



The Legislature
of the
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 84

HOUSE BILL 171

Introduced by

REPRESENTATIVE BEN LUJAN AND
REPRESENTATIVE KEITH J. GARDNER AND
REPRESENTATIVE LUCIANO "LUCKY" VARELA



REPRESENTATIVE JIM R. TRUJILLO
REPRESENTATIVE RODOLPHO S. MARTINEZ
REPRESENTATIVE NATHAN P. COTE
REPRESENTATIVE ANNA CROOK
REPRESENTATIVE HENRY "KIKI" SAAVEDRA

Chapter 84

AN ACT

RELATING TO TAXATION; CREATING A TAX CREDIT THAT CAN BE TAKEN PURSUANT TO THE INCOME TAX ACT OR THE CORPORATE INCOME AND FRANCHISE TAX ACT FOR THE COSTS OF TRANSPORTING DAIRY OR FEEDLOT WASTE TO A FACILITY FOR USE IN GENERATING ELECTRICITY OR MAKING BIOCRUDE OR OTHER LIQUID OR GASEOUS FUEL.

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

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

"AGRICULTURAL BIOMASS INCOME TAX CREDIT.--

A. A taxpayer who owns a dairy or feedlot and who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2020 may apply for, and the department may allow, a tax credit equal to five dollars (\$5.00) per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use. The tax credit created in this section may be referred to as the "agricultural biomass income tax credit".

B. If the requirements of this section have been complied with, the department shall issue to the taxpayer a document granting an agricultural biomass income tax credit.

1 The document shall be numbered for identification and declare
2 its date of issuance and the amount of the tax credit allowed
3 pursuant to this section. The document may be submitted by
4 the taxpayer with that taxpayer's income tax return or may be
5 sold, exchanged or otherwise transferred to another taxpayer.
6 The parties to such a transaction shall notify the department
7 of the sale, exchange or transfer within ten days of the sale,
8 exchange or transfer.

9 C. Any portion of the agricultural biomass income
10 tax credit that remains unused in a taxable year may be
11 carried forward for a maximum of four consecutive taxable
12 years following the taxable year in which the credit
13 originates until fully expended.

14 D. A taxpayer who otherwise qualifies and claims
15 an agricultural biomass income tax credit with respect to a
16 dairy or feedlot owned by a partnership or other business
17 association of which the taxpayer is a member may claim the
18 credit only in proportion to that taxpayer's interest in the
19 partnership or business association. The total agricultural
20 biomass income tax credits claimed in the aggregate with
21 respect to the same dairy or feedlot by all members of the
22 partnership or business association shall not exceed the
23 amount of the credit that could have been claimed by a single
24 owner of the dairy or feedlot.

25 E. A husband and wife who file separate returns

1 for a taxable year in which they could have filed a joint
2 return may each claim only one-half of the credit that would
3 have been allowed on a joint return.

4 F. Prior to July 1, 2011, the energy, minerals and
5 natural resources department shall adopt rules establishing
6 procedures to provide certification of transportation of
7 agricultural biomass to a qualified facility that uses
8 agricultural biomass to generate electricity or make biocrude
9 or other liquid or gaseous fuel for commercial use for
10 purposes of obtaining an agricultural biomass income tax
11 credit. The rules may be modified as determined necessary by
12 the energy, minerals and natural resources department to
13 determine accurate recording of the quantity of agricultural
14 biomass transported and used for the purpose allowable in this
15 section.

16 G. A taxpayer who claims an agricultural biomass
17 income tax credit shall not also claim an agricultural biomass
18 corporate income tax credit for transportation of the same
19 agricultural biomass on which the claim for that agricultural
20 biomass income tax credit is based.

21 H. The department shall limit the annual combined
22 total of all agricultural biomass income tax credits and all
23 agricultural biomass corporate income tax credits allowed to a
24 maximum of five million dollars (\$5,000,000). Applications
25 for the credit shall be considered in the order received by

1 the department.

2 I. As used in this section:

3 (1) "agricultural biomass" means wet manure
4 meeting specifications established by the energy, minerals and
5 natural resources department from either a dairy or feedlot
6 commercial operation;

7 (2) "biocrude" means a nonfossil form of
8 energy that can be transported and refined using existing
9 petroleum refining facilities and that is made from
10 biologically derived feedstocks and other agricultural
11 biomass;

12 (3) "feedlot" means an operation that
13 fattens livestock for market; and

14 (4) "dairy" means a facility that raises
15 livestock for milk production."

16 Section 2. A new section of the Corporate Income and
17 Franchise Tax Act is enacted to read:

18 "AGRICULTURAL BIOMASS CORPORATE INCOME TAX CREDIT.--

19 A. A taxpayer that files a New Mexico corporate
20 income tax return for a taxable year beginning on or after
21 January 1, 2011 and ending prior to January 1, 2020 for a
22 dairy or feedlot owned by the taxpayer may claim against the
23 taxpayer's corporate income and franchise tax liability, and
24 the department may allow, a tax credit equal to five dollars
25 (\$5.00) per wet ton of agricultural biomass transported from

1 the taxpayer's dairy or feedlot to a facility that uses
2 agricultural biomass to generate electricity or make biocrude
3 or other liquid or gaseous fuel for commercial use. The
4 credit provided in this section may be referred to as the
5 "agricultural biomass corporate income tax credit".

6 B. If the requirements of this section have been
7 complied with, the department shall issue to the taxpayer a
8 document granting an agricultural biomass corporate income tax
9 credit. The document shall be numbered for identification and
10 declare its date of issuance and the amount of the tax credit
11 allowed pursuant to this section. The document may be
12 submitted by the taxpayer with that taxpayer's corporate
13 income tax return or may be sold, exchanged or otherwise
14 transferred to another taxpayer. The parties to such a
15 transaction shall notify the department of the sale, exchange
16 or transfer within ten days of the sale, exchange or transfer.

17 C. A portion of the agricultural biomass corporate
18 income tax credit that remains unused in a taxable year may be
19 carried forward for a maximum of four consecutive taxable
20 years following the taxable year in which the credit
21 originates until the credit is fully expended.

22 D. Prior to July 1, 2011, the energy, minerals and
23 natural resources department shall adopt rules establishing
24 procedures to provide certification of transportation of
25 agricultural biomass to a qualified facility that uses

1 agricultural biomass to generate electricity or make biocrude
2 or other liquid or gaseous fuel for commercial use for
3 purposes of obtaining an agricultural biomass corporate income
4 tax credit. The rules may be modified as determined necessary
5 by the energy, minerals and natural resources department to
6 determine accurate recording of the quantity of agricultural
7 biomass transported and used for the purpose allowable in this
8 section.

9 E. A taxpayer that claims an agricultural biomass
10 corporate income tax credit shall not also claim an
11 agricultural biomass income tax credit for transportation of
12 the same agricultural biomass on which the claim for that
13 agricultural biomass income tax credit is based.

14 F. The department shall limit the annual combined
15 total of all agricultural biomass income tax credits and all
16 agricultural biomass corporate income tax credits allowed to a
17 maximum of five million dollars (\$5,000,000). Applications
18 for the credit shall be considered in the order received by
19 the department.

20 G. As used in this section:

21 (1) "agricultural biomass" means wet manure
22 meeting specifications established by the energy, minerals and
23 natural resources department from either a dairy or feedlot
24 commercial operation;

25 (2) "biocrude" means a nonfossil form of

1 energy that can be transported and refined using existing
2 petroleum refining facilities and that is made from
3 biologically derived feedstocks and other agricultural
4 biomass;

5 (3) "feedlot" means an operation that
6 fattens livestock for market; and

7 (4) "dairy" means a facility that raises
8 livestock for milk production."

9 Section 3. APPLICABILITY.--This act is applicable to
10 taxable years beginning on or after January 1, 2011 and ending
11 prior to January 1, 2020. _____

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BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT
SENATE



LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 8th day of March, 2010



BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO

OFFICE OF THE GOVERNOR

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SECRETARY OF STATE
OFFICE OF

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