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**ALTERNATIVE ENERGY PRODUCT
MANUFACTURERS TAX CREDIT ACT
Section 7-9J-1 Through 7-9J-8 NMSA 1978**

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7-9J-1. SHORT TITLE.-- Sections 11 through 18 of this act may be cited as the "Alternative Energy Product Manufacturers Tax Credit Act". (Laws 2007, Chapter 201, Section 11)

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.

(Laws 2011, Chapter 108, Section 1)

3.13.7.7 - DEFINITIONS: “SUBJECT TO DEPRECIATION” DEFINED

For purposes of Section 7-9J-2 NMSA 1978 “subject to depreciation” means the taxpayer’s federal income tax return must include a depreciation expense with respect to the manufacturing equipment for which an alternative energy product manufacturer’s 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”.

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

**7-9J-3. ADMINISTRATION.--The department shall administer the Alternative Energy Product Manufacturers Tax Credit Act pursuant to the Tax Administration Act.
(Laws 2007, Chapter 204, Section 13)**

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.

(Laws 2007, Chapter 204, Section 14)

3.13.7.9 - ITEMS NOT “MANUFACTURING EQUIPMENT”

Tangible personal property which is not a machine, mechanism or tool, or a component or fitting thereof, is not “manufacturing equipment” for the purpose of the Alternative Energy Product Manufacturers Tax Credit Act. Accordingly such items as furniture, shelving and supplies are not “manufacturing equipment”. Equipment that is neither essential to nor used in conjunction with the manufacturing plant will not qualify for the alternative energy product manufacturers tax credit, even if that equipment is physically located in the plant. Nonqualifying equipment may include, but is not limited to: coffee makers, kitchen equipment used in an employee cafeteria and televisions or radios used in an employee lounge or in a reception area.

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

3.13.7.10 - ITEMS WHICH MAY BE INCLUDED AS “MANUFACTURING EQUIPMENT”

The term “manufacturing operation” is defined as a plant where personnel perform production tasks “in conjunction with equipment not previously existing at the site” to produce alternative energy products. “Manufacturing equipment” must be exclusively and directly employed in the manufacturing process and must be physically located in the plant and used in conjunction with the production of alternative energy products. Therefore, equipment used in conjunction with the production of alternative energy products may include, but is not limited to, such items as manufacturing process equipment, lights, boilers, air conditioners, smoke detectors and other equipment essential to maintaining the proper climate for the manufacturing process, packaging equipment used to put the manufactured product in marketable form, warehousing equipment and computers used to control the manufacturing process or to inventory and schedule the shipping of manufactured products.

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

3.13.7.11 - VALUE OF QUALIFIED “MANUFACTURING EQUIPMENT”

The value of qualified manufacturing equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

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

3.13.7.13 - CARRY FORWARD OF UNUSED CREDITS

Unused alternative energy product manufacturers tax credit may be carried forward for five years from the end of the calendar year in which the credit was first approved by the department.

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

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.

(Laws 2007, Chapter 204, Section 15)

3.13.7.15 - EQUIVALENT OF ONE FULL-TIME EMPLOYEE

To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than 40 hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.

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

3.13.7.16 - REPORTING NUMBER OF EMPLOYEES – ESTIMATES

To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within 45 days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.

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

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.

(Laws 2007, Chapter 204, Section 16)

3.13.7.12 - APPLICATION OF THE CREDIT

A. The credit allowed by Section 7-9J-4 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 qualified expenditures were made for equipment included on the application for which the credit was approved by the department.

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

3.13.7.14 - USING THE CREDIT

A. Any amount of alternative energy product manufacturers tax credit claimed and approved may be applied by the claimant only against the modified combined tax liability 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 manufacturing operation in New Mexico. T subsequently qualifies for \$50,000 in alternative energy product manufacturer's tax credit. After applying \$13,000 to its own modified combined tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the manufacturing operation. T may not transfer the \$37,000 remaining authorized alternative energy product manufacturer's tax credit to S nor may S apply any of the remaining tax credit to S's modified combined tax liability. T, to the extent T still has modified combined 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 alternative energy product manufacturers tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed alternative energy product manufacturers tax credit held by a predecessor.

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

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.

(Laws 2007, Chapter 204, Section 17)

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.

(Laws 2007, Chapter 204, Section 18)
