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SENATE BILL 141

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

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TAXATION; CREATING THE AGRICULTURAL TRANSPORTATION
INCOME TAX CREDIT AND THE AGRICULTURAL TRANSPORTATION CORPORATE
INCOME TAX CREDIT; PROVIDING FOR AN INCOME TAX CREDIT AND A
CORPORATE INCOME TAX CREDIT OF TWENTY PERCENT OF OTHERWISE
DEDUCTIBLE BUSINESS EXPENSES DIRECTLY RELATED TO THE
TRANSPORTATION OF AGRICULTURAL PRODUCTS.

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 TRANSPORTATION INCOME TAX
CREDIT.--

A. A taxpayer who files an individual New Mexico
income tax return, who is not a dependent of another individual
and who is the owner of a New Mexico agricultural business may

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1 claim a credit in an amount equal to twenty percent of direct
2 eligible transportation expenditures incurred prior to January
3 1, 2017 to transport an agricultural product out of state to a
4 customer or for processing. The tax credit provided by this
5 section may be referred to as the "agricultural transportation
6 income tax credit".

7 B. The purpose of the agricultural transportation
8 income tax credit is to reduce the income tax liability of a
9 New Mexico agricultural business and to subsidize the New
10 Mexico agricultural industry in order for it to compete
11 successfully in the world market.

12 C. A taxpayer who is the owner of a New Mexico
13 agricultural business may only claim the agricultural
14 transportation income tax credit provided in this section for
15 the taxable year in which the eligible transportation
16 expenditures to transport an agricultural product out of state
17 were incurred. A taxpayer shall apply for approval of the
18 credit within one year following the end of the calendar year
19 in which the eligible transportation expenditure was incurred.

20 D. That portion of the agricultural transportation
21 income tax credit approved by the department that exceeds a
22 taxpayer's income tax liability in the taxable year in which
23 the agricultural transportation income tax credit is claimed
24 shall not be refunded to the taxpayer. The agricultural
25 transportation income tax credit shall not be carried forward

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1 or transferred to another taxpayer.

2 E. A husband and wife filing separate returns for a
3 taxable year for which they could have filed a joint return may
4 each claim only one-half of the agricultural transportation
5 income tax credit that would have been claimed on a joint
6 return.

7 F. A taxpayer who otherwise qualifies and claims an
8 agricultural transportation income tax credit in New Mexico
9 that may be claimed by a partnership or limited liability
10 company of which the taxpayer is a member may claim a credit
11 only in the proportion to the taxpayer's interest in the
12 partnership or limited liability company. The total credit
13 claimed by all members of the partnership or limited liability
14 company shall not exceed the allowable credit pursuant to
15 Subsection A of this section.

16 G. The taxpayer shall submit to the New Mexico
17 department of agriculture information required by its director
18 to certify the taxpayer as a New Mexico agricultural business
19 for the purpose of obtaining an agricultural transportation
20 income tax credit, including:

21 (1) that at least fifty-one percent of total
22 acres used by the taxpayer for agricultural operations are
23 located in New Mexico or at least fifty-one percent of the
24 taxpayer's income is derived from agricultural operations
25 located in New Mexico;

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1 (2) a declaration by the taxpayer that the
2 eligible transportation expenditures used to calculate the
3 agricultural transportation income tax credit are:

4 (a) directly attributable to the
5 transportation of an agricultural product out of New Mexico to
6 a customer or for processing;

7 (b) subject to applicable taxes and not
8 eligible for any other tax incentive; and

9 (c) not used to claim the agricultural
10 transportation income tax credit by any other taxpayer;

11 (3) invoices, receipts or other records of the
12 eligible transportation expenditures; and

13 (4) any other information required by the New
14 Mexico department of agriculture to demonstrate that the
15 taxpayer is eligible to claim the agricultural transportation
16 income tax credit.

17 H. The New Mexico department of agriculture shall
18 adopt rules establishing procedures to certify a New Mexico
19 agricultural business for the purposes of obtaining an
20 agricultural transportation income tax credit. The rules shall
21 ensure that the eligible transportation expenditures that
22 receive any other tax incentive shall not be used to calculate
23 the agricultural transportation income tax credit and that the
24 credits are not claimed by more than one taxpayer. The New
25 Mexico department of agriculture shall issue a dated

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1 certificate of eligibility containing the percentage of the
2 taxpayer's acres used for agricultural operations in New Mexico
3 or income derived from agricultural operations in New Mexico,
4 the total amount of transportation expenditures of the taxpayer
5 and the amount of eligible transportation expenditures that may
6 be used to calculate the agricultural transportation income tax
7 credit. All certificates of eligibility issued pursuant to
8 this subsection shall be sequentially numbered, and an account
9 of all certificates issued or destroyed shall be maintained by
10 the New Mexico department of agriculture. The taxation and
11 revenue department shall audit the records of the agricultural
12 transportation income tax credit maintained by the New Mexico
13 department of agriculture on a periodic basis to ensure
14 effective administration of the agricultural transportation
15 income tax credit and compliance with the Tax Administration
16 Act and this section.

17 I. The economic development department shall track
18 job creation as a result of the agricultural transportation
19 income tax credit. A New Mexico agricultural business shall
20 submit to the economic development department the total number
21 of employees of the taxpayer and number of employees or
22 contractors associated with eligible transportation
23 expenditures and any other information required by the
24 secretary of economic development to maintain a record of jobs
25 created or lost while the agricultural transportation income

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1 tax credit is in effect.

2 J. To claim an agricultural transportation income
3 tax credit, the taxpayer shall provide to the taxation and
4 revenue department the certificate of eligibility issued by the
5 New Mexico department of agriculture pursuant to this section
6 to the taxpayer for the taxable year for which the agricultural
7 transportation income tax credit is claimed.

8 K. The taxation and revenue department may allow a
9 maximum annual aggregate of two million dollars (\$2,000,000) in
10 agricultural transportation income tax credits that may be
11 claimed pursuant to the Income Tax Act and agricultural
12 transportation corporate income tax credits that may be claimed
13 pursuant to the Corporate Income and Franchise Tax Act.
14 Applications for the agricultural transportation income tax
15 credit and the agricultural transportation corporate income tax
16 credit shall be considered in the order received by the
17 taxation and revenue department.

18 L. The economic development department and the
19 taxation and revenue department shall compile an annual report
20 with the number of taxpayers who claim the agricultural
21 transportation income tax credit, the number of jobs created as
22 a result of the credit, the amount of the credit approved, the
23 net revenue to the state as a result of the credit and any
24 other information required by the legislature to aid in
25 evaluating the effectiveness of the credit. A taxpayer who

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1 claims the agricultural transportation income tax credit shall
2 provide the economic development department and the taxation
3 and revenue department with the information required to compile
4 the report. The economic development department and the
5 taxation and revenue department shall present the report before
6 the interim revenue stabilization and tax policy committee and
7 the legislative finance committee by November of each year.

8 Notwithstanding any other section of law to the contrary, the
9 New Mexico department of agriculture, the economic development
10 department and the taxation and revenue department may disclose
11 the number of applicants for the agricultural transportation
12 income tax credit, the amount of the credit approved, the total
13 income tax liability of the taxpayer, the number of employees
14 of the taxpayer and any other information required by the
15 legislature or the taxation and revenue department to aid in
16 evaluating the effectiveness of the credit.

17 M. An appropriate legislative committee shall
18 review the effectiveness of the agricultural transportation
19 income tax credit every four years beginning in 2015.

20 N. As used in this section:

21 (1) "agricultural operation" means the:

22 (a) plowing, tilling or preparation of
23 soil for the production of crops, livestock, animals or
24 poultry;

25 (b) planting, growing, fertilizing or

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1 harvesting of crops;

2 (c) application of pesticides,
3 herbicides or other chemicals, compounds or substances to
4 crops, weeds or soil in the connection with production of
5 crops, livestock, animals or poultry;

6 (d) breeding, hatching, raising,
7 producing, feeding, keeping, slaughtering or processing of
8 livestock, hogs, aquatic animals, equines, chickens, turkeys,
9 poultry or other fowl normally raised for food, mules, cattle,
10 sheep, goats, rabbits or similar farm animals for commercial
11 purposes;

12 (e) production and keeping of honey
13 bees, production of honey bee products and honey bee processing
14 facilities;

15 (f) production, processing or packaging
16 of eggs or egg products;

17 (g) manufacturing of feed for poultry or
18 livestock;

19 (h) rotation of crops;

20 (i) production of agricultural goods for
21 sale; or

22 (j) application of existing, changed or
23 new technology, practices, processes or products to an
24 agricultural operation;

25 (2) "agricultural product" means an

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1 agricultural good for sale;

2 (3) "eligible transportation expenditure"
3 means ordinary and necessary expenses paid or incurred during
4 the taxable year to transport an agricultural product grown,
5 raised or processed at a New Mexico farm, ranch or processing
6 plant from that farm, ranch or processing plant to a customer
7 or for processing and includes costs paid to common carriers to
8 transport an agricultural product out of New Mexico, costs paid
9 to operate vehicles for the purpose of transporting an
10 agricultural product, including fuel costs, and costs paid to
11 personnel that transport an agricultural product, but "eligible
12 transportation expenditure" does not include costs to prepare
13 an agricultural product for shipment;

14 (4) "New Mexico agricultural business" means a
15 sole proprietorship or a partnership or limited liability
16 company primarily located in New Mexico and engaged in:

17 (a) cultivating land to raise crops or
18 feeding, breeding, and raising livestock or poultry;

19 (b) the production of crops, livestock
20 or poultry; or

21 (c) processing of agricultural products;
22 and

23 (5) "tax incentive" means a credit, deduction,
24 rebate or exemption of any otherwise applicable tax or other
25 tax benefit."

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1 SECTION 2. A new section of the Corporate Income and
2 Franchise Tax Act is enacted to read:

3 "[NEW MATERIAL] AGRICULTURAL TRANSPORTATION CORPORATE
4 INCOME TAX CREDIT.--

5 A. A taxpayer that is a New Mexico corporation and
6 that files a corporate income tax return may claim a credit in
7 an amount equal to twenty percent of direct eligible
8 transportation expenditures incurred prior to January 1, 2017
9 to transport an agricultural product out of state to a customer
10 or for processing. The tax credit provided by this section may
11 be referred to as the "agricultural transportation corporate
12 income tax credit".

13 B. The purpose of the agricultural transportation
14 corporate income tax credit is to reduce the income tax
15 liability of a New Mexico agricultural business and to
16 subsidize the New Mexico agricultural industry in order for it
17 to compete successfully in the world market.

18 C. A taxpayer may only claim the agricultural
19 transportation corporate income tax credit provided in this
20 section for the taxable year in which the eligible
21 transportation expenditures to transport an agricultural
22 product out of state were incurred. A taxpayer shall apply for
23 approval of the credit within one year following the end of the
24 calendar year in which the eligible transportation expenditure
25 was incurred.

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1 D. That portion of the agricultural transportation
2 corporate income tax credit approved by the department that
3 exceeds a taxpayer's income tax liability in the taxable year
4 in which the agricultural transportation corporate income tax
5 credit is claimed shall not be refunded to the taxpayer. The
6 agricultural transportation corporate income tax credit shall
7 not be carried forward or transferred to another taxpayer.

8 E. The taxpayer shall submit to the New Mexico
9 department of agriculture information required by its director
10 to certify the taxpayer as a New Mexico agricultural business
11 for the purpose of obtaining an agricultural transportation
12 corporate income tax credit, including:

13 (1) that at least fifty-one percent of total
14 acres used by the taxpayer for agricultural operations are
15 located in New Mexico or at least fifty-one percent of the
16 taxpayer's income is derived from agricultural operations
17 located in New Mexico;

18 (2) a declaration by the taxpayer that the
19 eligible transportation expenditures used to calculate the
20 agricultural transportation corporate income tax credit are:

21 (a) directly attributable to the
22 transportation of an agricultural product out of New Mexico to
23 a customer or for processing;

24 (b) subject to applicable taxes and not
25 eligible for any other tax incentive; and

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1 (c) not used to claim the agricultural
2 transportation corporate income tax credit by any other
3 taxpayer;

4 (3) invoices, receipts or other records for
5 the eligible transportation expenditures; and

6 (4) any other information required by the New
7 Mexico department of agriculture to demonstrate that the
8 taxpayer is eligible to claim the agricultural transportation
9 corporate income tax credit.

10 F. The New Mexico department of agriculture shall
11 adopt rules establishing procedures to certify a New Mexico
12 agricultural business for the purposes of obtaining an
13 agricultural transportation corporate income tax credit. The
14 rules shall ensure that the eligible transportation
15 expenditures that receive any other tax incentive shall not be
16 used to calculate the agricultural transportation corporate
17 income tax credit and that the credit is not claimed by more
18 than one taxpayer. The New Mexico department of agriculture
19 shall issue a dated certificate of eligibility containing the
20 percentage of the taxpayer's acres used for agricultural
21 operations in New Mexico or income derived from agricultural
22 operations in New Mexico, the total amount of transportation
23 expenditures of the taxpayer and the amount of eligible
24 transportation expenditures that may be used to calculate the
25 agricultural transportation corporate income tax credit. All

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1 certificates of eligibility issued pursuant to this subsection
2 shall be sequentially numbered, and an account of all
3 certificates issued or destroyed shall be maintained by the New
4 Mexico department of agriculture. The taxation and revenue
5 department shall audit the records of the agricultural
6 transportation corporate income tax credit maintained by the
7 New Mexico department of agriculture on a periodic basis to
8 ensure effective administration of the agricultural
9 transportation corporate income tax credit and compliance with
10 the Tax Administration Act and this section.

11 G. The economic development department shall track
12 job creation as a result of the agricultural transportation
13 corporate income tax credit. A New Mexico agricultural
14 business shall submit to the economic development department
15 the total number of employees of the taxpayer, the number of
16 employees or contractors associated with eligible
17 transportation expenditures and any other information required
18 by the secretary of economic development to maintain a record
19 of jobs created or lost while the agricultural transportation
20 corporate income tax credit is in effect.

21 H. To claim an agricultural transportation
22 corporate income tax credit, the taxpayer shall provide to the
23 taxation and revenue department the certificate of eligibility
24 issued by the New Mexico department of agriculture pursuant to
25 this section to the taxpayer for the taxable year for which the

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1 agricultural transportation corporate income tax credit is
2 claimed.

3 I. The taxation and revenue department may allow a
4 maximum annual aggregate of two million dollars (\$2,000,000) in
5 agricultural transportation income tax credits that may be
6 claimed pursuant to the Income Tax Act and agricultural
7 transportation corporate income tax credits that may be claimed
8 pursuant to the Corporate Income and Franchise Tax Act.
9 Applications for the agricultural transportation income tax
10 credit and the agricultural transportation corporate income tax
11 credit shall be considered in the order received by the
12 taxation and revenue department.

13 J. The economic development department and the
14 taxation and revenue department shall compile an annual report
15 with the number of taxpayers that claim the agricultural
16 transportation corporate income tax credit, the number of jobs
17 created as a result of the credit, the amount of the credit
18 approved, the net revenue to the state as a result of the
19 credit and any other information required by the legislature to
20 aid in evaluating the effectiveness of the credit. A taxpayer
21 that claims the agricultural transportation corporate income
22 tax credit shall provide the economic development department
23 and the taxation and revenue department with the information
24 required to compile the report. The economic development
25 department and the taxation and revenue department shall

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1 present the report before the interim revenue stabilization and
2 tax policy committee and the legislative finance committee by
3 November of each year. Notwithstanding any other section of
4 law to the contrary, the New Mexico department of agriculture,
5 the economic development department and the taxation and
6 revenue department may disclose the number of applicants for
7 the agricultural transportation corporate income tax credit,
8 the amount of the credit approved, the total corporate income
9 tax liability of the taxpayer, the number of employees of the
10 taxpayer and any other information required by the legislature
11 or the taxation and revenue department to aid in evaluating the
12 effectiveness of the credit.

13 K. An appropriate legislative committee shall
14 review the effectiveness of the agricultural transportation
15 corporate income tax credit every four years beginning in 2015.

16 L. As used in this section:

17 (1) "agricultural operation" means the:

18 (a) plowing, tilling or preparation of
19 soil for the production of crops, livestock, animals or
20 poultry;

21 (b) planting, growing, fertilizing or
22 harvesting of crops;

23 (c) application of pesticides,
24 herbicides or other chemicals, compounds or substances to
25 crops, weeds or soil in the connection with production of

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1 crops, livestock, animals or poultry;

2 (d) breeding, hatching, raising,
3 producing, feeding, keeping, slaughtering or processing of
4 livestock, hogs, aquatic animals, equines, chickens, turkeys,
5 poultry or other fowl normally raised for food, mules, cattle,
6 sheep, goats, rabbits or similar farm animals for commercial
7 purposes;

8 (e) production and keeping of honey
9 bees, production of honey bee products and honey bee processing
10 facilities;

11 (f) production, processing or packaging
12 of eggs or egg products;

13 (g) manufacturing of feed for poultry or
14 livestock;

15 (h) rotation of crops;

16 (i) production of agricultural goods for
17 sale; or

18 (j) application of existing, changed or
19 new technology, practices, processes or products to an
20 agricultural operation;

21 (2) "agricultural product" means an
22 agricultural good for sale;

23 (3) "eligible transportation expenditure"
24 means ordinary and necessary expenses paid or incurred during
25 the taxable year to transport an agricultural product grown,

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1 raised or processed at a New Mexico farm, ranch or processing
2 plant from that farm, ranch or processing plant to a customer
3 or for processing and includes costs paid to common carriers to
4 transport an agricultural product out of New Mexico, costs paid
5 to operate vehicles for the purpose of transporting an
6 agricultural product, including fuel costs, and costs paid to
7 personnel that transport an agricultural product, but "eligible
8 transportation expenditure" does not include costs to prepare
9 an agricultural product for shipment;

10 (4) "New Mexico agricultural business" means a
11 corporation primarily located in New Mexico and engaged in:

12 (a) cultivating land to raise crops or
13 feeding, breeding, and raising livestock or poultry;

14 (b) the production of crops, livestock
15 or poultry; or

16 (c) processing of agricultural products;

17 and

18 (5) "tax incentive" means a credit, deduction,
19 rebate or exemption of any otherwise applicable tax or other
20 tax benefit."

21 **SECTION 3. APPLICABILITY.**--The provisions of this act
22 apply to taxable years beginning on or after January 1, 2012.