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SENATE BILL 607

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO TAXATION; PROVIDING TAX INCENTIVES FOR PRODUCTION
AND SALE OF BIODIESEL FUEL.

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

Section 1. A new section of the Income Tax Act is enacted
to read:

"~~[NEW MATERIAL]~~ CREDIT--BLENDED BIODIESEL FUEL.--

A. A taxpayer who is liable for payment of the
special fuel excise tax and who files a New Mexico income tax
return is eligible to claim a credit against income tax
liability for each gallon of blended biodiesel fuel on which
that person paid the special fuel excise tax in the taxable
year. The credit shall be in the following amounts for the
following periods:

(1) from January 1, 2007 until December 31,

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1 2007, at a rate of six cents (\$.06) per gallon;
2 (2) from January 1, 2008 until December 31,
3 2008, at a rate of five cents (\$.05) per gallon;
4 (3) from January 1, 2009 until December 31,
5 2009, at a rate of four cents (\$.04) per gallon;
6 (4) from January 1, 2010 until December 31,
7 2010, at a rate of three cents (\$.03) per gallon;
8 (5) from January 1, 2011 until December 31,
9 2011, at a rate of two cents (\$.02) per gallon; and
10 (6) from January 1, 2012 until December 31,
11 2012, at a rate of one cent (\$.01) per gallon.

12 B. The tax credit provided by this section may not
13 be claimed with respect to the same blended biodiesel fuel for
14 which a credit has been claimed pursuant to the Corporate
15 Income and Franchise Tax Act.

16 C. A taxpayer who otherwise qualifies for and
17 claims a credit pursuant to this section for blended biodiesel
18 fuel on which special fuel excise tax has been paid by a
19 partnership or other business association of which the taxpayer
20 is a member may claim a credit only in proportion to the
21 taxpayer's interest in the partnership or business association.
22 The total credit claimed in the aggregate by all members of the
23 partnership or business association shall not exceed the amount
24 of credit allowed pursuant to Subsection A of this section.

25 D. A husband and wife who file separate returns for
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1 a taxable year in which they could have filed a joint return
2 may each claim only one-half of the credit that would have been
3 allowed on a joint return.

4 E. The tax credit provided by this section may only
5 be applied against the income tax liability of the person who
6 paid the special fuel excise tax on the blended biodiesel fuel
7 with respect to which the credit is provided. If the credit
8 exceeds the person's income tax liability for the taxable year
9 in which the credit is granted, the credit may be carried
10 forward for five years.

11 F. For the purposes of this section:

12 (1) "biodiesel" means renewable,
13 biodegradable, monoalkyl ester combustible liquid fuel that is
14 derived from agricultural plant oils or animal fats and that
15 meets American society for testing and materials D 6751
16 standard specification for biodiesel B100 blend stock for
17 distillate fuels;

18 (2) "blended biodiesel fuel" means a diesel
19 fuel that contains five percent biodiesel; and

20 (3) "diesel fuel" means any diesel-engine fuel
21 used for the generation of power to propel a motor vehicle."

22 Section 2. A new section of the Corporate Income and
23 Franchise Tax Act is enacted to read:

24 "[NEW MATERIAL] CREDIT--BLENDED BIODIESEL FUEL.--

25 A. A taxpayer that is liable for payment of the

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1 special fuel excise tax and that files a New Mexico corporate
2 income tax return is eligible to claim a credit against
3 corporate income tax liability for each gallon of blended
4 biodiesel fuel on which that person paid the special fuel
5 excise tax in the taxable year. The credit shall be in the
6 following amounts for the following periods:

7 (1) from January 1, 2007 until December 31,
8 2007, at a rate of six cents (\$.06) per gallon;

9 (2) from January 1, 2008 until December 31,
10 2008, at a rate of five cents (\$.05) per gallon;

11 (3) from January 1, 2009 until December 31,
12 2009, at a rate of four cents (\$.04) per gallon;

13 (4) from January 1, 2010 until December 31,
14 2010, at a rate of three cents (\$.03) per gallon;

15 (5) from January 1, 2011 until December 31,
16 2011, at a rate of two cents (\$.02) per gallon; and

17 (6) from January 1, 2012 until December 31,
18 2012, at a rate of one cent (\$.01) per gallon.

19 B. The tax credit provided by this section may not
20 be claimed with respect to the same blended biodiesel fuel for
21 which a credit has been claimed pursuant to the Income Tax Act.

22 C. A taxpayer who otherwise qualifies for and
23 claims a credit pursuant to this section for blended biodiesel
24 fuel on which special fuel excise tax has been paid by a
25 partnership or other business association of which the taxpayer

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1 is a member may claim a credit only in proportion to the
2 taxpayer's interest in the partnership or business
3 association. The total credit claimed in the aggregate by all
4 members of the partnership or business association shall not
5 exceed the amount of credit allowed pursuant to Subsection A of
6 this section.

7 D. The tax credit provided by this section may only
8 be applied against the corporate income tax liability of the
9 person that paid the special fuel excise tax on the blended
10 biodiesel fuel with respect to which the credit is provided.
11 If the credit exceeds the person's corporate income tax
12 liability for the taxable year in which the credit is granted,
13 the credit may be carried forward for five years.

14 E. For the purposes of this section:

15 (1) "biodiesel" means renewable,
16 biodegradable, monoalkyl ester combustible liquid fuel that is
17 derived from agricultural plant oils or animal fats and that
18 meets American society for testing and materials D 6751
19 standard specification for biodiesel B100 blend stock for
20 distillate fuels;

21 (2) "blended biodiesel fuel" means a diesel
22 fuel that contains five percent biodiesel; and

23 (3) "diesel fuel" means any diesel-engine fuel
24 used for the generation of power to propel a motor vehicle."

25 Section 3. A new section of the Gross Receipts and
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1 Compensating Tax Act is enacted to read:

2 "[NEW MATERIAL] GROSS RECEIPTS TAX--COMPENSATING TAX--
3 BIODIESEL BLENDING FACILITY TAX CREDIT.--

4 A. A taxpayer who is a rack operator as defined in
5 the Special Fuels Supplier Tax Act and who installs biodiesel
6 blending equipment in property owned by the taxpayer for the
7 purpose of establishing or expanding a facility to produce
8 blended biodiesel fuel is eligible to claim a credit against
9 gross receipts tax or compensating tax. The credit shall be an
10 amount equal to thirty percent of the purchase cost of the
11 equipment plus thirty percent of the cost of installing that
12 equipment. The credit provided by this section may be referred
13 to as the "biodiesel blending facility tax credit".

14 B. The biodiesel blending facility tax credit shall
15 not exceed fifty thousand dollars (\$50,000) with respect to
16 equipment installed at any one facility.

17 C. Upon application from a taxpayer wishing to
18 claim the biodiesel blending facility tax credit, the energy,
19 minerals and natural resources department shall determine if
20 the equipment for which the tax credit will be claimed meets
21 the requirements of this section and if purchase and
22 installation costs reported by the taxpayer are legitimate.
23 Upon these determinations being made in favor of the taxpayer,
24 the energy, minerals and natural resources department shall
25 issue a dated certificate of eligibility containing this

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1 information and an estimate of the amount of the biodiesel
2 blending facility tax credit for which the taxpayer is
3 eligible.

4 D. To claim the biodiesel blending facility tax
5 credit, the taxpayer shall provide to the taxation and revenue
6 department the certificate of eligibility from the energy,
7 minerals and natural resources department. Upon receipt of the
8 certificate, the taxation and revenue department shall approve
9 the claim for the credit if the total cumulative amount of
10 approved claims for the credit for all taxpayers for all years
11 does not exceed one million dollars (\$1,000,000). The
12 department shall maintain a record of the cumulative amount of
13 claims for the credit that have been approved and when it
14 determines that this cumulative amount has reached one million
15 dollars (\$1,000,000), it shall cease approving any additional
16 claims for the biodiesel blending facility tax credit.

17 E. The tax credit provided by this section may only
18 be applied against the taxpayer's gross receipts tax liability
19 or compensating tax liability. If the credit exceeds the
20 taxpayer's tax liability in the reporting period for which it
21 is granted, the credit may be carried forward for four years
22 from the date of the certificate of eligibility.

23 F. For the purposes of this section:

24 (1) "biodiesel" means renewable,
25 biodegradable, monoalkyl ester combustible liquid fuel that is
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1 derived from agricultural plant oils or animal fats and that
2 meets American society for testing and materials D 6751
3 standard specification for biodiesel B100 blend stock for
4 distillate fuels;

5 (2) "biodiesel blending equipment" means
6 equipment necessary for the process of blending biodiesel with
7 diesel fuel to produce blended biodiesel fuel;

8 (3) "blended biodiesel fuel" means a diesel
9 fuel that contains five percent biodiesel; and

10 (4) "diesel fuel" means any diesel-engine fuel
11 used for the generation of power to propel a motor vehicle."