

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 950

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO TAXATION; EXPANDING CRITERIA FOR ELIGIBILITY FOR
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. The tax credit provided in this section may be
referred to as the "renewable energy production tax credit".

~~[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~~

1 ~~using a qualified energy resource in the taxable year.]~~

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

4 (1) holds title to a qualified energy
5 generator;

6 (2) directly or indirectly owns at least five
7 percent of a business entity that holds title to a qualified
8 energy generator;

9 (3) leases property upon which a qualified
10 energy generator operates from a county or municipality under
11 authority of an industrial revenue bond; or

12 (4) is allocated part of or an entire amount
13 of a renewable energy production tax credit pursuant to
14 Subsection G of this section.

15 C. The amount of the tax credit shall equal one
16 cent (\$.01) per kilowatt-hour of the first four hundred
17 thousand megawatt-hours of electricity produced by the
18 qualified energy generator in the taxable year, provided that
19 the total amount of tax credits claimed by all taxpayers for a
20 single qualified energy generator in a taxable year shall not
21 exceed one cent (\$.01) per kilowatt-hour of the first four
22 hundred thousand megawatt-hours of electricity produced by the
23 qualified energy generator.

24 D. A taxpayer eligible for a renewable energy
25 production tax credit pursuant to Subsection B of this section

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

6 ~~B.]~~ E. As used in this section:

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

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

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

- 23 (a) solar light;
24 (b) solar heat;
25 (c) wind; or

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1 (d) biomass.

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

underscored material = new
[bracketed material] = delete

1 ~~[D. To claim a renewable energy production tax~~
2 ~~credit, a taxpayer that has been certified as eligible pursuant~~
3 ~~to Subsection C of this section shall submit]~~

4 G. A taxpayer may be allocated all or a portion of
5 the right to claim a renewable energy production tax credit if:

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

9 (2) the business entity would qualify for the
10 renewable energy production tax credit pursuant to this
11 subsection or Paragraph (1), (2), (3) or (4) of Subsection B of
12 this section;

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

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

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

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

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

11 ~~[F.]~~ J. The renewable energy production tax credit
12 may be deducted from the taxpayer's New Mexico corporate income
13 tax liability for ~~[the]~~ a taxable year. If the amount of the
14 tax credit claimed exceeds the taxpayer's corporate income tax
15 liability ~~[the excess may be carried forward for up to five~~
16 ~~consecutive taxable years]:~~

17 (1) the excess may be carried forward to each
18 succeeding taxable year that begins before January 1, 2008; and

19 (2) for taxable years beginning on or after
20 January 1, 2007, any excess claimed that year or carried
21 forward from prior taxable years shall be refunded to the
22 taxpayer."

23 Section 2. APPLICABILITY.--The provisions of this act
24 apply to taxable years beginning on or after January 1, 2005.