



The Legislature  
of the  
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 115

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 440

Introduced by



# Chapter 115

## AN ACT

1  
2 RELATING TO TAXATION; PROVIDING AN ADVANCED ENERGY DEDUCTION  
3 FOR THE LEASING OF TANGIBLE PERSONAL PROPERTY; ESTABLISHING  
4 THE PERIOD OF ALLOWABLE DEDUCTIONS FOR LEASES AS TWENTY-FIVE  
5 YEARS.

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 SECTION 1. Section 7-9-114 NMSA 1978 (being Laws 2010,  
9 Chapter 77, Section 1 and Laws 2010, Chapter 78, Section 1) is  
10 amended to read:

11 "7-9-114. ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND  
12 COMPENSATING TAXES.--

13 A. Receipts from selling or leasing tangible  
14 personal property or services that are eligible generation  
15 plant costs to a person that holds an interest in a qualified  
16 generating facility may be deducted from gross receipts if the  
17 holder of the interest delivers an appropriate nontaxable  
18 transaction certificate to the seller or lessor. The  
19 department shall issue nontaxable transaction certificates to  
20 a person that holds an interest in a qualified generating  
21 facility upon presentation to the department of a certificate  
22 of eligibility obtained from the department of environment  
23 pursuant to Subsection G of this section for the deduction  
24 created in this section or a certificate of eligibility  
25 pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

1 The deduction created in this section may be referred to as  
2 the "advanced energy deduction".

3 B. The purpose of the advanced energy deduction is  
4 to encourage the construction and development of qualified  
5 generating facilities in New Mexico and to sequester or  
6 control carbon dioxide emissions.

7 C. The value of eligible generation plant costs  
8 from the sale or lease of tangible personal property to a  
9 person that holds an interest in a qualified generating  
10 facility for which the department of environment has issued a  
11 certificate of eligibility pursuant to Subsection G of this  
12 section may be deducted in computing the compensating tax due.

13 D. The maximum tax benefit allowed for all  
14 eligible generation plant costs from a qualified generating  
15 facility shall be sixty million dollars (\$60,000,000) total  
16 for eligible generation plant costs deducted or claimed  
17 pursuant to this section or Section 7-2-18.25, 7-2A-25 or  
18 7-9G-2 NMSA 1978.

19 E. Deductions taken pursuant to this section shall  
20 be reported separately on a form approved by the department.  
21 The nontaxable transaction certificates used to obtain tax-  
22 deductible tangible personal property or services shall  
23 display clearly a notice to the taxpayer that the deduction  
24 shall be reported separately from any other deductions claimed  
25 from gross receipts. A taxpayer deducting eligible generation

1 plant costs from the costs on which compensating tax is  
2 imposed shall report those eligible generation plant costs  
3 that are being deducted.

4 F. The deductions allowed for a qualified  
5 generating facility pursuant to this section shall be  
6 available for a ten-year period for purchases and a twenty-  
7 five-year period for leases from the year development of the  
8 qualified generating facility begins and expenditures are made  
9 for which nontaxable transaction certificates authorized  
10 pursuant to this section are submitted to sellers or lessors  
11 for eligible generation plant costs or deductions from the  
12 costs on which compensating tax are calculated are first taken  
13 for eligible generation plant costs.

14 G. An entity that holds an interest in a qualified  
15 generating facility may request a certificate of eligibility  
16 from the department of environment to enable the requester to  
17 obtain a nontaxable transaction certificate for the advanced  
18 energy deduction. The department of environment shall:

19 (1) determine if the facility is a qualified  
20 generating facility;

21 (2) require that the requester provide the  
22 department of environment with the information necessary to  
23 assess whether the requester's facility meets the criteria to  
24 be a qualified generating facility;

25 (3) issue a certificate from sequentially

1 numbered certificates to the requester stating that the  
2 facility is or is not a qualified generating facility within  
3 one hundred eighty days after receiving all information  
4 necessary to make a determination;

5 (4) issue:

6 (a) rules governing the procedures for  
7 administering the provisions of this subsection; and

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

10 (5) deposit fees collected pursuant to this  
11 subsection in the state air quality permit fund created  
12 pursuant to Section 74-2-15 NMSA 1978; and

13 (6) report annually to the appropriate  
14 interim legislative committee information that will allow the  
15 legislative committee to analyze the effectiveness of the  
16 advanced energy deduction, including the identity of qualified  
17 generating facilities, the energy production means used, the  
18 amount of emissions identified in this section reduced and  
19 removed by those qualified generating facilities and whether  
20 any requests for certificates of eligibility could not be  
21 approved due to program limits.

22 H. The economic development department shall keep  
23 a record of temporary and permanent jobs at all qualified  
24 generating facilities in New Mexico. The economic development  
25 department and the taxation and revenue department shall

1 measure the amount of state revenue that is attributable to  
2 activity at each qualified generating facility in New Mexico.  
3 The economic development department shall coordinate with the  
4 department of environment to report annually to the  
5 appropriate interim legislative committee on the effectiveness  
6 of the advanced energy deduction. A taxpayer who claims an  
7 advanced energy deduction shall provide the economic  
8 development department, the department of environment and the  
9 taxation and revenue department with the information required  
10 to compile the report required by this section.

11 Notwithstanding any other section of law to the contrary, the  
12 economic development department, the department of environment  
13 and the taxation and revenue department may disclose the  
14 number of applicants for the advanced energy deduction, the  
15 amount of the deduction approved, the number of employees of  
16 the taxpayer and any other information required by the  
17 legislature or the taxation and revenue department to aid in  
18 evaluating the effectiveness of that deduction.

19 I. If the department of environment issues a  
20 certificate of eligibility to a taxpayer stating that the  
21 taxpayer holds an interest in a qualified generating facility  
22 and the taxpayer does not sequester or control carbon dioxide  
23 emissions to the extent required by this section by the later  
24 of January 1, 2017 or eighteen months after the commercial  
25 operation date of the qualified generating facility, the

1 taxpayer's certification as a qualified generating facility  
2 shall be revoked by the department of environment and the  
3 taxpayer shall repay to the state tax deductions granted  
4 pursuant to this section; provided that, if the taxpayer  
5 demonstrates to the department of environment that the  
6 taxpayer made every effort to sequester or control carbon  
7 dioxide emissions to the extent feasible and the facility's  
8 inability to meet the sequestration requirements of a  
9 qualified generating facility was beyond the facility's  
10 control, the department of environment shall determine, after  
11 a public hearing, the amount of tax deduction that should be  
12 repaid to the state. The department of environment, in its  
13 determination, shall consider the environmental performance of  
14 the facility and the extent to which the inability to meet the  
15 sequestration requirements of a qualified generating facility  
16 was in the control of the taxpayer. The repayment as  
17 determined by the department of environment shall be paid  
18 within one hundred eighty days following a final order by the  
19 department of environment.

20 J. The advanced energy deduction allowed pursuant  
21 to this section shall not be claimed for the same qualified  
22 expenses for which a taxpayer claims a credit pursuant to  
23 Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction  
24 pursuant to Section 7-9-54.3 NMSA 1978.

25 K. An appropriate legislative committee shall

1 review the effectiveness of the advanced energy deduction  
2 every four years beginning in 2015.

3 L. As used in this section:

4 (1) "coal-based electric generating  
5 facility" means a new or repowered generating facility and an  
6 associated coal gasification facility, if any, that uses coal  
7 to generate electricity and that meets the following  
8 specifications:

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

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

19 (c) captures and sequesters or controls  
20 carbon dioxide emissions so that by the later of January 1,  
21 2017 or eighteen months after the commercial operation date of  
22 the coal-based electric generating facility, no more than one  
23 thousand one hundred pounds per megawatt-hour of carbon  
24 dioxide is emitted into the atmosphere;

25 (d) all infrastructure required for



1 sequestration is in place by the later of January 1, 2017 or  
2 eighteen months after the commercial operation date of the  
3 coal-based electric generating facility;

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

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

10 (2) "eligible generation plant costs" means  
11 expenditures for the development and construction of a  
12 qualified generating facility, including permitting; lease  
13 payments; site characterization and assessment; engineering;  
14 design; carbon dioxide capture, treatment, compression,  
15 transportation and sequestration; site and equipment  
16 acquisition; and fuel supply development used directly and  
17 exclusively in a qualified generating facility;

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

24 (4) "geothermal electric generating  
25 facility" means a facility with a name-plate capacity of one

1 megawatt or more that uses geothermal energy to generate  
2 electricity, including a facility that captures and provides  
3 geothermal energy to a preexisting electric generating  
4 facility using other fuels in part;

5 (5) "interest in a qualified generating  
6 facility" means title to a qualified generating facility; a  
7 lessee's interest in a qualified generating facility; and a  
8 county or municipality's interest in a qualified generating  
9 facility when the county or municipality issues an industrial  
10 revenue bond for construction of the qualified generating  
11 facility;

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

15 (7) "qualified generating facility" means a  
16 facility that begins construction not later than December 31,  
17 2015 and is:

18 (a) a solar thermal electric generating  
19 facility that begins construction on or after July 1, 2010 and  
20 that may include an associated renewable energy storage  
21 facility;

22 (b) a solar photovoltaic electric  
23 generating facility that begins construction on or after July  
24 1, 2010 and that may include an associated renewable energy  
25 storage facility;

1 (c) a geothermal electric generating  
2 facility that begins construction on or after July 1, 2010;

3 (d) a recycled energy project if that  
4 facility begins construction on or after July 1, 2010; or

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

8 (8) "recycled energy" means energy produced  
9 by a generation unit with a name-plate capacity of not more  
10 than fifteen megawatts that converts the otherwise lost energy  
11 from the exhaust stacks or pipes to electricity without  
12 combustion of additional fossil fuel;

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

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

22 (11) "solar thermal electric generating  
23 facility" means an electric generating facility with a name-  
24 plate capacity of one megawatt or more that uses solar thermal  
25 energy to generate electricity, including a facility that

1 captures and provides solar thermal energy to a preexisting  
2 electric generating facility using other fuels in part."

3 SECTION 2. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2011. \_\_\_\_\_

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*Ben Lujan*

BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES

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STEPHEN R. ARIAS, CHIEF CLERK  
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JOHN A. SANCHEZ, PRESIDENT  
SENATE

*Lenore M. Naranjo*

LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 7<sup>th</sup> day of April, 2011

*Susana Martinez*

SUSANA MARTINEZ, GOVERNOR  
STATE OF NEW MEXICO

Office of the Governor  
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