

State of New Mexico - Taxation and Revenue Department
ADVANCED ENERGY TAX CREDIT APPLICATION

Page 1 of 2

Purpose of Form. A qualified electricity generating facility located in New Mexico may be eligible to apply for and claim the advanced energy tax credit (advanced energy income tax credit, advanced energy corporate income tax credit and the advanced energy combined reporting tax credit). The credit may be applied against corporate or personal income tax due, compensating tax, withholding tax or gross receipts tax due to New Mexico. The amount of the credit is 6% of the eligible generation plant costs. See the instructions for important definitions. The aggregate amount of tax credit that may be claimed with respect to a qualified generating facility is limited to \$60,000,000.

To obtain approval, submit a completed Form RPD-41333, *Advanced Energy Tax Credit Application*, a certificate of eligibility issued by the New Mexico Environment Department and other information the Taxation and Revenue Department requires to determine the amount of tax credit allowed. See Section 3. The application must be submitted within one year following the end of the calendar year in which the eligible generation plant costs are incurred. The right to claim the credit may be allocated to other taxpayers who are interest owners in the qualified generating facility. The *Notice of Allocation of Right to Claim Advanced Energy Tax Credits* is required to be attached to Form RPD-41333 to allocate the credit to interest owners.

Once approved, the qualified generating facility or other approved interest owners may use Form RPD-41334, *Advanced Energy Tax Credit Claim Form*, to claim the credit against tax due. If the credit amount exceeds the taxpayer's liability, the excess can be carried forward for up to ten years.

A **qualified generating facility** is a facility that begins construction not later than December 31, 2015, and is:

1. a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;
2. a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;
3. a geothermal electric generating facility that begins construction on or after July 1, 2009;
4. a recycled energy project if that facility begins construction on or after July 1, 2007; or
5. a new or repowered coal-based electric generating facility and an associated coal gasification facility.

Mail Form RPD-41333, *Advanced Energy Tax Credit Application*, and all required attachments to: Taxation and Revenue Department, Director's Office, P.O. Box 8485, Albuquerque, New Mexico 87198-8485. For assistance completing this form or checking the status of your application, call (505) 795-1735.

Section 1. - Qualified Generating Facility Information

Name of qualified generating facility		
Physical address		
City	State	ZIP code
New Mexico Business Tax Identification Number (NMBTIN)	FEIN or SSN	
Name of contact person	Telephone number ()	

Section 2. - Computation of the Advanced Energy Tax Credit

1. Enter the first and last day of the calendar year in which the qualified expenditures were made:
(Purchase must be made on or after July 1, 2007 to qualify.)
From _____ To _____
(mm/dd/ccyy) (mm/dd/ccyy)

2. The value of eligible generation plant costs for the qualified generating facility described in this application.
\$ _____

3. The amount of advanced energy tax credit allowed for the qualified generating facility. (Multiply line 2 by 6%. Enter here.)
\$ _____

ADVANCED ENERGY TAX CREDIT INSTRUCTIONS

HOW TO APPLY FOR THIS CREDIT: A qualified generating facility or an interest owner, on behalf of the qualified generating facility, must apply for a certificate of eligibility from the New Mexico Environment Department (NMED) before applying to obtain approval to claim the advanced energy tax credit (advanced energy income tax credit, advanced energy corporate income tax credit and the advanced energy combined reporting tax credit). NMED determines if the facility is a qualified generating facility and issues a certificate within 180 days after receiving all information necessary to determine eligibility. Fees will apply, but may not exceed \$150,000. For assistance in obtaining a certificate of eligibility and applicable fees, call (505) 476-4339 or write:

New Mexico Environment Department
Technical Services Manager
NMED Air Quality Bureau
525 Camino de los Marquez, Suite 1
Santa Fe, New Mexico 87505

Once NMED issues a certificate, the claimant may submit a completed Form RPD-41333, *Advanced Energy Tax Credit Application*, to the Taxation and Revenue Department (TRD) for approval. The certificate of eligibility must be attached to the application, along with information required to determine the amount of allowable advanced energy tax credits. The application must be submitted within one year following the end of the calendar year in which the eligible generation plant costs are incurred. TRD will issue an approval for the credit, and the claimant may then use Form RPD-41334, *Advanced Energy Tax Credit Claim Form*, to claim the credit against personal or corporate income taxes, gross receipts, compensating or withholding taxes due to the State of New Mexico.

Documentation required to determine the amount of advanced energy tax credit allowed includes but is not limited to:

- the certificate of eligibility issued by NMED;
- a detailed schedule describing each qualified expenditure and showing the date of purchase and amount expended;
- a depreciation schedule that can be reconciled to the schedule of qualified expenditures; and
- copies of invoices to support the purchases.

You may be asked to provide the Department with a copy of your federal Form 4562 at the time it is filed with the Internal Revenue Service.

A taxpayer claiming the advanced energy tax credit is ineligible for credits pursuant to the Investment Credit Act or any other credit that may be taken against personal income tax, corporate income tax, gross receipts tax, compensating tax

or withholding tax for the same expenditures.

ALLOCATING THE RIGHT TO CLAIM THE CREDIT: A taxpayer that holds interest in a qualified generating facility may be allocated the right to claim the advanced energy tax credit, without regard to the taxpayer's relative interest in the qualified generating facility if:

- the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the Department;
- allocations to the taxpayer and all other taxpayers allocated a right to claim the credit does not exceed 100% of the credit allowed for the qualified generating facility; and
- the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least 5% interest in the qualified generating facility.

Taxpayers eligible to claim an advanced energy tax credit holding less than 100% of the interest in the qualified generating facility shall designate an individual to submit the application, the eligible generation plant costs incurred during the calendar year and the relative interest of those costs attributed to each eligible interest holder. Any changes to the apportioned interest must be reported to the Department. To allocate the right to claim all or a portion of the advanced energy tax credit, complete the *Notice of Allocation of Right to Claim Advanced Energy Tax Credits*, attach it to Form RPD-41333, *Advanced Energy Tax Credit Application*, and **attach proof** that the transferee is eligible for the credit as a taxpayer holding an interest in the qualified generating facility.

ADVANCED ENERGY GROSS RECEIPTS AND COMPENSATING TAX DEDUCTION: An interest owner who has been issued a certificate of eligibility from NMED, may also be eligible to take a gross receipts or compensating tax deduction for purchases of eligible expenses for the qualified generating facility in lieu of claiming the Advanced Energy Tax Credit. See RPD-41349, *Advanced Energy Deduction Report*, for more information.

HOW TO CLAIM THIS CREDIT: To claim approved advanced energy tax credits, you must attach a completed Form RPD-41334, *Advanced Energy Tax Credit Claim Form*, to the return to which you wish to apply the credit. The credit may not exceed the tax liability due on the return. Excess advanced energy tax credits can then be carried forward for up to ten years and can be applied to any combination of personal or corporate income tax, gross receipts tax, compensating tax or withholding tax due the claimant.

To claim approved advanced energy tax credit against the

ADVANCED ENERGY TAX CREDIT INSTRUCTIONS

CRS-1 return (prior to July 1, 2021), you must file the full-page version of the New Mexico CRS-1 Form. Complete the CRS-1 Long Form and supplemental forms, if any, according to the instructions. Do not reduce the tax liability on the CRS-1 Long Form to reflect the advanced energy tax credit claimed. For periods starting July 1, 2021, this credit is claimed on the gross receipts tax (TRD-41413) less any taxes collected with respect to local option gross receipts taxes, compensating tax (TRD-41412), and withholding taxes (TRD-41409 or TRD-41414). Instead, underpay the tax liability shown on the return by the amount of tax credit claimed and attach a completed Form RPD-41334, *Advanced Energy Tax Credit Claim Form*. Do not enter a negative number or claim more credit than the tax due shown on the CRS-1 Long Form for the current report period. When computing the amount of advanced energy combined reporting tax credit that may be claimed against the gross receipts reported on a return, compute the credit at 3.9% of the gross receipts if the taxpayer's business is located in a municipality, and 5.125% of the gross receipts if the taxpayer's business location is anywhere else within or outside New Mexico.

To claim approved advanced energy tax credit against **Form PIT-1**, attach a completed Form RPD-41334, *Advanced Energy Tax Credit Claim Form*, to Form PIT-1, *New Mexico Personal Income Tax Return*, or to **Form FID-1**, *New Mexico Fiduciary Income Tax Return*. Enter the amount of credit claimed against the current return on Schedule PIT-CR or FID-CR. Do not claim more credit than the tax due shown on Form PIT-1 or FID-1. Married individuals who file separate returns for a tax year in which they could have filed a joint return may each claim only one-half of the advanced energy income tax credit that would have been allowed on a joint return.

To claim approved advanced energy tax credit against **Forms CIT-1 or S-Corp**, attach a completed Form RPD-41334, *Advanced Energy Tax Credit Claim Form*, to Form CIT-1, *New Mexico Corporate Income and Franchise Tax Return*, or to Form S-Corp, *New Mexico Subchapter S Corporate Income and Franchise Tax Return*. Enter the amount of credit claimed against the current return on Schedule CIT-CR or S-Corp-CR. Do not claim more credit than the corporate income tax due shown on Form CIT-1, or more than the corporate income tax due and withholding tax due shown on Form S-Corp. The credit cannot be applied against any franchise tax due.

Mail the return and the claim form, RPD-41334, to the address on the tax return to which you wish to apply the credit. For assistance call (505) 476-3683.

RECAPTURE:

If the New Mexico Environment Department (NMED) issues a certificate of eligibility to a taxpayer stating that the facility is a qualified generating facility and the taxpayer does not sequester or control carbon dioxide emissions to the extent required by January 1, 2017, or 18 months after the commercial operation date of the qualified generating facility, the taxpayer's certification as a qualified generating facility shall be revoked by NMED and the taxpayer shall refund to the state tax credits granted. If the taxpayer demonstrates to the NMED that the taxpayer made every effort to sequester or control carbon dioxide emissions to the extent feasible and the facility's inability to meet the sequestration requirements of a qualified generating facility was beyond the facility's control, NMED shall determine, after a public hearing, the amount of the tax credit that should be refunded. NMED, in its determination, shall consider the environmental performance of the facility and the extent to which the inability to meet the sequestration requirements of a qualified generating facility was in the control of the taxpayer. The refund as determined by NMED shall be paid within 180 days following a final order by NMED.

IMPORTANT DEFINITIONS:

"Eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

Value of "eligible generation plant costs". The value of eligible generation plant costs is the adjusted basis established for the qualified generating facility under the applicable provisions of the Internal Revenue Code of 1986.

Eligible generation plant cost must be "subject to depreciation". For purposes of the advanced energy tax credit, eligible generation plant costs must be subject to depreciation. "Subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to the eligible generation plant costs for which an advanced energy 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".

"Qualified generating facility" is a facility that begins construction no later than December 31, 2015, and is:

1. a solar thermal electric generating facility that begins construction on or after July 1, 2007, and that may include

ADVANCED ENERGY TAX CREDIT INSTRUCTIONS

- an associated renewable energy storage facility;
2. a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009, and that may include an associated renewable energy storage facility;
 3. a geothermal electric generating facility that begins construction on or after July 1, 2009;
 4. a recycled energy project if that facility begins construction on or after July 1, 2007; or
 5. a new or repowered coal-based electric generating facility and an associated coal gasification facility.

“Recycled energy” means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel.

“Sequester” means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coal bed methane or natural gas recovery techniques.

“Name-plate capacity” means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement.

“Solar photovoltaic electric generating facility” means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity.

“Solar thermal electric generating facility” means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part.

“Interest in a qualified generating facility” means title

to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility.

“Coal-based electric generating facility” means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

- emits the lesser of:
 1. what is achievable with the best available control technology, or
 2. thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;
- removes the greater of:
 1. what is achievable with the best available control technology, or
 2. ninety percent of the mercury from the input fuel;
- captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017, or 18 months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere,
- all infrastructure required for sequestration is in place by the later of January 1, 2017, or 18 months after the commercial operation date of the coal-based electric generating facility,
- includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility, and
- does not exceed a name-plate capacity of 700 net megawatts.