

**Effective dates.** — Laws 2005, ch. 104, § 29 made Laws 2005, ch. 104, § 21 effective July 1, 2005.

## **7-9I-6. Administration of the act.**

Unless otherwise provided by the Affordable Housing Tax Credit Act, the department shall administer the Affordable Housing Tax Credit Act pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**History:** Laws 2005, ch. 104, § 22.

### **ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 104, § 29 made Laws 2005, ch. 104, § 22 effective July 1, 2005.

## **ARTICLE 9J**

# **Alternative Energy Product Manufacturers Tax Credit Act**

## **7-9J-1. Short title.**

Sections 11 through 18 of this act [7-9J-1 to 7-9J-8 NMSA 1978] may be cited as the "Alternative Energy Product Manufacturers Tax Credit Act".

**History:** Laws 2007, ch. 204, § 11.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## **7-9J-2. Definitions.**

As used in the Alternative Energy Product Manufacturers Tax Credit Act:

A. "alternative energy product" means an alternative energy vehicle, fuel cell system, renewable energy system or any component of an alternative energy vehicle, fuel cell system or renewable energy system; components for integrated gasification combined cycle coal facilities and equipment related to the sequestration of carbon from integrated gasification combined cycle plants; or, beginning in taxable year 2011 and ending in taxable year 2019, a product extracted from or secreted by a single cell photosynthetic organism;

B. "alternative energy vehicle" means a motor vehicle manufactured by an original equipment manufacturer that fully warrants and certifies that the motor vehicle meets the federal motor vehicle safety standards and is designed to be propelled in whole or in part by electricity; "alternative energy vehicle" includes a gasoline-electric hybrid motor vehicle exempt from the motor vehicle excise tax pursuant to Subsection G of Section 7-14-6 NMSA 1978;

C. "component" means a part, assembly of parts, material, ingredient or supply that is incorporated directly into an end product;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fuel cell system" means a system that converts hydrogen, natural gas or waste gas to electricity without combustion, including:

(1) a fuel cell or a system used to generate or reform hydrogen for use in a fuel cell; or

(2) a system used to generate or reform hydrogen for use in a fuel cell, including:

(a) electrolyzers that use renewable energy; and

(b) reformers that use natural gas as the feedstock;

F. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but "manufacturing" does not include construction, farming, power generation or processing natural resources;

G. "manufacturing equipment" means an essential machine, mechanism or tool or a component of an essential machine, mechanism or tool used directly and exclusively in a taxpayer's manufacturing operation and that is subject to depreciation pursuant to the Internal Revenue Code of 1986 by the taxpayer carrying on the manufacturing; provided that "manufacturing equipment" does not include a vehicle that leaves the site of a manufacturing operation for the purpose of transporting persons or property, including property for which the taxpayer claims a credit pursuant to Section 7-9-79 NMSA 1978;

H. "manufacturing operation" means a plant employing personnel to perform production tasks, in conjunction with manufacturing equipment not previously existing at the site, to produce alternative energy products;

I. "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 that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharge 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 alternative energy product manufacturers tax credit applied against any or all of those taxes or surcharges; provided that "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

J. "pass-through entity" means a business association other than:

- (1) a sole proprietorship;
- (2) an estate or trust;
- (3) a corporation, limited liability company, partnership or other entity that is not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or
- (4) a partnership that is organized as an investment partnership in which the partner's income is derived solely from interest, dividends and sales of securities;

K. "qualified expenditure" means an expenditure for the purchase of manufacturing equipment made after July 1, 2006 by a taxpayer approved by the department;

L. "renewable energy" means energy from solar heat, solar light, wind, geothermal energy, landfill gas or biomass either singly or in combination that produces low or zero emissions and has substantial long-term production potential;

M. "renewable energy system" means a system using only renewable energy to produce hydrogen or to generate electricity, including related cogeneration systems that create mechanical energy or that produce heat or steam for space or water heating and agricultural or small industrial processes and includes a:

- (1) photovoltaic energy system;
- (2) solar-thermal energy system;
- (3) biomass energy system;
- (4) wind energy system;
- (5) hydrogen production system; or
- (6) battery cell energy system; and

N. "taxpayer" means a person, including a shareholder, member, partner or other owner of a pass-through entity, that is liable for payment of a tax or to whom an assessment has been made if the assessment remains unabated or the amount thereof has not been paid.

**History:** Laws 2007, ch. 204, § 12; 2011, ch. 108, § 1.

#### **ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, see 26 U.S.C. § 1.

**The 2011 amendment,** effective June 17, 2011, included products of single cell photosynthetic organisms as eligible alternative energy products for taxable years 2011 through 2019.

### **7-9J-3. Administration.**

The department shall administer the Alternative Energy Product Manufacturers Tax Credit Act pursuant to the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**History:** Laws 2007, ch. 204, § 13.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **7-9J-4. Alternative energy product manufacturers tax credit.**

A. A tax credit to be known as the "alternative energy product manufacturers tax credit" may be claimed by a taxpayer in an amount:

- (1) for which the taxpayer has been granted approval by the department pursuant to the Alternative Energy Product Manufacturers Tax Credit Act; and
- (2) not to exceed five percent of the taxpayer's qualified expenditures.

B. The alternative energy product manufacturers tax credit may only be deducted from the taxpayer's modified combined tax liability. Any portion of the alternative energy product manufacturers tax credit that remains unused at the end of the taxpayer's reporting period may be carried forward for five years.

**History:** Laws 2007, ch. 204, § 14.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **7-9J-5. Eligibility requirements; employment.**

To be eligible to claim a credit pursuant to the Alternative Energy Product Manufacturers Tax Credit Act, the taxpayer shall employ a number of full-time employees equal to one full-time employee in addition to the number of full-time employees employed one year prior to the day on which the taxpayer applies for the credit for every:

A. five hundred thousand dollars (\$500,000), or a portion of that amount, of qualified expenditures claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars (\$30,000,000); and

B. one million dollars (\$1,000,000), or a portion of that amount, in value of qualified expenditures over thirty million dollars (\$30,000,000) claimed by the taxpayer in a taxable year in the same claim.

**History:** Laws 2007, ch. 204, § 15.

### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **7-9J-6. Approval of credit; issuance and denial; application; deadlines.**

A. The department shall issue or deny approval for an alternative energy product manufacturers tax credit in response to a taxpayer's application for approval for the credit. The department shall issue approval for a credit claimed by a taxpayer who satisfies the requirements of the Alternative Energy Product Manufacturers Tax Credit Act.

B. The department may require a taxpayer who claims an alternative energy product manufacturers tax credit to produce evidence of the taxpayer's compliance with the Alternative Energy Product Manufacturers Tax Credit Act.

C. A taxpayer may apply for approval of an alternative energy product manufacturers tax credit on or before the last day of the year following the end of the calendar year in which the qualified expenditure is made. The department shall not issue approval for the alternative energy product manufacturers tax credit if the taxpayer

applies for approval after the last day of the year following the end of the calendar year in which the qualified expenditure is made.

**History:** Laws 2007, ch. 204, § 16.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

#### **7-9J-7. Recapture.**

If the taxpayer or a successor in the business of the taxpayer ceases operations at a facility in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed an alternative energy product manufacturers tax credit, the department shall not grant additional alternative energy product manufacturers tax credits with respect to that facility. Any amount of the approved credit with respect to that facility that is not claimed against the taxpayer's modified combined tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of cessation of operations, the taxpayer shall pay the modified income tax liability against which an approved credit was taken. For the purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling, for the repair or replacement of facilities damaged or destroyed or during labor disputes.

**History:** Laws 2007, ch. 204, § 17.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 204 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

#### **7-9J-8. Credit claim forms.**

The department shall provide credit claim forms and instructions. A credit claim form shall accompany any return in which the taxpayer claims a credit, and the claim shall specify the amount of credit intended to apply to each return.

**History:** Laws 2007, ch. 204, § 18.

#### **ANNOTATIONS**