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SENATE BILL 530

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO TAXATION; AMENDING PROVISIONS OF THE RENEWABLE ENERGY PRODUCTION TAX CREDIT IN THE CORPORATE INCOME AND FRANCHISE TAX ACT; INCREASING THE ANNUAL AGGREGATE CAP ON CERTIFICATION OF ELIGIBLE ENERGY GENERATORS; ALLOCATING THE CREDIT TO CATEGORIES OF ELIGIBLE ENERGY GENERATORS.

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

Section 1. Section 7-2-18.18 NMSA 1978 (being Laws 2007, Chapter 204, Section 2) is amended to read:

"7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which a tax credit pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

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1 B. A taxpayer who files an individual New Mexico
2 income tax return and who is not a dependent of another
3 taxpayer is eligible for the renewable energy production tax
4 credit if the taxpayer:

5 (1) holds title to a qualified energy
6 generator that first produced electricity on or before January
7 1, 2018; 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 and if the qualified
11 energy generator first produced electricity on or before
12 January 1, 2018.

13 C. The amount of the tax credit shall equal one
14 cent (\$.01) per kilowatt-hour of the first four hundred
15 thousand megawatt-hours of electricity produced by the
16 qualified energy generator in the taxable year using a wind- or
17 biomass-derived qualified energy resource, provided that the
18 total amount of tax credits claimed by all taxpayers for a
19 single qualified energy generator in a taxable year using a
20 wind- or biomass-derived qualified energy resource 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. The amount of the tax credit for electricity
25 produced by a qualified energy generator in the taxable year

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1 using a solar-light-derived or solar-heat-derived qualified
2 energy resource shall be at the amounts specified in Paragraphs
3 (1) through (10) of this subsection; provided that the total
4 amount of tax credits claimed for a taxable year by all
5 taxpayers for a single qualified energy generator using a
6 solar-light-derived or solar-heat-derived qualified energy
7 resource shall be limited to the first two hundred thousand
8 megawatt-hours of electricity produced by the qualified energy
9 generator in the taxable year:

10 (1) one and one-half cents (\$.015) per
11 kilowatt-hour in the first taxable year in which the qualified
12 energy generator produces electricity using a solar-light-
13 derived or solar-heat-derived qualified energy resource;

14 (2) two cents (\$.02) per kilowatt-hour in the
15 second taxable year in which the qualified energy generator
16 produces electricity using a solar-light-derived or solar-heat-
17 derived qualified energy resource;

18 (3) two and one-half cents (\$.025) per
19 kilowatt-hour in the third taxable year in which the qualified
20 energy generator produces electricity using a solar-light-
21 derived or solar-heat-derived qualified energy resource;

22 (4) three cents (\$.03) per kilowatt-hour in the
23 fourth taxable year in which the qualified energy generator
24 produces electricity using a solar-light-derived or solar-heat-
25 derived qualified energy resource;

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1 (5) three and one-half cents (\$.035) per
2 kilowatt-hour in the fifth taxable year in which the qualified
3 energy generator produces electricity using a solar-light-
4 derived or solar-heat-derived qualified energy resource;

5 (6) four cents (\$.04) per kilowatt-hour in the
6 sixth taxable year in which the qualified energy generator
7 produces electricity using a solar-light-derived or
8 solar-heat-derived qualified energy resource;

9 (7) three and one-half cents (\$.035) per
10 kilowatt-hour in the seventh taxable year in which the qualified
11 energy generator produces electricity using a solar-light-
12 derived or solar-heat-derived qualified energy resource;

13 (8) three cents (\$.03) per kilowatt-hour in the
14 eighth taxable year in which the qualified energy generator
15 produces electricity using a solar-light-derived or solar-heat-
16 derived qualified energy resource;

17 (9) two and one-half cents (\$.025) per
18 kilowatt-hour in the ninth taxable year in which the qualified
19 energy generator produces electricity using a solar-light-
20 derived or solar-heat-derived qualified energy resource; and

21 (10) two cents (\$.02) per kilowatt-hour in the
22 tenth taxable year in which the qualified energy generator
23 produces electricity using a solar-light-derived or solar-heat-
24 derived qualified energy resource.

25 E. A taxpayer eligible for a renewable energy

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1 production tax credit pursuant to Subsection B of this section
2 shall be eligible for the renewable energy production tax credit
3 for ten consecutive years, beginning on the date the qualified
4 energy generator begins producing electricity.

5 F. As used in this section:

6 (1) "biomass" means organic material that is
7 available on a renewable or recurring basis, including:

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

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

20 (c) animal waste, including manure and
21 slaughterhouse and other processing waste;

22 (d) solid woody waste materials,
23 including landscape or right-of-way tree trimmings, rangeland
24 maintenance residues, waste pallets, crates and manufacturing,
25 construction and demolition wood wastes, excluding pressure-

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1 treated, chemically treated or painted wood wastes and wood
2 contaminated with plastic;

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

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

8 (g) segregated municipal solid waste,
9 excluding tires and medical and hazardous waste;

10 (2) "qualified energy generator" means a
11 facility with at least one megawatt generating capacity located
12 in New Mexico that produces electricity by means of a fluidized
13 bed technology or similar low-emissions technology or a
14 zero-emissions generation technology that has substantial
15 long-term production potential using a qualified energy resource
16 and that sells that electricity to an 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~~ solar light, solar heat,
2 wind or biomass that is potentially available in sufficient
3 quantities to supply the qualified energy generator for a
4 minimum of ten years.

5 G. A person that holds title to a facility
6 generating electricity from a qualified energy resource or a
7 person that leases such a facility from a county or municipality
8 pursuant to an industrial revenue bond may request certification
9 of eligibility for the renewable energy production tax credit
10 from the energy, minerals and natural resources department,
11 which shall determine if the facility is a qualified energy
12 generator. The energy, minerals and natural resources
13 department may certify the eligibility of an energy generator
14 only if the total amount of electricity that may be produced
15 annually by all qualified energy generators that are certified
16 pursuant to this section and pursuant to Section 7-2A-19 NMSA
17 1978 will not exceed a total of ~~[two]~~ three million two hundred
18 thousand megawatt-hours, ~~[plus an additional five hundred~~
19 ~~thousand]~~ which shall be allocated among qualified energy
20 resources as follows:

21 (1) nine hundred thousand megawatt-hours
22 produced by qualified energy generators using a solar-light-
23 derived or solar-heat-derived qualified energy resource;

24 (2) six hundred thousand megawatt-hours
25 produced by qualified energy generators using a biomass-derived

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1 qualified energy resource; and

2 (3) one million seven hundred thousand
3 megawatt-hours produced by qualified energy generators using a
4 wind-derived qualified energy resource.

5 H. Applications for certification shall be
6 considered in the order received. The energy, minerals and
7 natural resources department may estimate the annual
8 power-generating potential of a generating facility for the
9 purposes of this section. The energy, minerals and natural
10 resources department shall issue a certificate to the applicant
11 stating whether the facility is an eligible qualified energy
12 generator and the estimated annual production potential of the
13 generating facility, which shall be the limit of that facility's
14 energy production eligible for the tax credit for the taxable
15 year. The energy, minerals and natural resources department may
16 issue rules governing the procedure for administering the
17 provisions of [~~this subsection~~] Subsections G and H of this
18 section and shall report annually to the appropriate interim
19 legislative committee information that will allow the
20 legislative committee to analyze the effectiveness of the
21 renewable energy production tax credit, including the identity
22 of qualified energy generators, the energy production means
23 used, the amount of energy produced by those qualified energy
24 generators and whether any applications could not be approved
25 due to program limits.

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1 [~~H-~~] I. A taxpayer may be allocated all or a portion
2 of the right to claim a renewable energy production tax credit
3 without regard to proportional ownership interest if:

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

7 (2) the business entity:

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

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

16 (c) owns, through one or more
17 intermediate business entities that are each taxed for federal
18 income tax purposes as a partnership, an interest in the
19 business entity described in Subparagraph (b) of this paragraph;

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

24 (4) the business entity provides notice of the
25 allocation and the taxpayer's interest to the energy, minerals

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1 and natural resources department on forms prescribed by that
2 department; and

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

5 [~~F.~~] J. Upon receipt of notice of an allocation of
6 the right to claim all or a portion of the renewable energy
7 production tax credit, the energy, minerals and natural
8 resources department shall promptly certify the allocation in
9 writing to the recipient of the allocation.

10 [~~J.~~] K. A husband and wife who file separate returns
11 for a taxable year in which they could have filed a joint return
12 may each claim only one-half of the credit that would have been
13 allowed on a joint return.

14 [~~K.~~] L. A taxpayer may claim the renewable energy
15 production tax credit by submitting to the taxation and revenue
16 department the certificate issued by the energy, minerals and
17 natural resources department, pursuant to Subsection G, [~~H~~] H
18 or I of this section, documentation showing the taxpayer's
19 interest in the facility, documentation of the amount of
20 electricity produced by the facility in the taxable year and any
21 other information the taxation and revenue department may
22 require to determine the amount of the tax credit due the
23 taxpayer.

24 [~~L.~~] M. If the requirements of this section have
25 been complied with, the department shall approve the renewable

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1 energy production tax credit. The credit may be deducted from a
2 taxpayer's New Mexico income tax liability for the taxable year
3 for which the credit is claimed. If the amount of tax credit
4 exceeds the taxpayer's income tax liability for the taxable
5 year:

6 (1) the excess may be carried forward for a
7 period of five taxable years; or

8 (2) if the tax credit was issued with respect
9 to a qualified energy generator that first produced electricity
10 using a qualified energy resource on or after October 1, 2007,
11 the excess shall be refunded to the taxpayer.

12 [~~M.~~] N. Once a taxpayer has been granted a
13 renewable energy production tax credit for a given facility,
14 that taxpayer shall be allowed to retain the facility's original
15 date of application for tax credits for that facility until
16 either the facility goes out of production for more than six
17 consecutive months in a year or until the facility's ten-year
18 eligibility has expired."

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

21 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
22 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

23 A. The tax credit provided in this section may be
24 referred to as the "renewable energy production tax credit".
25 The tax credit provided in this section may not be claimed with

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1 respect to the same electricity production for which the
2 renewable energy production tax credit provided in the Income
3 Tax Act has been claimed.

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

6 (1) holds title to a qualified energy generator
7 that first produced electricity on or before January 1, 2018; 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 and if the qualified
11 energy generator first produced electricity on or before January
12 1, 2018.

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

23 D. The amount of the tax credit for electricity
24 produced by a qualified energy generator in the taxable year
25 using a solar-light-derived or solar-heat-derived qualified

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1 energy resource shall be at the amounts specified in Paragraphs
2 (1) through (10) of this subsection; provided that the total
3 amount of tax credits claimed for a taxable year by all
4 taxpayers for a single qualified energy generator using a solar-
5 light-derived or solar-heat-derived qualified energy resource
6 shall be limited to the first two hundred thousand megawatt-
7 hours of electricity produced by the qualified energy generator
8 in the taxable year:

9 (1) one and one-half cents (\$.015) per
10 kilowatt-hour in the first taxable year in which the qualified
11 energy generator produces electricity using a solar-light-
12 derived or solar-heat-derived qualified energy resource;

13 (2) two cents (\$.02) per kilowatt-hour in the
14 second taxable year in which the qualified energy generator
15 produces electricity using a solar-light-derived or solar-heat-
16 derived qualified energy resource;

17 (3) two and one-half cents (\$.025) per
18 kilowatt-hour in the third taxable year in which the qualified
19 energy generator produces electricity using a solar-light-
20 derived or solar-heat-derived qualified energy resource;

21 (4) three cents (\$.03) per kilowatt-hour in the
22 fourth taxable year in which the qualified energy generator
23 produces electricity using a solar-light-derived or solar-heat-
24 derived qualified energy resource;

25 (5) three and one-half cents (\$.035) per

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1 kilowatt-hour in the fifth taxable year in which the qualified
2 energy generator produces electricity using a solar-light-
3 derived or solar-heat-derived qualified energy resource;

4 (6) four cents (\$.04) per kilowatt-hour in the
5 sixth taxable year in which the qualified energy generator
6 produces electricity using a solar-light-derived or solar-heat-
7 derived qualified energy resource;

8 (7) three and one-half cents (\$.035) per
9 kilowatt-hour in the seventh taxable year in which the qualified
10 energy generator produces electricity using a solar-light-
11 derived or solar-heat-derived qualified energy resource;

12 (8) three cents (\$.03) per kilowatt-hour in the
13 eighth taxable year in which the qualified energy generator
14 produces electricity using a solar-light-derived or solar-heat-
15 derived qualified energy resource;

16 (9) two and one-half cents (\$.025) per
17 kilowatt-hour in the ninth taxable year in which the qualified
18 energy generator produces electricity using a solar-light-
19 derived or solar-heat-derived qualified energy resource; and

20 (10) two cents (\$.02) per kilowatt-hour in the
21 tenth taxable year in which the qualified energy generator
22 produces electricity using a solar-light-derived or solar-heat-
23 derived qualified energy resource.

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

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1 shall be eligible for the renewable energy production tax credit
2 for ten consecutive years, beginning on the date the qualified
3 energy generator begins producing electricity.

4 F. As used in this section:

5 (1) "biomass" means organic material that is
6 available on a renewable or recurring basis, including:

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

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

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

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

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1 contaminated with plastic;

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

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

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

9 (2) "qualified energy generator" means a
10 facility with at least one megawatt generating capacity located
11 in New Mexico that produces electricity by means of a fluidized
12 bed technology or similar low-emissions technology or a zero-
13 emissions generation technology that has substantial long-term
14 production potential using a qualified energy resource and that
15 sells that electricity to an 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]~~ solar light, solar heat,

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1 wind or biomass that is potentially available in sufficient
2 quantities to supply the qualified energy generator for a
3 minimum of ten years.

4 G. A person that holds title to a facility
5 generating electricity from a qualified energy resource or a
6 person that leases such a facility from a county or municipality
7 pursuant to an industrial revenue bond may request certification
8 of eligibility for the renewable energy production tax credit
9 from the energy, minerals and natural resources department,
10 which shall determine if the facility is a qualified energy
11 generator. The energy, minerals and natural resources
12 department may certify the eligibility of an energy generator
13 only if the total amount of electricity that may be produced
14 annually by all qualified energy generators that are certified
15 pursuant to this section and pursuant to the Income Tax Act will
16 not exceed a total of ~~[two]~~ three million two hundred thousand
17 megawatt-hours, ~~[plus an additional five hundred thousand]~~ which
18 shall be allocated among qualified energy resources as follows:

19 (1) nine hundred thousand megawatt-hours
20 produced by qualified energy generators using a solar-light-
21 derived or solar-heat-derived qualified energy resource;

22 (2) six hundred thousand megawatt-hours
23 produced by qualified energy generators using a biomass-derived
24 qualified energy resource; and

25 (3) one million seven hundred thousand

1 megawatt-hours produced by qualified energy generators using a
2 wind-derived qualified energy resource.

3 H. Applications for certification shall be
4 considered in the order received. The energy, minerals and
5 natural resources department may estimate the annual
6 power-generating potential of a generating facility for the
7 purposes of this section. The energy, minerals and natural
8 resources department shall issue a certificate to the applicant
9 stating whether the facility is an eligible qualified energy
10 generator and the estimated annual production potential of the
11 generating facility, which shall be the limit of that facility's
12 energy production eligible for the tax credit for the taxable
13 year. The energy, minerals and natural resources department may
14 issue rules governing the procedure for administering the
15 provisions of [~~this subsection~~] Subsections G and H of this
16 section and shall report annually to the appropriate interim
17 legislative committee information that will allow the
18 legislative committee to analyze the effectiveness of the
19 renewable energy production tax credit, including the identity
20 of qualified energy generators, the energy production means
21 used, the amount of energy produced by those qualified energy
22 generators and whether any applications could not be approved
23 due to program limits.

24 [~~H.~~] I. A taxpayer may be allocated all or a portion
25 of the right to claim a renewable energy production tax credit

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1 without regard to proportional ownership interest if:

2 (1) the taxpayer owns an interest in a business
3 entity that is taxed for federal income tax purposes as a
4 partnership;

5 (2) the business entity:

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

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

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

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

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

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

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

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

18 ~~[K.]~~ L. If the requirements of this section have
19 been complied with, the department shall approve the renewable
20 energy production tax credit. The credit may be deducted from a
21 taxpayer's New Mexico corporate income tax liability for the
22 taxable year for which the credit is claimed. If the amount of
23 tax credit exceeds the taxpayer's corporate income tax liability
24 for the taxable year:

25 (1) the excess may be carried forward for a

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1 period of five taxable years; or

2 (2) if the tax credit was issued with respect
3 to a qualified energy generator that first produced electricity
4 using a qualified energy resource on or after October 1, 2007,
5 the excess shall be refunded to the taxpayer.

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

13 Section 3. APPLICABILITY.--The provisions of this act
14 apply to taxable years beginning on or after January 1, 2009.