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HOUSE BILL 171

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Ben Lujan

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:

"[NEW MATERIAL] 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

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

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

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

23 D. A taxpayer who otherwise qualifies and claims an
24 agricultural biomass income tax credit with respect to a dairy
25 or feedlot owned by a partnership or other business association

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1 of which the taxpayer is a member may claim the credit only in
2 proportion to that taxpayer's interest in the partnership or
3 business association. The total agricultural biomass income
4 tax credits claimed in the aggregate with respect to the same
5 dairy or feedlot by all members of the partnership or business
6 association shall not exceed the amount of the credit that
7 could have been claimed by a single owner of the dairy or
8 feedlot.

9 E. A husband and wife who file separate returns for
10 a taxable year in which they could have filed a joint return
11 may each claim only one-half of the credit that would have been
12 allowed on a joint return.

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

24 G. A taxpayer who claims an agricultural biomass
25 income tax credit shall not also claim an agricultural biomass

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1 corporate income tax credit for transportation of the same
2 agricultural biomass on which the claim for that agricultural
3 biomass income tax credit is based.

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

10 I. As used in this section:

11 (1) "agricultural biomass" means wet manure
12 meeting specifications established by the energy, minerals and
13 natural resources department from either a dairy or feedlot
14 commercial operation;

15 (2) "biocrude" means a nonfossil form of
16 energy that can be transported and refined using existing
17 petroleum refining facilities and that is made from
18 biologically derived feedstocks and other agricultural biomass;

19 (3) "feedlot" means an operation that fattens
20 livestock for market; and

21 (4) "dairy" means a facility that raises
22 livestock for milk production."

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

25 "[NEW MATERIAL] AGRICULTURAL BIOMASS CORPORATE INCOME TAX

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1 CREDIT.--

2 A. A taxpayer that files a New Mexico corporate
3 income tax return for a taxable year beginning on or after
4 January 1, 2011 and ending prior to January 1, 2020 for a dairy
5 or feedlot owned by the taxpayer may claim against the
6 taxpayer's corporate income and franchise tax liability, and
7 the department may allow, a tax credit equal to five dollars
8 (\$5.00) per wet ton of agricultural biomass transported from
9 the taxpayer's dairy or feedlot to a facility that uses
10 agricultural biomass to generate electricity or make biocrude
11 or other liquid or gaseous fuel for commercial use. The credit
12 provided in this section may be referred to as the
13 "agricultural biomass corporate income tax credit".

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

25 C. A portion of the agricultural biomass corporate

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1 income tax credit that remains unused in a taxable year may be
2 carried forward for a maximum of four consecutive taxable years
3 following the taxable year in which the credit originates until
4 the credit is fully expended.

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

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

22 F. The department shall limit the annual combined
23 total of all agricultural biomass income tax credits and all
24 agricultural biomass corporate income tax credits allowed to a
25 maximum of five million dollars (\$5,000,000). Applications for

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1 the credit shall be considered in the order received by the
2 department.

3 G. As used in this section:

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

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

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

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

16 Section 3. APPLICABILITY.--This act is applicable to
17 taxable years beginning on or after January 1, 2011 and ending
18 prior to January 1, 2020.