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SENATE BILL 303

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Roman M. Maes III

AN ACT

RELATING TO TAXATION; PROVIDING FOR TRANSFERABILITY OF THE
RENEWABLE ENERGY PRODUCTION TAX CREDIT.

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

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

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

A. A taxpayer that owns a qualified energy
generator certified by the energy, minerals and natural
resources department is eligible for a tax credit in an amount
equal to one cent (\$.01) per kilowatt-hour for the first four
hundred thousand megawatt-hours of electricity produced by the
qualified energy generator using a qualified energy resource in
the taxable year. A taxpayer shall be eligible for the tax

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1 credit for ten consecutive years, beginning on the date the
2 qualified energy generator begins producing electricity. The
3 tax credit provided in this section may be referred to as the
4 "renewable energy production tax credit".

5 B. As used in this section:

6 (1) "biomass" means agricultural or animal
7 waste; thinnings from trees less than fifteen inches in
8 diameter, slash and brush; lumbermill or sawmill residues; and
9 salt cedar and other phreatophytes removed from watersheds or
10 river basins;

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

16 (3) "qualified energy resource" means a
17 resource that generates electrical energy by means of a
18 fluidized bed technology or similar low-emissions technology or
19 a zero-emissions generation technology that has substantial
20 long-term production potential and that uses only the following
21 energy sources:

- 22 (a) solar light;
- 23 (b) solar heat;
- 24 (c) wind; or
- 25 (d) biomass.

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1 C. A taxpayer may request certification of
2 eligibility for the renewable energy production tax credit from
3 the energy, minerals and natural resources department, which
4 shall determine if the applicant is a qualified energy
5 generator; provided that the department may certify the
6 eligibility of an energy generator only if the total amount of
7 electricity that may be produced annually by all qualified
8 energy generators that are certified will not exceed two
9 million megawatt-hours. Applications shall be considered in
10 the order received. The energy, minerals and natural resources
11 department may estimate the annual power-generating potential
12 of a generating facility for the purposes of this section. The
13 energy, minerals and natural resources department shall issue a
14 certificate to the applicant stating whether the applicant is
15 an eligible qualified energy generator and the estimated annual
16 production potential of the generating facility, which shall be
17 the limit of that facility's energy production eligible for the
18 tax credit for the taxable year. The energy, minerals and
19 natural resources department may issue rules governing the
20 procedure for administering the provisions of this subsection.

21 D. To claim a renewable energy production tax
22 credit, a taxpayer that has been certified as eligible pursuant
23 to Subsection C of this section shall submit to the taxation
24 and revenue department the certificate issued by the energy,
25 minerals and natural resources department, documentation of the

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1 amount of electricity produced by the taxpayer's facility in
2 the taxable year and any other information the taxation and
3 revenue department may require to determine the amount of the
4 tax credit due the taxpayer. The taxation and revenue
5 department shall issue a document granting the tax credit for
6 the amount it has determined is due the taxpayer. The tax
7 credit document shall be numbered for identification and
8 declare the date of issuance and the amount of the credit.

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

16 [~~F. The renewable energy production tax credit may~~
17 ~~be deducted from the taxpayer's New Mexico corporate income tax~~
18 ~~liability for the taxable year. If the amount of the tax~~
19 ~~credit claimed exceeds the taxpayer's corporate income tax~~
20 ~~liability, the excess may be carried forward for up to five~~
21 ~~consecutive taxable years.]~~

22 F. Tax credit documents issued pursuant to
23 Subsection D of this section may be sold, exchanged or
24 otherwise transferred. The parties to such a transaction shall
25 notify the taxation and revenue department of the sale,

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1 exchange or transfer within ten days of the sale, exchange or
2 transfer.

3 G. The holder of a tax credit document may apply
4 all or a portion of the renewable energy production tax credit
5 granted by the document against the holder's modified combined
6 tax liability, personal income tax liability or corporate
7 income tax liability. Any balance may be carried forward for
8 up to three years from the date of issuance of the tax credit
9 document. No amount of renewable energy production tax credit
10 may be applied against a gross receipts tax imposed by a
11 municipality or county.

12 H. Notwithstanding the provisions of Section 7-1-8
13 NMSA 1978, the taxation and revenue department may disclose to
14 any person the balance of renewable energy production tax
15 credit remaining on a tax credit document."

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