for purposes of obtaining a solar market development  
23 corporate income tax credit. The rules shall address technical  
24 specifications and requirements relating to safety, code and  
25 standards compliance, solar collector orientation and sun

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1 exposure, minimum system sizes, system applications and lists  
2 of eligible components. The energy, minerals and natural  
3 resources department may modify the specifications and  
4 requirements as necessary to maintain a high level of system  
5 quality and performance.

6 K. The energy, minerals and natural resources  
7 department may issue a certificate of eligibility only if the  
8 total amount of solar market development corporate income tax  
9 credits represented by certificates of eligibility does not  
10 exceed in any calendar year an aggregate amount of five million  
11 dollars (\$5,000,000). If a taxpayer applies for a certificate  
12 of eligibility but is unable to receive the certificate because  
13 applications have exceeded the limitation provided in this  
14 subsection, the taxpayer shall be placed for the subsequent  
15 calendar year at the front of a queue of taxpayers submitting  
16 applications in the subsequent calendar year. Completed  
17 applications for a certificate of eligibility shall be  
18 considered in the order received by that department.

19 L. As used in this section:

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

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

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1 water heating."

2 SECTION 3. APPLICABILITY.--The provisions of this act  
3 apply to taxable years beginning on or after January 1, 2017.

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