

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 47

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO TAXATION; EXPANDING THE DEDUCTION FOR LOCOMOTIVE
FUEL FROM GROSS RECEIPTS AND FROM COMPENSATING TAX.

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

SECTION 1. Section 7-9-110.3 NMSA 1978 (being Laws 2011,
Chapter 60, Section 3 and Laws 2011, Chapter 61, Section 3) is
amended to read:

"7-9-110.3. PURPOSE AND REQUIREMENTS OF LOCOMOTIVE FUEL
DEDUCTION.--

A. The purpose of the deduction on fuel loaded or
used by a common carrier in a locomotive engine from gross
receipts and from compensating tax is to encourage the
construction, renovation, maintenance and operation of railroad
locomotive refueling facilities and ~~[related activities]~~ other
railroad capital investments in New Mexico.

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1 B. To be eligible for the deduction on fuel loaded
2 or used by a common carrier in a locomotive engine from
3 compensating tax, the fuel shall be used or loaded by a common
4 carrier that, after July 1, 2011:

5 (1) made a capital investment of one hundred
6 million dollars (\$100,000,000) or more in new construction or
7 renovations at the railroad locomotive refueling facility in
8 which the fuel is loaded or used; or

9 (2) on or after July 1, 2012, made a capital
10 investment of fifty million dollars (\$50,000,000) or more in
11 new railroad infrastructure improvements, including railroad
12 facilities, track, signals and supporting railroad network,
13 located in New Mexico; provided that the new railroad
14 infrastructure improvements are not required by a regulatory
15 agency to correct problems, such as regular or preventative
16 maintenance, specifically identified by that agency as
17 requiring necessary corrective action.

18 C. To be eligible for the deduction on fuel loaded
19 or used by a common carrier in a locomotive engine from gross
20 receipts, a common carrier shall deliver an appropriate
21 nontaxable transaction certificate to the seller and the sale
22 shall be made to a common carrier that:

23 (1) after July 1, 2011, made a capital
24 investment of one hundred million dollars (\$100,000,000) or
25 more in new construction or renovations at the railroad

1 locomotive refueling facility in which the fuel is sold [~~and~~
 2 ~~the common carrier shall deliver an appropriate nontaxable~~
 3 ~~transaction certificate to the seller]; or~~

4 (2) on or after July 1, 2012, made a capital
 5 investment of fifty million dollars (\$50,000,000) or more in
 6 new railroad infrastructure improvements, including railroad
 7 facilities, track, signals and supporting railroad network,
 8 located in New Mexico; provided that the new railroad
 9 infrastructure improvements are not required by a regulatory
 10 agency to correct problems, such as regular or preventative
 11 maintenance, specifically identified by that agency as
 12 requiring necessary corrective action.

13 D. The economic development department shall
 14 promulgate rules for the issuance of a certificate of
 15 eligibility for the purposes of claiming a deduction on fuel
 16 loaded or used by a common carrier in a locomotive engine from
 17 gross receipts or compensating tax. A common carrier may
 18 request a certificate of eligibility from the economic
 19 development department to provide to the taxation and revenue
 20 department to establish eligibility for a nontaxable
 21 transaction certificate for the deduction on fuel loaded or
 22 used by a common carrier in a locomotive engine from gross
 23 receipts. The taxation and revenue department shall issue
 24 nontaxable transaction certificates to a common carrier upon
 25 the presentation of a certificate of eligibility obtained from

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1 the economic development department pursuant to this
2 subsection.

3 E. The economic development department shall keep a
4 record of temporary and permanent jobs from all railroad
5 activity [~~at each railroad locomotive refueling facility~~] where
6 a capital investment is made by a common carrier that claims a
7 deduction on fuel loaded or used by a common carrier in a
8 locomotive engine from gross receipts or from compensating tax.
9 The economic development department and the taxation and
10 revenue department shall estimate the amount of state revenue
11 that is attributable to all railroad activity [~~occurring at~~
12 ~~each locomotive refueling facility~~] where a capital investment
13 is made by a common carrier that claims a deduction on fuel
14 loaded or used by a common carrier in a locomotive engine from
15 gross receipts or from compensating tax.

16 F. The economic development department and the
17 taxation and revenue department shall compile an annual report
18 with the number of taxpayers who claim the deduction on fuel
19 loaded or used by a common carrier in a locomotive engine from
20 gross receipts and from compensating tax, the number of jobs
21 created as a result of that deduction, the amount of that
22 deduction approved, the net revenue to the state as a result of
23 that deduction and any other information required by the
24 legislature to aid in evaluating the effectiveness of that
25 deduction. A taxpayer who claims a deduction on fuel loaded or

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1 used by a common carrier in a locomotive engine from gross
 2 receipts or from compensating tax shall provide the economic
 3 development department and the taxation and revenue department
 4 with the information required to compile that report. The
 5 economic development department and the taxation and revenue
 6 department shall present that report before the legislative
 7 interim revenue stabilization and tax policy committee and the
 8 legislative finance committee by November of each year.
 9 Notwithstanding any other section of law to the contrary, the
 10 economic development department and the taxation and revenue
 11 department may disclose the number of applicants for the
 12 deduction on fuel loaded or used by a common carrier in a
 13 locomotive engine from gross receipts and from compensating
 14 tax, the amount of the deduction approved, the number of
 15 employees of the taxpayer and any other information required by
 16 the legislature or the taxation and revenue department to aid
 17 in evaluating the effectiveness of that deduction.

18 G. An appropriate legislative committee shall
 19 review the effectiveness of the deduction for each taxpayer who
 20 claims the deduction on fuel loaded or used by a common carrier
 21 in a locomotive engine from gross receipts and from
 22 compensating tax every six years beginning in 2019."

23 SECTION 2. SEVERABILITY.--If any part or application of
 24 this act is held invalid, the remainder or its application to
 25 other situations or persons shall not be affected.

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1 **SECTION 3. REPEAL.**--Laws 2011, Chapter 60, Sections 4 and
2 5 and Laws 2011, Chapter 61, Sections 4 and 5 are repealed.

3 **SECTION 4. APPLICABILITY.**--The deductions provided in
4 this act apply to gross receipts tax and compensating tax
5 reporting periods beginning on or after July 1, 2013; provided
6 that the economic development department certifies to the
7 taxation and revenue department that at least one common
8 carrier, prior to July 1, 2012, in a class A county with a
9 population according to the most recent federal decennial
10 census of more than two hundred thousand but less than three
11 hundred thousand, has commenced land acquisition, acquisition
12 of all necessary permits and actual construction.

13 **SECTION 5. EFFECTIVE DATE.**--The effective date of the
14 provisions of this act is July 1, 2012.

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