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HOUSE BILL 92

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO TAXATION; CREATING THE GEOTHERMAL ELECTRICITY
GENERATION INCOME TAX CREDIT, THE GEOTHERMAL ELECTRICITY
GENERATION CORPORATE INCOME TAX CREDIT AND GROSS RECEIPTS TAX
AND COMPENSATING TAX DEDUCTIONS FOR GEOTHERMAL ELECTRICITY
GENERATION FACILITY CONSTRUCTION COSTS; DISTRIBUTING THE LOSS
OF LOCAL OPTION GROSS RECEIPTS TAX REVENUE ATTRIBUTABLE TO THE
DEDUCTIONS TO LOCAL GOVERNMENTS.

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

SECTION 1. A new section of the Tax Administration Act is
enacted to read:

"[NEW MATERIAL] DISTRIBUTION--OFFSET FOR GEOTHERMAL
ELECTRICITY GENERATION-RELATED GROSS RECEIPTS AND COMPENSATING
TAX DEDUCTIONS.--

A. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made to a municipality in an amount, subject to
2 any increase or decrease made pursuant to Section 7-1-6.15 NMSA
3 1978, equal to the sum of the deductions claimed pursuant to
4 Section 4 of this 2024 act for the month by taxpayers from
5 business locations attributable to the municipality multiplied
6 by the sum of the combined rate of all municipal local option
7 gross receipts taxes in effect in the municipality on January
8 1, 2025 plus one and two hundred twenty-five thousandths
9 percent.

10 B. A distribution pursuant to Section 7-1-6.1 NMSA
11 1978 shall be made to a county in an amount, subject to any
12 increase or decrease made pursuant to Section 7-1-6.15 NMSA
13 1978, equal to the sum of the total deductions claimed pursuant
14 to Section 4 of this 2024 act for the month by taxpayers from
15 business locations:

16 (1) within a municipality in the county
17 multiplied by the combined rate of all county local option
18 gross receipts taxes in effect on January 1, 2025 that are
19 imposed in the county; and

20 (2) in the county but not within a
21 municipality multiplied by the combined rate of all county
22 local option gross receipts taxes in effect on January 1, 2025
23 that are imposed in the county area not within a municipality.

24 C. A distribution pursuant to this section may be
25 adjusted for a distribution made to a tax increment development

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1 district with respect to a portion of a gross receipts tax
2 increment dedicated by a municipality pursuant to the Tax
3 Increment for Development Act.

4 D. For the purposes of this section, "business
5 locations attributable to the municipality" means business
6 locations:

7 (1) within the municipality;

8 (2) on land owned by the state, commonly known
9 as the "state fairgrounds", within the exterior boundaries of
10 the municipality;

11 (3) outside the boundaries of the municipality
12 on land owned by the municipality; and

13 (4) on an Indian reservation or pueblo grant
14 in an area that is contiguous to the municipality and in which
15 the municipality performs services pursuant to a contract
16 between the municipality and the Indian tribe or Indian pueblo
17 if:

18 (a) the contract describes an area in
19 which the municipality is required to perform services and
20 requires the municipality to perform services that are
21 substantially the same as the services the municipality
22 performs for itself; and

23 (b) the governing body of the
24 municipality has submitted a copy of the contract to the
25 secretary."

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1 SECTION 2. A new section of the Income Tax Act is enacted
2 to read:

3 "[NEW MATERIAL] GEOTHERMAL ELECTRICITY GENERATION INCOME
4 TAX CREDIT.--

5 A. For taxable years prior to January 1, 2032, a
6 taxpayer who is not a dependent of another individual and who
7 holds an interest in a geothermal electricity generation
8 facility may apply for, and the department may allow, a credit
9 against the taxpayer's tax liability imposed pursuant to the
10 Income Tax Act. The tax credit provided by this section may be
11 referred to as the "geothermal electricity generation income
12 tax credit".

13 B. The amount of a tax credit allowed pursuant to
14 this section shall be an amount equal to one and one-half cents
15 (\$0.015) per kilowatt-hour of electricity generated in New
16 Mexico in a taxable year by the geothermal electricity
17 generation facility in which the taxpayer holds an interest.

18 C. A taxpayer shall apply for certification of
19 eligibility for the credit provided by this section from the
20 energy, minerals and natural resources department on forms and
21 in the manner prescribed by that department. The aggregate
22 amount of credits that may be certified pursuant to this
23 section and Section 3 of this 2024 act in any calendar year is
24 five million dollars (\$5,000,000). Completed applications
25 shall be considered in the order received. Applications for

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1 certification received after this limitation has been met in a
2 calendar year shall not be approved for that calendar year, but
3 shall be considered for certification in the following calendar
4 year. The application shall include proof that the taxpayer is
5 eligible for certification, including that the geothermal
6 electricity generation facility that produced the energy for
7 which the taxpayer is claiming credit, the geothermal resources
8 used by the geothermal electricity generation facility and the
9 taxpayer's interest in the geothermal electricity generation
10 facility are in accordance with the definitions set forth in
11 this section. For taxpayers approved to receive the credit,
12 the energy, minerals and natural resources department shall
13 issue a certificate of eligibility stating the amount of credit
14 to which the taxpayer is entitled for the taxable year. The
15 certificate of eligibility shall be numbered for identification
16 and declare the date of issuance and the amount of the tax
17 credit allowed.

18 D. A taxpayer may claim a geothermal electricity
19 generation income tax credit for the taxable year in which
20 electricity was generated in New Mexico by a geothermal
21 electricity generation facility in which the taxpayer holds an
22 interest. To receive the credit provided by this section, a
23 taxpayer shall apply to the department on forms and in the
24 manner prescribed by the department. The application shall
25 include a certification made pursuant to Subsection C of this

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1 section.

2 E. That portion of a credit that exceeds a
3 taxpayer's tax liability in the taxable year in which the
4 credit is claimed may be carried forward for up to three
5 consecutive years.

6 F. Married individuals filing separate returns for
7 a taxable year for which they could have filed a joint return
8 may each claim only one-half of the credit that would have been
9 claimed on a joint return.

10 G. A taxpayer may be allocated the right to claim a
11 credit provided by this section in proportion to the taxpayer's
12 ownership interest if the taxpayer owns an interest in a
13 business entity that is taxed for federal income tax purposes
14 as a partnership or limited liability company and that business
15 entity has met all of the requirements to be eligible for the
16 credit. The total credit claimed by all members of the
17 partnership or limited liability company shall not exceed the
18 maximum amount of the credit allowed pursuant to this section.

19 H. A taxpayer allowed a tax credit pursuant to this
20 section shall report the amount of the credit to the department
21 in a manner required by the department.

22 I. The department shall compile an annual report on
23 the credit provided by this section that shall include the
24 number of taxpayers approved by the department to receive the
25 credit, the aggregate amount of credits approved and any other

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1 information necessary to evaluate the credit. The department
2 shall present the report to the revenue stabilization and tax
3 policy committee and the legislative finance committee with an
4 analysis of the cost of the tax credit.

5 J. As used in this section:

6 (1) "geothermal electricity generation
7 facility" means a facility located in New Mexico that generates
8 electricity from geothermal resources and:

9 (a) for new facilities, begins
10 construction on or after January 1, 2025; or

11 (b) for existing facilities, on or after
12 January 1, 2025, increases the amount of electricity generated
13 from geothermal resources the facility generated prior to that
14 date by at least one hundred percent;

15 (2) "geothermal resources" means the natural
16 heat of the earth in excess of two hundred fifty degrees
17 Fahrenheit or the energy, in whatever form, below the surface
18 of the earth present in, resulting from, created by or that may
19 be extracted from this natural heat in excess of two hundred
20 fifty degrees Fahrenheit and all minerals in solution or other
21 products obtained from naturally heated fluids, brines,
22 associated gases and steam, in whatever form, found below the
23 surface of the earth, but excluding oil, hydrocarbon gas and
24 other hydrocarbon substances and excluding the heating and
25 cooling capacity of the earth not resulting from the natural

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1 heat of the earth in excess of two hundred fifty degrees
2 Fahrenheit as may be used for the heating and cooling of
3 buildings through an on-site geotexchange heat pump or similar
4 on-site system; and

5 (3) "interest in a geothermal electricity
6 generation facility" means title to a geothermal electricity
7 generation facility; a leasehold interest in such facility; an
8 ownership interest in a business or entity that is taxed for
9 federal income tax purposes as a partnership that holds title
10 to or a leasehold interest in such facility; or an ownership
11 interest, through one or more intermediate entities that are
12 each taxed for federal income tax purposes as a partnership, in
13 a business that holds title to or a leasehold interest in such
14 facility."

15 SECTION 3. A new section of the Corporate Income and
16 Franchise Tax Act is enacted to read:

17 "[NEW MATERIAL] GEOTHERMAL ELECTRICITY GENERATION
18 CORPORATE INCOME TAX CREDIT.--

19 A. For taxable years prior to January 1, 2032, a
20 taxpayer that holds an interest in a geothermal electricity
21 generation facility may apply for, and the department may
22 allow, a credit against the taxpayer's tax liability imposed
23 pursuant to the Corporate Income and Franchise Tax Act. The
24 tax credit provided by this section may be referred to as the
25 "geothermal electricity generation corporate income tax

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1 credit".

2 B. The amount of a tax credit allowed pursuant to
3 this section shall be an amount equal to one and one-half cents
4 (\$0.015) per kilowatt-hour of electricity generated in New
5 Mexico in a taxable year by the geothermal electricity
6 generation facility in which the taxpayer holds an interest.

7 C. A taxpayer shall apply for certification of
8 eligibility for the credit provided by this section from the
9 energy, minerals and natural resources department on forms and
10 in the manner prescribed by that department. The aggregate
11 amount of credits that may be certified pursuant to this
12 section and Section 2 of this 2024 act in any calendar year is
13 five million dollars (\$5,000,000). Completed applications
14 shall be considered in the order received. Applications for
15 certification received after this limitation has been met in a
16 calendar year shall not be approved for that calendar year, but
17 shall be considered for certification in the following calendar
18 year. The application shall include proof that the taxpayer is
19 eligible for certification, including that the geothermal
20 electricity generation facility that produced the energy for
21 which the taxpayer is claiming credit, the geothermal resources
22 used by the geothermal electricity generation facility and the
23 taxpayer's interest in the geothermal electricity generation
24 facility are in accordance with the definitions set forth in
25 this section. For taxpayers approved to receive the credit,

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1 the energy, minerals and natural resources department shall
2 issue a certificate of eligibility stating the amount of credit
3 to which the taxpayer is entitled for the taxable year. The
4 certificate of eligibility shall be numbered for identification
5 and declare the date of issuance and the amount of the tax
6 credit allowed.

7 D. A taxpayer may claim a geothermal electricity
8 generation corporate income tax credit for the taxable year in
9 which electricity was generated in New Mexico by a geothermal
10 electricity generation facility in which the taxpayer holds an
11 interest. To receive the credit provided by this section, a
12 taxpayer shall apply to the department on forms and in the
13 manner prescribed by the department. The application shall
14 include a certification made pursuant to Subsection C of this
15 section.

16 E. That portion of a credit that exceeds a
17 taxpayer's tax liability in the taxable year in which the
18 credit is claimed may be carried forward for up to three
19 consecutive years.

20 F. A taxpayer allowed a tax credit pursuant to this
21 section shall report the amount of the credit to the department
22 in a manner required by that department.

23 G. The department shall compile an annual report on
24 the credit provided by this section that shall include the
25 number of taxpayers approved by the department to receive the

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1 credit, the aggregate amount of credits approved and any other
2 information necessary to evaluate the credit. The department
3 shall present the report to the revenue stabilization and tax
4 policy committee and the legislative finance committee with an
5 analysis of the cost of the tax credit.

6 H. As used in this section:

7 (1) "geothermal electricity generation
8 facility" means a facility located in New Mexico that generates
9 electricity from geothermal resources and:

10 (a) for new facilities, begins
11 construction on or after January 1, 2025; or

12 (b) for existing facilities, on or after
13 January 1, 2025, increases the amount of electricity generated
14 from geothermal resources the facility generated prior to that
15 date by at least one hundred percent;

16 (2) "geothermal resources" means the natural
17 heat of the earth in excess of two hundred fifty degrees
18 Fahrenheit or the energy, in whatever form, below the surface
19 of the earth present in, resulting from, created by or that may
20 be extracted from this natural heat in excess of two hundred
21 fifty degrees Fahrenheit and all minerals in solution or other
22 products obtained from naturally heated fluids, brines,
23 associated gases and steam, in whatever form, found below the
24 surface of the earth, but excluding oil, hydrocarbon gas and
25 other hydrocarbon substances and excluding the heating and

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1 cooling capacity of the earth not resulting from the natural
2 heat of the earth in excess of two hundred fifty degrees
3 Fahrenheit as may be used for the heating and cooling of
4 buildings through an on-site geexchange heat pump or similar
5 on-site system; and

6 (3) "interest in a geothermal electricity
7 generation facility" means title to a geothermal electricity
8 generation facility; a leasehold interest in such facility; an
9 ownership interest in a business or entity that is taxed for
10 federal income tax purposes as a partnership that holds title
11 to or a leasehold interest in such facility; or an ownership
12 interest, through one or more intermediate entities that are
13 each taxed for federal income tax purposes as a partnership, in
14 a business that holds title to or a leasehold interest in such
15 facility."

16 SECTION 4. A new section of the Gross Receipts and
17 Compensating Tax Act is enacted to read:

18 "[NEW MATERIAL] DEDUCTIONS--GROSS RECEIPTS TAX--
19 COMPENSATING TAX--GEOTHERMAL ELECTRICITY GENERATION-RELATED
20 SALES AND USE.--

21 A. Prior to July 1, 2032, receipts from:

22 (1) selling tangible personal property
23 installed as part of, or services rendered in connection with,
24 constructing and equipping a geothermal electricity generation
25 facility may be deducted from gross receipts;

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1 (2) selling tangible personal property
2 installed as part of a system used for the distribution of
3 electricity generated from a geothermal electricity generation
4 facility may be deducted from gross receipts; and

5 (3) selling or leasing tangible personal
6 property or selling services that are construction plant costs
7 to a person who holds an interest in a geothermal electricity
8 generation facility may be deducted from gross receipts if the
9 holder of the interest delivers an appropriate nontaxable
10 transaction certificate to the seller or lessor or provides
11 alternative evidence pursuant to Section 7-9-43 NMSA 1978.

12 B. Prior to July 1, 2032, the value of:

13 (1) tangible personal property installed as
14 part of, or services rendered in connection with, constructing
15 and equipping a geothermal electricity generation facility may
16 be deducted in computing compensating tax due;

17 (2) tangible personal property installed as
18 part of a system used for the distribution of electricity
19 generated from a geothermal electricity generation facility may
20 be deducted in computing compensating tax due; and

21 (3) construction plant costs purchased by a
22 person who holds an interest in a geothermal electricity
23 generation facility may be deducted in computing compensating
24 tax due.

25 C. A taxpayer allowed a deduction pursuant to this

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1 section shall report the amount of the deduction separately in
2 a manner required by the department.

3 D. The department shall compile an annual report on
4 the deductions provided by this section that shall include the
5 number of taxpayers that claimed the deductions, the aggregate
6 amount of deductions claimed and any other information
7 necessary to evaluate the effectiveness of the deductions. The
8 department shall present the annual report to the revenue
9 stabilization and tax policy committee and the legislative
10 finance committee with an analysis of the effectiveness and
11 cost of the deductions.

12 E. As used in this section:

13 (1) "construction plant costs" means actual
14 expenditures for the development and construction of a
15 geothermal electricity generation facility, including the
16 drilling of wells to at least twelve thousand feet; permitting;
17 site characterization and assessment; engineering; design; site
18 and equipment acquisition; raw materials; and fuel supply
19 development used directly and exclusively in the facility;

20 (2) "geothermal electricity generation
21 facility" means a facility located in New Mexico that generates
22 electricity from geothermal resources and:

23 (a) for a new facility, begins
24 construction on or after January 1, 2025; or

25 (b) for an existing facility, on or

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1 after January 1, 2025, increases the amount of electricity
2 generated from geothermal resources the facility generated
3 prior to that date by at least one hundred percent;

4 (3) "geothermal resources" means the natural
5 heat of the earth in excess of two hundred fifty degrees
6 Fahrenheit or the energy, in whatever form, below the surface
7 of the earth present in, resulting from, created by or that may
8 be extracted from this natural heat in excess of two hundred
9 fifty degrees Fahrenheit and all minerals in solution or other
10 products obtained from naturally heated fluids, brines,
11 associated gases and steam, in whatever form, found below the
12 surface of the earth, but excluding oil, hydrocarbon gas and
13 other hydrocarbon substances and excluding the heating and
14 cooling capacity of the earth not resulting from the natural
15 heat of the earth in excess of two hundred fifty degrees
16 Fahrenheit as may be used for the heating and cooling of
17 buildings through an on-site geexchange heat pump or similar
18 on-site system; and

19 (4) "interest in a geothermal electricity
20 generation facility" means title to a geothermal electricity
21 generation facility; a leasehold interest in such facility; an
22 ownership interest in a business or entity that is taxed for
23 federal income tax purposes as a partnership that holds title
24 to or a leasehold interest in such facility; or an ownership
25 interest, through one or more intermediate entities that are

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1 each taxed for federal income tax purposes as a partnership, in
2 a business that holds title to or a leasehold interest in such
3 facility."

4 SECTION 5. APPLICABILITY.--The provisions of Sections 2
5 and 3 of this act apply to taxable years beginning on or after
6 January 1, 2025.

7 SECTION 6. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is January 1, 2025.