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HOUSE BILL 96

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Carl Trujillo and Michael Padilla

AN ACT

RELATING TO TAXATION; AMENDING THE TECHNOLOGY JOBS TAX CREDIT ACT TO CREATE THE TECHNOLOGY JOBS AND RESEARCH AND DEVELOPMENT TAX CREDIT ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF CHAPTER 7 NMSA 1978.

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

SECTION 1. Section 7-9F-1 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 22, Section 1) is amended to read:

"7-9F-1. SHORT TITLE.--~~[This act]~~ Chapter 7, Article 9F NMSA 1978 may be cited as the "Technology Jobs and Research and Development Tax Credit Act".

SECTION 2. Section 7-9F-2 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 22, Section 2) is amended to read:

"7-9F-2. PURPOSE OF ACT.--It is the purpose of the Technology Jobs and Research and Development Tax Credit Act to .195289.5SA

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1 provide a favorable tax climate for technology-based businesses
2 engaging in research, development and experimentation and to
3 promote increased employment and higher wages in those fields
4 in New Mexico."

5 SECTION 3. Section 7-9F-3 NMSA 1978 (being Laws 2000 (2nd
6 S.S.), Chapter 22, Section 3) is amended to read:

7 "7-9F-3. DEFINITIONS.--As used in the Technology Jobs and
8 Research and Development Tax Credit Act:

9 A. "affiliate" means a person who directly or
10 indirectly owns or controls, is owned or controlled by or is
11 under common ownership or control with another person through
12 ownership of voting securities or other ownership interests
13 representing a majority of the total voting power of the
14 entity;

15 B. "annual payroll expense" means the wages paid or
16 payable by the taxpayer [~~for the one-year period ending on the~~
17 ~~day~~] in the taxable year for which the taxpayer applies for an
18 additional credit pursuant to the Technology Jobs and Research
19 and Development Tax Credit Act;

20 C. "base payroll expense" means the wages paid or
21 payable by the taxpayer [~~for the one-year period ending on the~~
22 ~~day one year prior to the day~~] in the taxable year for which
23 the taxpayer applies for an additional credit pursuant to the
24 Technology Jobs and Research and Development Tax Credit Act,
25 adjusted for any increase from the preceding taxable year in

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1 the consumer price index for the United States for all items as
2 published by the United States department of labor [~~since that~~
3 ~~day~~] in the taxable year for which the additional credit is
4 claimed. In a taxable year during which a taxpayer has been
5 part of a business merger or acquisition or other change in
6 business organization, the taxpayer's base payroll expense
7 shall include the payroll expense of all entities included in
8 the reorganization for all positions that are included in the
9 business entity resulting from the reorganization;

10 D. "department" means the taxation and revenue
11 department, the secretary of taxation and revenue or any
12 employee of the department exercising authority lawfully
13 delegated to that employee by the secretary;

14 E. "facility" means a factory, mill, plant,
15 refinery, warehouse, dairy, feedlot, building or complex of
16 buildings located within the state, including the land on which
17 [~~the facility~~] it is located and all machinery, equipment and
18 other real and tangible personal property located at or within
19 [~~the facility~~] it and used in connection with [~~the~~] its
20 operation [~~of the facility~~];

21 F. "local option gross receipts tax" means a tax
22 authorized to be imposed by a county or municipality upon the
23 taxpayer's gross receipts, as that term is defined in the Gross
24 Receipts and Compensating Tax Act, and required to be collected
25 by the department at the same time and in the same manner as

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1 the gross receipts tax; "local option gross receipts tax"
2 includes the taxes imposed pursuant to the Municipal Local
3 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
4 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,
5 Local Hospital Gross Receipts Tax Act, County Correctional
6 Facility Gross Receipts Tax Act and such other acts as may be
7 enacted authorizing counties or municipalities to impose taxes
8 on gross receipts, which taxes are to be collected by the
9 department in the same time and in the same manner as it
10 collects the gross receipts tax;

11 [F-] G. "qualified expenditure" means an
12 expenditure or an allocated portion of an expenditure by a
13 taxpayer in connection with qualified research at a qualified
14 facility, including expenditures for depletable land and rent
15 paid or incurred for land, improvements, the allowable amount
16 paid or incurred to operate or maintain a facility, buildings,
17 equipment, computer software, computer software upgrades,
18 consultants and contractors performing work in New Mexico,
19 payroll, technical books and manuals and test materials, but
20 not including any expenditure on property that is owned by a
21 municipality or county in connection with an industrial revenue
22 bond project, property for which the taxpayer has received any
23 credit pursuant to the Capital Equipment Tax Credit Act or the
24 Investment Credit Act, property that was owned by the taxpayer
25 or an affiliate before ~~[the effective date of the Technology~~

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1 ~~Jobs Tax Credit Act~~ July 3, 2000 or research and development
2 expenditures reimbursed by a person who is not an affiliate of
3 the taxpayer. If ~~an~~ a "qualified expenditure" is an
4 allocation of an expenditure, the cost accounting methodology
5 used for the allocation of the expenditure shall be the same
6 cost accounting methodology used by the taxpayer in its other
7 business activities;

8 ~~[G.]~~ H. "qualified facility" means a facility in
9 New Mexico at which qualified research is conducted other than
10 a facility operated by a taxpayer for the United States or any
11 agency, department or instrumentality thereof;

12 ~~[H.]~~ I. "qualified research" means research:

13 (1) that is undertaken for the purpose of
14 discovering information:

15 (a) that is technological in nature; and
16 (b) the application of which is intended
17 to be useful in the development of a new or improved business
18 component of the taxpayer; and

19 (2) substantially all of the activities of
20 which constitute elements of a process of experimentation
21 related to a new or improved function, performance, reliability
22 or quality, but not related to style, taste or cosmetic or
23 seasonal design factors;

24 J. "qualified research and development small
25 business" means a taxpayer that:

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1 (1) employed no more than fifty employees as
2 determined by the number of employees for which the taxpayer
3 was liable for unemployment insurance coverage in the taxable
4 year for which an additional credit is claimed;

5 (2) had total qualified expenditures of no
6 more than five million dollars (\$5,000,000) in the taxable year
7 for which an additional credit is claimed; and

8 (3) did not have more than fifty percent of
9 its voting securities or other equity interest with the right
10 to designate or elect the board of directors or other governing
11 body of the business owned directly or indirectly by another
12 business;

13 ~~[F.]~~ K. "rural area" means any area of the state
14 other than [a class A county, a class B county that has a net
15 taxable value for rate-setting purposes for any property tax
16 year of more than three billion dollars (\$3,000,000,000), the
17 municipality of Rio Rancho and the area within three miles of
18 the exterior boundaries of a class A county] the state
19 fairgrounds, an incorporated municipality with a population of
20 thirty thousand or more according to the most recent federal
21 decennial census and any area within three miles of the
22 external boundaries of an incorporated municipality with a
23 population of thirty thousand or more according to the most
24 recent federal decennial census;

25 ~~[J.]~~ L. "taxpayer" means any of the following

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1 persons, other than a federal, state or other governmental unit
2 or subdivision or an agency, department, institution or
3 instrumentality thereof:

4 (1) a person liable for payment of any tax;

5 (2) a person responsible for withholding and
6 payment or collection and payment of any tax;

7 (3) a person to whom an assessment has been
8 made if the assessment remains unabated or the assessed amount
9 has not been paid; or

10 (4) for purposes of the additional credit
11 against the taxpayer's income tax pursuant to the Technology
12 Jobs and Research and Development Tax Credit Act and to the
13 extent of their respective interest in that entity, the
14 shareholders, members, partners or other owners of:

15 (a) a small business corporation that
16 has elected to be treated as an S corporation for federal
17 income tax purposes; or

18 (b) an entity treated as a partnership
19 or disregarded entity for federal income tax purposes; and

20 ~~[K-]~~ M. "wages" means remuneration ~~[in cash or~~
21 ~~other form]~~ for services performed by an employee for an
22 employer."

23 SECTION 4. Section 7-9F-4 NMSA 1978 (being Laws 2000 (2nd
24 S.S.), Chapter 22, Section 4) is amended to read:

25 "7-9F-4. ADMINISTRATION OF ACT.--The department shall

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1 administer the Technology Jobs and Research and Development Tax
2 Credit Act pursuant to the Tax Administration Act."

3 SECTION 5. Section 7-9F-5 NMSA 1978 (being Laws 2000 (2nd
4 S.S.), Chapter 22, Section 5) is amended to read:

5 "7-9F-5. BASIC CREDIT--ADDITIONAL CREDIT--AMOUNTS--
6 CLAIMANT.--

7 A. The basic credit provided for in the Technology
8 Jobs and Research and Development Tax Credit Act is an amount
9 equal to [~~four~~] five percent of the amount of qualified
10 expenditures made by a taxpayer conducting qualified research
11 at a qualified facility.

12 B. The additional credit provided for in the
13 Technology Jobs and Research and Development Tax Credit Act is
14 an amount equal to [~~four~~] five percent of the amount of
15 qualified expenditures made by a taxpayer conducting qualified
16 research at a qualified facility."

17 SECTION 6. Section 7-9F-6 NMSA 1978 (being Laws 2000 (2nd
18 S.S.), Chapter 22, Section 6) is amended to read:

19 "7-9F-6. ELIGIBILITY REQUIREMENTS.--

20 A. A taxpayer conducting qualified research at a
21 qualified facility and making qualified expenditures is
22 eligible to claim the basic credit pursuant to the Technology
23 Jobs and Research and Development Tax Credit Act.

24 B. A taxpayer conducting qualified research at a
25 qualified facility and making qualified expenditures is

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1 eligible to claim the additional credit pursuant to the
2 Technology Jobs and Research and Development Tax Credit Act if:

3 (1) the taxpayer increases the taxpayer's
4 annual payroll expense at the qualified facility by at least
5 seventy-five thousand dollars (\$75,000) over the base payroll
6 expense of the taxpayer;

7 (2) the increase in Paragraph (1) of this
8 subsection has not previously been used to meet the
9 requirements of this subsection; and

10 (3) there is at least a seventy-five thousand
11 dollar (\$75,000) increase in the taxpayer's annual payroll
12 expense for every one million dollars (\$1,000,000) in qualified
13 expenditures claimed by the taxpayer in a taxable year in the
14 same claim."

15 SECTION 7. Section 7-9F-9 NMSA 1978 (being Laws 2000 (2nd
16 S.S.), Chapter 22, Section 9) is amended to read:

17 "7-9F-9. CLAIMING THE BASIC CREDIT [~~FOR CERTAIN TAXES~~].--

18 A. A taxpayer may apply for approval of a credit
19 within one year following the end of the [~~calendar year~~]
20 reporting period in which the qualified expenditure was made.

21 B. A taxpayer having applied for and been granted
22 approval for a basic credit by the department pursuant to the
23 Technology Jobs and Research and Development Tax Credit Act may
24 claim the amount of the approved basic credit against the
25 taxpayer's compensating tax, withholding tax or gross receipts

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1 tax, ~~[or withholding tax]~~ excluding local option gross receipts
2 tax, due to the state of New Mexico; provided that no taxpayer
3 may claim an amount of approved basic credit for ~~[any]~~ a
4 reporting period in which the basic credit is being claimed
5 that exceeds the sum of the taxpayer's compensating tax,
6 withholding tax and gross receipts tax, ~~[compensating tax and~~
7 ~~withholding tax]~~ excluding local option gross receipts tax, due
8 for that reporting period.

9 ~~[G. A taxpayer who has applied for and been granted~~
10 ~~approval for an additional credit by the department pursuant to~~
11 ~~the Technology Jobs Tax Credit Act may claim the amount of the~~
12 ~~approved additional credit against the taxpayer's income tax or~~
13 ~~corporate income tax due the state of New Mexico; provided~~
14 ~~that:~~

15 ~~(1) no taxpayer may claim an amount of~~
16 ~~approved additional credit for any reporting period that~~
17 ~~exceeds the amount of the taxpayer's income tax or corporate~~
18 ~~income tax due for that reporting period; and~~

19 ~~(2) a husband and wife who file separate~~
20 ~~returns for a taxable year in which they could have filed a~~
21 ~~joint return may each claim only one-half of the additional~~
22 ~~credit that would have been allowed them on a joint return.~~

23 ~~D.]~~ C. Any amount of approved basic credit not
24 claimed against the taxpayer's compensating tax, withholding
25 tax or gross receipts tax, ~~[compensating tax or withholding~~

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1 ~~tax] excluding local option gross receipts tax, due [and any~~
2 ~~amount of approved additional credit not claimed against the~~
3 ~~taxpayer's income tax or corporate income tax due for a~~
4 ~~reporting period]~~ may be claimed in subsequent reporting
5 periods [provided that a husband and wife who file separate
6 returns for a taxable year in which they could have filed a
7 joint return may each claim only one half of the additional
8 credit that would have been allowed them on a joint return] for
9 a period of up to three years from the date of the original
10 claim."

11 SECTION 8. A new section of the Technology Jobs and
12 Research and Development Tax Credit Act, Section 7-9F-9.1 NMSA
13 1978, is enacted to read:

14 "7-9F-9.1. [NEW MATERIAL] CLAIMING THE ADDITIONAL
15 CREDIT.--

16 A. A taxpayer may apply for approval of an
17 additional credit pursuant to the Technology Jobs and Research
18 and Development Tax Credit Act within one year following the
19 end of the taxable year in which the qualified expenditure was
20 made.

21 B. A taxpayer that has applied for and been granted
22 approval for an additional credit by the department pursuant to
23 the Technology Jobs and Research and Development Tax Credit Act
24 may claim the amount of the approved additional credit against
25 the taxpayer's income tax or corporate income tax liability.

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1 Except as provided in Subsection C of this section, no taxpayer
2 may claim an amount of approved additional credit for a taxable
3 year in which the additional credit is being claimed that
4 exceeds the amount of the taxpayer's income tax or corporate
5 income tax due for that taxable year.

6 C. If a taxpayer is a qualified research and
7 development small business and the amount of approved
8 additional credit for the taxable year in which the additional
9 credit is being claimed exceeds the taxpayer's income tax
10 liability or corporate income tax liability, the excess shall
11 be refunded to the taxpayer pursuant to Paragraphs (1) through
12 (3) of this subsection. If the taxpayer's total qualified
13 expenditures for the taxable year for which the claim is made
14 is:

15 (1) less than three million dollars
16 (\$3,000,000), the excess additional credit shall be refunded to
17 the taxpayer;

18 (2) greater than or equal to three million
19 dollars (\$3,000,000) and less than four million dollars
20 (\$4,000,000), two-thirds of the excess additional credit shall
21 be refunded to the taxpayer; and

22 (3) greater than or equal to four million
23 dollars (\$4,000,000) and less than or equal to five million
24 dollars (\$5,000,000), one-third of the excess additional credit
25 shall be refunded to the taxpayer.

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1 D. Any amount of approved additional credit not
2 claimed against the taxpayer's income tax or corporate income
3 tax due for a taxable year or refunded to the taxpayer may be
4 claimed in subsequent reporting periods for a period of up to
5 three years from the date of the original claim.

6 E. Married individuals filing separate returns for
7 a taxable year for which they could have filed a joint return
8 may each claim only one-half of the additional credit that
9 would have been claimed on a joint return."

10 **SECTION 9.** A new section of the Technology Jobs and
11 Research and Development Tax Credit Act is enacted to read:

12 "[NEW MATERIAL] TAXPAYER REPORTING REQUIREMENT.--A
13 taxpayer claiming a credit pursuant to the Technology Jobs and
14 Research and Development Tax Credit Act shall file reports with
15 the department. The reports shall be submitted on or before
16 June 30 of the year following a calendar year in which the
17 taxpayer claims a basic or additional credit and by June 30 of
18 each of the two succeeding years. The reports shall contain
19 information describing the taxpayer's business operations in
20 New Mexico that is sufficient for the department to enforce the
21 recapture provision pursuant to Section 7-9F-11 NMSA 1978. If
22 a taxpayer fails to submit a required report, the amount of any
23 basic or additional credit claimed for that year shall be
24 subject to the recapture provision."

25 **SECTION 10.** TEMPORARY PROVISION--TRANSITION OF THE

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1 RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT.--A taxpayer
2 that is eligible for a research and development small business
3 tax credit but has not claimed the credit prior to July 1, 2014
4 may claim the credit in accordance with the provisions of the
5 Research and Development Small Business Tax Credit Act in
6 effect immediately prior to July 1, 2014. The taxation and
7 revenue department shall approve claims submitted but not
8 approved prior to July 1, 2014 if the claim meets the
9 requirements of the Research and Development Small Business Tax
10 Credit Act in effect immediately prior to July 1, 2014.

11 Claiming the research and development small business tax credit
12 pursuant to this section with respect to a reporting period
13 renders the taxpayer ineligible to claim a credit for the same
14 reporting period pursuant to the Technology Jobs and Research
15 and Development Tax Credit Act.

16 SECTION 11. TEMPORARY PROVISION--TRANSFER OF REFERENCE OF
17 LAW.--On and after July 1, 2014, references in law to the
18 Technology Jobs Tax Credit Act shall be deemed to be references
19 to the Technology Jobs and Research and Development Tax Credit
20 Act.

21 SECTION 12. REPEAL.--Sections 7-9F-7 and 7-9H-1 through
22 7-9H-6 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 22,
23 Section 7 and Laws 2005, Chapter 104, Sections 11 through 16,
24 as amended) are repealed.

25 SECTION 13. APPLICABILITY.--

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A. The provisions of Section 8 of this act apply to taxable years beginning on or after January 1, 2014.

B. The provisions of this act apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2014.

SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.