

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 141

3
4
5
6
7
8
9
10
11 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

12
13
14
15
16
17
18
19
20
21
22
23
24
25
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

.189170.1

underscored material = new
[bracketed material] = delete

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 allow the New Mexico
10 agricultural industry to compete successfully in the world
11 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

.189170.1

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 taxation and
17 revenue department information required to certify the taxpayer
18 as a New Mexico agricultural business for the purpose of
19 obtaining an agricultural transportation income tax credit,
20 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;

.189170.1

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
14 taxation and revenue department to demonstrate that the
15 taxpayer is eligible to claim the agricultural transportation
16 income tax credit.

17 H. The taxation and revenue department shall adopt
18 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.

25 I. The economic development department shall track

1 job creation as a result of the agricultural transportation
2 income tax credit. A New Mexico agricultural business shall
3 submit to the economic development department the total number
4 of employees of the taxpayer and number of employees or
5 contractors associated with eligible transportation
6 expenditures and any other information required by the
7 secretary of economic development to maintain a record of jobs
8 created or lost while the agricultural transportation income
9 tax credit is in effect.

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

20 K. The economic development department and the
21 taxation and revenue department shall compile an annual report
22 with the number of taxpayers who claim the agricultural
23 transportation income tax credit, the number of jobs created as
24 a result of the credit, the amount of the credit approved, the
25 net revenue to the state as a result of the credit and any

.189170.1

1 other information required by the legislature to aid in
2 evaluating the effectiveness of the credit. A taxpayer who
3 claims the agricultural transportation income tax credit shall
4 provide the economic development department and the taxation
5 and revenue department with the information required to compile
6 the report. The economic development department and the
7 taxation and revenue department shall present the report before
8 the interim revenue stabilization and tax policy committee and
9 the legislative finance committee by November of each year.
10 Notwithstanding any other section of law to the contrary, the
11 economic development department and the taxation and revenue
12 department may disclose the number of applicants for the
13 agricultural transportation income tax credit, the amount of
14 the credit approved, the total income tax liability of the
15 taxpayer, the number of employees of the taxpayer and any other
16 information required by the legislature or the taxation and
17 revenue department to aid in evaluating the effectiveness of
18 the credit.

19 L. An appropriate legislative committee shall
20 review the effectiveness of the agricultural transportation
21 income tax credit every four years beginning in 2015.

22 M. As used in this section:

23 (1) "agricultural operation" means the:

24 (a) plowing, tilling or preparation of
25 soil for the production of crops, livestock, animals or

1 poultry;

2 (b) planting, growing, fertilizing or
3 harvesting of crops;

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

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

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

17 (f) production, processing or packaging
18 of eggs or egg products;

19 (g) manufacturing of feed for poultry or
20 livestock;

21 (h) rotation of crops;

22 (i) production of milk or milk products;

23 (j) production of agricultural goods for
24 sale; or

25 (k) application of existing, changed or

.189170.1

underscoring material = new
~~[bracketed material] = delete~~

1 new technology, practices, processes or products to an
2 agricultural operation;

3 (2) "agricultural product" means an
4 agricultural good for sale;

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

17 (4) "New Mexico agricultural business" means a
18 sole proprietorship or a partnership or limited liability
19 company primarily located in New Mexico and engaged in:

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

22 (b) the production of crops, livestock
23 or poultry; or

24 (c) processing of agricultural products
25 for consumption; and

1 (5) "tax incentive" means a credit, deduction,
 2 rebate or exemption of any otherwise applicable tax or other
 3 tax benefit."

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

6 "[NEW MATERIAL] AGRICULTURAL TRANSPORTATION CORPORATE
 7 INCOME TAX CREDIT.--

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

16 B. The purpose of the agricultural transportation
 17 corporate income tax credit is to reduce the income tax
 18 liability of a New Mexico agricultural business and to allow
 19 the New Mexico agricultural industry to compete successfully in
 20 the world market.

21 C. A taxpayer may only claim the agricultural
 22 transportation corporate income tax credit provided in this
 23 section for the taxable year in which the eligible
 24 transportation expenditures to transport an agricultural
 25 product out of state were incurred. A taxpayer shall apply for

.189170.1

underscored material = new
 [bracketed material] = delete

1 approval of the credit within one year following the end of the
2 calendar year in which the eligible transportation expenditure
3 was incurred.

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

11 E. The taxpayer shall submit to the taxation and
12 revenue department information required to certify the taxpayer
13 as a New Mexico agricultural business for the purpose of
14 obtaining an agricultural transportation corporate income tax
15 credit, including:

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

21 (2) a declaration by the taxpayer that the
22 eligible transportation expenditures used to calculate the
23 agricultural transportation corporate income tax credit are:

24 (a) directly attributable to the
25 transportation of an agricultural product out of New Mexico to

1 a customer or for processing;

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

4 (c) not used to claim the agricultural
 5 transportation corporate income tax credit by any other
 6 taxpayer;

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

9 (4) any other information required by the
 10 taxation and revenue department to demonstrate that the
 11 taxpayer is eligible to claim the agricultural transportation
 12 corporate income tax credit.

13 F. The taxation and revenue department shall adopt
 14 rules establishing procedures to certify a New Mexico
 15 agricultural business for the purposes of obtaining an
 16 agricultural transportation corporate income tax credit. The
 17 rules shall ensure that the eligible transportation
 18 expenditures that receive any other tax incentive shall not be
 19 used to calculate the agricultural transportation corporate
 20 income tax credit and that the credit is not claimed by more
 21 than one taxpayer.

22 G. The economic development department shall track
 23 job creation as a result of the agricultural transportation
 24 corporate income tax credit. A New Mexico agricultural
 25 business shall submit to the economic development department

.189170.1

underscored material = new
 [bracketed material] = delete

1 the total number of employees of the taxpayer, the number of
2 employees or contractors associated with eligible
3 transportation expenditures and any other information required
4 by the secretary of economic development to maintain a record
5 of jobs created or lost while the agricultural transportation
6 corporate income tax credit is in effect.

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

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

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

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

19 K. As used in this section:

20 (1) "agricultural operation" means the:

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

24 (b) planting, growing, fertilizing or
25 harvesting of crops;

.189170.1

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

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

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

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

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

18 (h) rotation of crops;

19 (i) production of milk or milk products;

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

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

25 (2) "agricultural product" means an

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 corporation primarily located in New Mexico and engaged in:

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

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

20 (c) processing of agricultural products
21 for consumption; and

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

25 SECTION 3. APPLICABILITY.--The provisions of this act

.189170.1

1 apply to taxable years beginning on or after January 1, 2012.

2 - 16 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

underscoring = new
~~[bracketed material]~~ = delete