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SENATE BILL 469

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

INTRODUCED BY

Carlos R. Cisneros

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; CHANGING THE RENEWABLE ENERGY PRODUCTION
TAX CREDIT RATE FOR THE USE OF SOLAR-ENERGY-DERIVED QUALIFIED
ENERGY GENERATORS; CHANGING ELECTRICITY PRODUCTION REQUIREMENTS
FOR THE CALCULATION OF RENEWABLE ENERGY PRODUCTION TAX CREDITS;
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]
CREDITS--LIMITATIONS--DEFINITIONS--CLAIMING THE [CREDIT]
CREDITS.--

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

4 B. A person is eligible for the renewable energy
5 production tax [~~credit~~] credits if the person:

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

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

11 C. The amount of the tax credit shall equal one
12 cent (\$.01) per kilowatt-hour of the first four hundred
13 thousand megawatt-hours of electricity produced by [~~the~~] a
14 qualified energy generator using a wind- or biomass-derived
15 qualified energy resource in the taxable year, provided that
16 the total amount of tax credits claimed by all taxpayers for a
17 single qualified energy generator using a wind- or biomass-
18 derived qualified energy resource in a taxable year shall not
19 exceed one cent (\$.01) per kilowatt-hour of the first four
20 hundred thousand megawatt-hours of electricity produced by the
21 qualified energy generator. The amount of the tax credit shall
22 equal two cents (\$.02) per kilowatt-hour of the first two
23 hundred thousand megawatt-hours of electricity produced by a
24 qualified energy generator using a solar-light- or solar-heat-
25 derived qualified energy resource in the taxable year, provided

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1 that the total amount of tax credits claimed by all taxpayers
2 for a single qualified energy generator using a solar-light- or
3 solar-heat-derived qualified energy resource shall not exceed
4 two cents (\$.02) per kilowatt-hour of the first two hundred
5 thousand megawatt-hours of electricity produced by the
6 qualified energy resource in the taxable year.

7 D. A taxpayer eligible for [a] the renewable energy
8 production tax [~~credit~~] credits pursuant to Subsection B of
9 this section shall be eligible for the renewable energy
10 production tax [~~credit~~] credits for ten consecutive years,
11 beginning on the date the qualified energy generator begins
12 producing electricity.

13 E. As used in this section:

14 (1) "biomass" means agricultural or animal
15 waste; thinnings from trees less than fifteen inches in
16 diameter, slash and brush; lumbermill or sawmill residues; and
17 salt cedar and other phreatophytes removed from watersheds or
18 river basins;

19 (2) "qualified energy generator" means a
20 facility with at least [~~ten megawatts~~] one megawatt generating
21 capacity located in New Mexico that produces electricity using
22 a qualified energy resource and that sells that electricity to
23 an unrelated person; and

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

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

5 (a) solar light;

6 (b) solar heat;

7 (c) wind; or

8 (d) biomass.

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

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

8 G. A taxpayer may be allocated all or a portion of
9 the right to claim ~~[a]~~ the renewable energy production tax
10 ~~[credit]~~ credits without regard to proportional ownership
11 interest if:

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

15 (2) the business entity:
16 (a) would qualify for the renewable
17 energy production tax ~~[credit]~~ credits pursuant to Paragraph
18 (1) or (2) of Subsection B of this section;

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

24 (c) owns, through one or more
25 intermediate business entities that are each taxed for federal

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1 income tax purposes as a partnership, an interest in the
2 business entity described in Subparagraph (b) of this paragraph
3 [~~(2) of this subsection~~];

4 (3) the taxpayer and all other taxpayers
5 allocated a right to claim the renewable energy production tax
6 [~~credit~~] credits pursuant to this subsection own collectively
7 at least a five percent interest in a qualified energy
8 generator;

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

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

15 H. Upon receipt of notice of an allocation of the
16 right to claim all or a portion of the renewable energy
17 production tax [~~credit~~] credits, the energy, minerals and
18 natural resources department shall promptly certify the
19 allocation in writing to the recipient of the allocation.

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

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1 amount of electricity produced by the facility in the taxable
2 year and any other information the taxation and revenue
3 department may require to determine the amount of the tax
4 credit due the taxpayer.

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

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

18 Section 2. REPEAL.--Laws 2005, Chapter 104, Section 7 is
19 repealed.

20 Section 3. APPLICABILITY.--The provisions of this act
21 apply to taxable years beginning on or after January 1, 2006.