

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 395

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

INTRODUCED BY

Hector H. Balderas

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR SALES OF BIOMASS-RELATED EQUIPMENT AND BIOMASS MATERIAL; EXPANDING A COMPENSATING TAX DEDUCTION FOR BIOMASS-RELATED EQUIPMENT AND BIOMASS MATERIAL; CHANGING THE DEFINITION OF "BIOMASS" FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005; REPEALING LAWS 2005, CHAPTER 104, SECTION 7.

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 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.--

.159287.2

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

24 E. As used in this section:

25 (1) "biomass" means [~~agricultural or animal~~

underscored material = new
[bracketed material] = delete

1 ~~waste; thinnings from trees less than fifteen inches in~~
2 ~~diameter, slash and brush; lumbermill or sawmill residues; and~~
3 ~~salt cedar and other phreatophytes removed from watersheds or~~
4 ~~river basins]~~ organic material that is available on a renewable
5 or recurring basis, including:

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

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

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

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

.159287.2

underscored material = new
[bracketed material] = delete

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

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

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

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

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

- 19 (a) solar light;
- 20 (b) solar heat;
- 21 (c) wind; or
- 22 (d) biomass.

23 F. A person that holds title to a facility
24 generating electricity from a qualified energy resource or
25 [~~one~~] a person that leases such a facility from a county or

.159287.2

underscored material = new
~~[bracketed material] = delete~~

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

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

25 (1) the taxpayer owns an interest in a

.159287.2

underscored material = new
[bracketed material] = delete

1 business entity that is taxed for federal income tax purposes
2 as a partnership;

3 (2) the business entity:

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

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

12 (c) owns, through one or more
13 intermediate business entities that are each taxed for federal
14 income tax purposes as a partnership, an interest in the
15 business entity described in Subparagraph (b) of this paragraph
16 [~~(2) of this subsection~~];

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

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

25 (5) the energy, minerals and natural resources

.159287.2

1 department certifies the allocation in writing to the taxpayer.

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

7 I. A taxpayer may claim the renewable energy
8 production tax credit by submitting to the taxation and revenue
9 department the certificate issued by the energy, minerals and
10 natural resources department, pursuant to Subsection F or G of
11 this section, documentation showing the taxpayer's interest in
12 the facility, documentation of the amount of electricity
13 produced by the facility in the taxable year and any other
14 information the taxation and revenue department may require to
15 determine the amount of the tax credit due the taxpayer.

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

23 K. The renewable energy production tax credit may
24 be deducted from the taxpayer's New Mexico corporate income tax
25 liability for a taxable year. If the amount of the tax credit

.159287.2

underscored material = new
[bracketed material] = delete

1 claimed exceeds the taxpayer's corporate income tax liability,
2 the excess may be carried forward for up to five consecutive
3 taxable years."

4 Section 2. A new section of the Gross Receipts and
5 Compensating Tax Act is enacted to read:

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

8 A. Receipts from the sale of a biomass boiler,
9 gasifier, furnace, turbine-generator, storage facility,
10 feedstock trailer, interconnection transformer, feedstock
11 processing or drying equipment, harvesting and transportation
12 equipment, composting equipment or mulching equipment may be
13 deducted from gross receipts.

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

17 C. As used in this section:

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

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

25 (3) "biomass material" means organic material

.159287.2

1 that is available on a renewable or recurring basis, including:

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

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

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

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

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

24 (f) landfill gas, wastewater treatment
25 gas and biosolids, including organic waste byproducts generated

.159287.2

underscored material = new
[bracketed material] = delete

1 during the wastewater treatment process; and

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

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

6 Section 3. Section 7-9-98 NMSA 1978 (being Laws 2005,
7 Chapter 179, Section 1) is amended to read:

8 "7-9-98. DEDUCTION--COMPENSATING TAX--BIOMASS-RELATED
9 EQUIPMENT--BIOMASS MATERIALS.--

10 A. The value of a biomass boiler, gasifier,
11 furnace, turbine-generator, storage facility, [~~feedstock~~
12 ~~processing or drying equipment~~] feedstock trailer, [~~or~~]
13 interconnection transformer, feedstock processing or drying
14 equipment, harvesting and transportation equipment, composting
15 equipment or mulching equipment may be deducted in computing
16 the compensating tax due.

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

20 C. As used in this section:

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

25 (2) "biofuels" means biomass material

.159287.2

underscoring material = new
[bracketed material] = delete

1 converted to liquid or gaseous fuels such as ethanol, methanol,
2 methane and hydrogen;

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

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

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

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

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

25 (e) crops and trees planted for the

.159287.2

underscoring material = new
[bracketed material] = delete

- 1 purpose of being used to produce energy;
- 2 (f) landfill gas, wastewater treatment
- 3 gas and biosolids, including organic waste byproducts generated
- 4 during the wastewater treatment process; and
- 5 (g) segregated municipal solid waste,
- 6 excluding tires and medical and hazardous waste; and
- 7 (4) "biopower" means biomass material
- 8 converted to produce electrical and thermal energy."

9 Section 4. REPEAL.--Laws 2005, Chapter 104, Section 7 is
10 repealed.

11 Section 5. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2006.