

Taxation and Revenue Department  
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**OTHER TAX CREDITS**  
**Sections 7-9G-1 and 7-9G-2 NMSA 1978**

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# NEW MEXICO TAXATION AND REVENUE DEPARTMENT

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**7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING HIGH-WAGE JOBS.--**

A. A taxpayer who is an eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each new high-wage economic-based job. The credit provided in this section may be referred to as the "high-wage jobs tax credit".

B. The high-wage jobs tax credit may be claimed and allowed in an amount equal to ten percent of the wages and benefits distributed to an eligible employee in a new high-wage economic-based job, but shall not exceed twelve thousand dollars (\$12,000).

C. The high-wage jobs tax credit may be claimed by an eligible employer for each new high-wage economic-based job performed for the year in which the new high-wage economic-based job is created and for the three following qualifying periods.

D. A new high-wage economic-based job shall not be eligible for a credit pursuant to this section unless the eligible employer's total number of employees with new high-wage economic-based jobs on the last day of the qualifying period at the location at which the job is performed or based is at least one more than the number on the day prior to the date the job was created.

E. With respect to each new high-wage economic-based job for which an eligible employer seeks the high-wage jobs tax credit, the employer shall certify:

(1) the amount of wages paid to each eligible employee in a new high-wage economic-based job during each qualifying period;

(2) the number of weeks the position was occupied during the qualifying period;

(3) whether the new high-wage economic-based job was in a municipality with a population of forty thousand or more or with a population of less than forty thousand according to the most recent federal decennial census and whether the job was in the unincorporated area of a county; and

(4) the total number of employees employed by the employer at the job location on the day prior to the qualifying period and on the last day of the qualifying period.

F. To receive a high-wage jobs tax credit with respect to any qualifying period, an eligible employer shall apply to the taxation and revenue department on forms and in the manner prescribed by the department. The application shall include a certification made pursuant to Subsection E of this section.

G. The credit provided in this section may be deducted from the modified combined tax liability of a taxpayer. If the credit exceeds the modified combined tax liability of the taxpayer, the excess shall be refunded to the taxpayer.

H. The economic development department shall report to the appropriate interim legislative committee before November 1 of each year the

cost of this tax credit to the state and its impact on company recruitment and job creation.

**I. As used in this section:**

(1) "benefits" means any employee benefit plan as defined in Title 1, Section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002;

(2) "eligible employee" means an individual who is employed by an eligible employer and who is a resident of New Mexico; "eligible employee" does not include an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust;

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, of an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust; or

(d) is working or has worked as an employee or as an independent contractor for an entity that directly or indirectly owns stock in a corporation of the eligible employer or other interest of the eligible employer that represents fifty percent or more of the total voting power of that entity or has a value equal to fifty percent or more of the capital and profits interest in the entity;

(3) "eligible employer" means an employer that:

(a) made more than fifty percent of its sales to persons outside New Mexico during the most recent twelve months of the employer's modified combined tax liability reporting periods ending prior to claiming a high-wage jobs tax credit; or

(b) is eligible for development training program assistance pursuant to Section 21-19-7 NMSA 1978;

(4) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as the gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11

NMSA 1978, minus the amount of any credit other than the high-wage jobs tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

(5) "new high-wage economic-based job" means a job created by an eligible employer on or after July 1, 2004 and prior to July 1, 2015 that is occupied for at least forty-eight weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least:

(a) forty thousand dollars (\$40,000) if the job is performed or based in a municipality with a population of forty thousand or more according to the most recent federal decennial census; and

(b) twenty-eight thousand dollars (\$28,000) if the job is performed or based in a municipality with a population of less than forty thousand according to the most recent federal decennial census or in the unincorporated area of a county;

(6) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a new high-wage economic-based job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a new high-wage economic-based job; and

(7) "wages" means wages as defined in Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c).  
(Laws 2008, Chapter 27, Section 1)

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**7-9G-2. ADVANCED ENERGY TAX CREDIT--GROSS RECEIPTS TAX--  
COMPENSATING TAX--WITHHOLDING TAX.--**

**A. Except as otherwise provided in this section, a taxpayer that holds an interest in a qualified generating facility located in New Mexico may claim a credit to be computed pursuant to the provisions of this section. The credit provided by this section may be referred to as the "advanced energy combined reporting tax credit".**

**B. As used in this section:**

**(1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;**

**(2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:**

**(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;**

**(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;**

**(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;**

**(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;**

**(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and**

**(f) does not exceed a name-plate capacity of seven hundred net megawatts;**

**(3) "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;**

**(4) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;**

(5) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(6) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(7) "gross receipts tax due to the state" means the taxpayer's gross receipts liability for the reporting period that is:

(a) determined by, if the taxpayer's business location is described in Subsection A of Section 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross receipts for the reporting period by the difference between the gross receipts tax rate specified in Section 7-9-4 NMSA 1978 and one and two hundred twenty-five thousandths percent; or

(b) equal to, if the taxpayer's business location is not described in Subsection A of Section 7-1-6.4 NMSA 1978, the gross receipts tax rate specified in Section 7-9-4 NMSA 1978;

(8) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title

to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(9) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(10) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(11) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that

converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(12) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(13) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(14) "solar thermal electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part.

C. A taxpayer that holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy combined reporting tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;

(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred percent of the advanced energy tax credit allowed for the qualified generating facility; and

(3) the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

D. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy combined reporting tax credit, the department shall verify the allocation due to the recipient.

E. Subject to the limit imposed in Subsection K of this section, the advanced energy combined reporting tax credit with respect to a qualified generating facility shall equal six percent of the eligible generation plant costs of the qualified generating facility. Taxpayers eligible to claim an advanced energy combined reporting tax credit holding less than one hundred percent of the interest in the qualified generating facility shall designate an individual to report annually to the department. That designated individual shall report the eligible generation plant costs incurred during the calendar year and the relative interest of those costs attributed to each eligible interest holder. The taxpayers shall submit a copy of the relative interests attributed to each interest holder to the department, and any change to the apportioned interests shall be submitted to the department. The designated person and the department may identify a mutually acceptable reporting schedule.

F. A taxpayer may apply for the advanced energy combined reporting tax credit by submitting to the taxation and revenue department a certificate

issued by the department of environment pursuant to Subsection K of this section, documentation showing the taxpayer's interest in the qualified generating facility identified in the certificate, documentation of all eligible generation plant costs incurred by the taxpayer prior to the date of the application by the taxpayer for the advanced energy combined reporting tax credit and any other information the taxation and revenue department requests to determine the amount of tax credit due to the taxpayer.

**G.** A taxpayer having applied for and been granted approval to claim an advanced energy combined reporting tax credit by the department pursuant to this section may claim an amount of available credit against the taxpayer's gross receipts tax, compensating tax or withholding tax due to the state. Any balance of the advanced energy combined reporting tax credit that the taxpayer is approved to claim after applying that tax credit against the taxpayer's gross receipts tax, compensating tax or withholding tax liabilities may be claimed by the taxpayer against the taxpayer's tax liability pursuant to the Income Tax Act by claiming an advanced energy income tax credit or against the taxpayer's tax liability pursuant to the Corporate Income and Franchise Tax Act by claiming an advanced energy corporate income tax credit. The advanced energy combined reporting tax credit is not refundable. The total amount of tax credit claimed pursuant to this section, when combined with the advanced energy tax credits claimed pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act, shall not exceed the total amount of advanced energy tax credits approved by the department for the qualified generating facility.

**H.** A taxpayer that is liable for the payment of gross receipts or compensating tax with respect to the ownership, development, construction, maintenance or operation of a new coal-based electric generating facility that does not meet the criteria for a qualified generating facility and that begins construction after January 1, 2007 shall not claim an advanced energy tax combined reporting credit pursuant to this section or a gross receipts tax credit, a compensating tax credit or a withholding tax credit pursuant to any other state law.

**I.** If the amount of the advanced energy tax credit approved by the department exceeds the taxpayer's liability, the excess may be carried forward for up to ten years.

**J.** The aggregate amount of advanced energy tax credit that may be claimed with respect to each qualified generating facility shall not exceed sixty million dollars (\$60,000,000).

**K.** An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for the advanced energy combined reporting tax credit. The department of environment:

- (1) shall determine if the facility is a qualified generating facility;
- (2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

**(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;**

**(4) shall:**

**(a) issue rules governing the procedure for administering the provisions of this subsection and Subsection L of this section and for providing certificates of eligibility for advanced energy tax credits;**

**(b) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars (\$150,000); and**

**(c) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and**

**(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.**

**L. If the department of environment issues a certificate of eligibility to a taxpayer stating that the taxpayer holds an interest in a qualified generating facility and the taxpayer does not sequester or control carbon dioxide emissions to the extent required by this section by the later of January 1, 2017 or eighteen months after the commercial operation date of the qualified generating facility, the taxpayer's certification as a qualified generating facility shall be revoked by the department of environment and the taxpayer shall repay to the state tax credits granted pursuant to this section; provided that if the taxpayer demonstrates to the department of environment that the taxpayer made every effort to sequester or control carbon dioxide emissions to the extent feasible and the facility's inability to meet the sequestration requirements of a qualified generating facility was beyond the facility's control, in which case the department of environment shall determine, after a public hearing, the amount of the tax credit that should be repaid to the state. The department of environment, in its determination, shall consider the environmental performance of the facility and the extent to which the inability to meet the sequestration requirements of a qualified generating facility was in the control of the taxpayer. The repayment as determined by the department of environment shall be paid within one hundred eighty days following a final order by the department of environment.**

**M. Expenditures for which a taxpayer claims an advanced energy combined reporting tax credit pursuant to this section are ineligible for credits pursuant to the provisions of the Investment Credit Act or any other credit against personal income tax, corporate income tax, compensating tax, gross receipts tax or withholding tax.**

**N. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the eligible generation plant costs are incurred.  
(Laws 2009, Chapter 279, Section 3)**

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### **3.13.8.8 - VALUE OF ELIGIBLE GENERATION PLANT COSTS**

The value of eligible generation plant costs pursuant to Section 7-9G-2 NMSA 1978 shall be the adjusted basis established for the qualified generating facility under the applicable provisions of the Internal Revenue Code of 1986.

[3.13.8.8 NMAC - N, 12/31/08]

### **3.13.8.9 - ELIGIBLE GENERATION PLANT COST MUST BE “SUBJECT TO DEPRECIATION”**

For purposes of Section 7-9G-2 NMSA 1978 eligible generation plant costs must be subject to depreciation. “Subject to depreciation” means the taxpayer’s federal income tax return must include a depreciation expense with respect to the eligible generation plant costs for which an advanced energy tax credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 is “subject to depreciation”.

[3.13.8.9 NMAC - N, 12/31/08]

### **3.13.8.10 - APPLICATION OF THE CREDIT**

A. The credit allowed by Section 7-9G-2 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

B. The credit may not be applied to a report period prior to the report period that includes the first day on which eligible generation plant costs were incurred and included on the application for which the credit was approved by the department.

[3.13.8.10 NMAC - N, 12/31/08]

### **3.13.8.11 - CARRY FORWARD OF UNUSED CREDITS**

Unused advanced energy tax credit allowed by Section 7-9G-2 NMSA 1978 may be carried forward for five years from the end of the calendar year in which the credit was approved by the department.

[3.13.8.11 NMAC - N, 12/31/08]

### **3.13.8.12 - USING THE CREDIT**

A. Any amount of advanced energy tax credit claimed and approved may be applied by the claimant only against the gross receipts, compensating and withholding taxes owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.

B. Examples:

(1) Corporation T sets up a qualified generating facility in New Mexico. T subsequently qualifies for \$50,000 in advanced energy tax credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T’s New Mexico business, including the qualified generating facility. T may not transfer the \$37,000 remaining authorized advanced energy tax credit to S nor may S apply any of the remaining tax

credit to S's gross receipts, compensating and withholding tax liability. T, to the extent T still has gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for advanced energy tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed advanced energy tax credit held by a predecessor.

[3.13.8.12 NMAC - N, 12/31/08]

### **3.13.8.13 - LIMITATION ON OTHER CREDITS**

Expenditures for which a taxpayer claims the advanced energy tax credit pursuant to Section 7-9G-2 NMSA 1978 may not be used to qualify for or claim any other credit that may be applied against gross receipts tax, compensating tax or withholding tax.

[3.13.8.13 NMAC - N, 12/31/08]