

TITLE 3: TAXATION
CHAPTER 13: BUSINESS TAX CREDITS
PART 7: ALTERNATIVE ENERGY PRODUCT MANUFACTURERS TAX CREDIT

3.13.7.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.13.7.1 NMAC - N, 12/31/08]

3.13.7.2 SCOPE: This part applies to all persons carrying on a manufacturing operation in New Mexico that produce alternative energy products and who may be eligible to obtain the alternative energy product manufacturers tax credit.
[3.13.7.2 NMAC - N, 12/31/08]

3.13.7.3 STATUTORY AUTHORITY: Section 7-9J-1 through 8 and 9-11-6.2 NMSA 1978.
[3.13.7.3 NMAC - N, 12/31/08]

3.13.7.4 DURATION: Permanent.
[3.13.7.4 NMAC - N, 12/31/08]

3.13.7.5 EFFECTIVE DATE: 12/31/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.13.7.5 NMAC - N, 12/31/08]

3.13.7.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Alternative Energy Product Manufacturers Tax Credit Act.
[3.13.7.6 NMAC - N, 12/31/08]

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]

3.13.7.8 [RESERVED]

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]

3.13.7.12 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]

3.13.7.13 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]

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]

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]

HISTORY OF 3.13.7 NMAC: [RESERVED]