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SENATE BILL 222

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

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO TAXATION; PROVIDING FOR A CREDIT FOR BUSINESS  
IMPROVEMENT BENEFIT FEES OF CERTAIN BUSINESS IMPROVEMENT  
DISTRICTS FROM NET INCOME.

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]~~ BUSINESS IMPROVEMENT BENEFIT TAX CREDIT.--

A. A taxpayer who files an individual New Mexico  
income tax return and who is not a dependent of another  
individual may claim a credit in an amount equal to the amount  
of the qualified business improvement benefit fee less the  
amount of any other tax incentive or rebate of expenditures to  
the taxpayer as a result of the qualified business improvement  
benefit fee paid by the taxpayer. The tax credit provided by

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1 this section may be referred to as the "business improvement  
2 benefit tax credit".

3 B. The purpose of the credit provided by this  
4 section is to promote revitalization and restore the economic  
5 vitality of areas within certain municipalities by encouraging  
6 business owners to participate in business improvement  
7 districts.

8 C. A taxpayer may claim the credit provided in this  
9 section for each taxable year in which the taxpayer pays the  
10 qualified business improvement benefit fee. A taxpayer shall  
11 apply for approval for a credit within one year following the  
12 end of the calendar year in which the taxpayer paid the  
13 qualified business improvement benefit fee.

14 D. That portion of a business improvement benefit  
15 tax credit approved by the department that exceeds a taxpayer's  
16 income tax liability in the taxable year in which the credit is  
17 claimed shall not be refunded to the taxpayer. The business  
18 improvement benefit tax credit shall not be carried forward or  
19 transferred to another taxpayer.

20 E. A husband and wife who file separate returns for  
21 a taxable year in which they could have filed a joint return  
22 may each claim only one-half of the credit provided by this  
23 section that would have been allowed on the joint return.

24 F. A taxpayer who otherwise qualifies for the  
25 business improvement benefit tax credit that may be claimed by

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1 a partnership or limited liability company of which the  
2 taxpayer is a member may only claim a credit in the proportion  
3 to the taxpayer's interest in the partnership or limited  
4 liability company. The total credit by all members of the  
5 partnership or limited liability company shall not exceed the  
6 allowable credit pursuant to Subsection A of this section.

7 G. The taxpayer shall submit to the municipality in  
8 which the business improvement district is located the  
9 information required to certify that a taxpayer is located  
10 within the business improvement district and subject to the  
11 qualified business improvement benefit fee for the purpose of  
12 claiming the credit provided by this section.

13 H. The municipality shall adopt an ordinance  
14 establishing procedures to certify that a taxpayer is located  
15 within the business improvement district and subject to the  
16 qualified business improvement benefit fee and to certify the  
17 credit amount for the purposes of claiming the credit provided  
18 by this section. The ordinance shall ensure that not more than  
19 one taxpayer may claim the business improvement benefit tax  
20 credit for the same qualified business improvement benefit fee  
21 paid. The municipality shall calculate the credit amount in  
22 accordance with the provisions of this section. The  
23 municipality shall issue a dated certificate of eligibility  
24 containing the amount that the taxpayer paid in qualified  
25 business improvement fees, the amount of any other tax

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1 incentive or rebate of expenditures due to the taxpayer as a  
2 result of the qualified business improvement benefit fee paid  
3 by the taxpayer and the total amount of the credit that the  
4 taxpayer may claim. All certificates of eligibility issued  
5 pursuant to this subsection shall be sequentially numbered, and  
6 an account of all certificates issued or destroyed shall be  
7 maintained by the municipality. The department shall audit the  
8 records of the credit provided by this section and maintained  
9 by the municipality on a periodic basis to ensure effective  
10 administration of the credit and compliance with the Tax  
11 Administration Act and this section.

12 I. The economic development department shall track  
13 job creation as a result of the credit provided by this  
14 section. A taxpayer claiming the credit provided by this  
15 section shall submit to the economic development department the  
16 total number of employees or contractors of the taxpayer and  
17 any other information required by the secretary of economic  
18 development to maintain a record of jobs created or lost.

19 J. To claim the credit provided in this section,  
20 the taxpayer shall provide to the department the certificate of  
21 eligibility issued by the municipality pursuant to this section  
22 to the taxpayer for the taxable year for which the credit is  
23 claimed.

24 K. The department may allow a maximum annual  
25 aggregate of two million dollars (\$2,000,000) in business

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1 improvement benefit tax credits provided pursuant to this  
2 section and the Corporate Income and Franchise Tax Act.  
3 Applications for the business improvement benefit tax credit  
4 shall be considered in the order received by the department.

5 L. The economic development department and the  
6 taxation and revenue department shall compile an annual report  
7 with the number of taxpayers who claim the credit provided by  
8 this section, the number of jobs created as a result of the  
9 credit, the aggregate amount of the credit, the net revenue to  
10 the state as a result of the credit and any other information  
11 required by the legislature to aid in evaluating the  
12 effectiveness of the credit. A taxpayer who claims the credit  
13 shall provide the economic development department and the  
14 taxation and revenue department with the information required  
15 to compile the report. The economic development department and  
16 the taxation and revenue department shall present the report  
17 before the interim revenue stabilization and tax policy  
18 committee and the legislative finance committee by November of  
19 each year. Notwithstanding any other section of law to the  
20 contrary, the economic development department and the taxation  
21 and revenue department may disclose the number of applicants  
22 for the credit, the amount of the credit approved, the total  
23 income tax liability of the taxpayer, the number of employees  
24 of the taxpayer and any other information required by the  
25 legislature or the taxation and revenue department to aid in

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1 evaluating the effectiveness of the credit.

2 M. An appropriate legislative committee shall  
3 review the effectiveness of the credit provided by this section  
4 every four years beginning in 2015.

5 N. As used in this section:

6 (1) "business improvement district" means an  
7 entity, having a contiguous area of clearly defined boundaries  
8 within an incorporated municipality in which at least  
9 three-fourths of the area is zoned and used for business or  
10 mixed commercial or retail use, that is established pursuant to  
11 the Business Improvement District Act, in which the  
12 improvements are to be constructed and upon which the business  
13 improvement benefit fee for the costs of the improvements is to  
14 be imposed;

15 (2) "qualified business improvement benefit  
16 fee" means the business improvement benefit fee assessed  
17 pursuant to the Business Improvement District Act by a business  
18 improvement district that is within an incorporated  
19 municipality with a population, as shown by the most recent  
20 federal decennial census, of greater than twenty thousand and  
21 less than twenty-five thousand and located in a class B county  
22 with a net taxable value used for rate-setting purposes for the  
23 2009 property tax year of greater than three hundred million  
24 dollars (\$300,000,000) but less than seven hundred fifty  
25 million dollars (\$750,000,000); and

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1 (3) "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] BUSINESS IMPROVEMENT BENEFIT TAX CREDIT.--

7 A. A taxpayer that is a New Mexico corporation and  
8 that files a corporate income tax return may claim a credit in  
9 an amount equal to the amount of the qualified business  
10 improvement benefit fee less the amount of any other tax  
11 incentive or rebate of expenditures to the taxpayer as a result  
12 of the qualified business improvement benefit fee paid by the  
13 taxpayer. The tax credit provided by this section may be  
14 referred to as the "business improvement benefit tax credit".

15 B. The purpose of the credit provided by this  
16 section is to promote revitalization and restore the economic  
17 vitality of areas within certain municipalities by encouraging  
18 corporations to participate in business improvement districts.

19 C. A taxpayer may claim the credit provided in this  
20 section for each taxable year in which the taxpayer pays the  
21 qualified business improvement benefit fee. A taxpayer shall  
22 apply for approval for a credit within one year following the  
23 end of the calendar year in which the taxpayer paid the  
24 qualified business improvement benefit fee.

25 D. That portion of a business improvement benefit

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1 tax credit approved by the department that exceeds a taxpayer's  
2 income tax liability in the taxable year in which the credit is  
3 claimed shall not be refunded to the taxpayer. The business  
4 improvement benefit tax credit shall not be carried forward or  
5 transferred to another taxpayer.

6 E. The taxpayer shall submit to the municipality in  
7 which the business improvement district is located the  
8 information required to certify that a taxpayer is located  
9 within the business improvement district and subject to the  
10 qualified business improvement benefit fee for the purpose of  
11 claiming the deduction provided by this section.

12 F. The municipality shall adopt an ordinance  
13 establishing procedures to certify that a taxpayer is located  
14 within the business improvement district and subject to the  
15 qualified business improvement benefit fee and to certify the  
16 credit amount for the purposes of claiming the credit provided  
17 by this section. The ordinance shall ensure that not more than  
18 one taxpayer may claim the business improvement benefit tax  
19 credit for the same qualified business improvement benefit fee  
20 paid. The municipality shall calculate the credit amount in  
21 accordance with the provisions of this section. The  
22 municipality shall issue a dated certificate of eligibility  
23 containing the amount that the taxpayer paid in qualified  
24 business improvement fees, the amount of any other tax  
25 incentive or rebate of expenditures due to the taxpayer as a

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1 result of the qualified business improvement benefit fee paid  
2 by the taxpayer and the total amount of the credit that the  
3 taxpayer may claim. All certificates of eligibility issued  
4 pursuant to this subsection shall be sequentially numbered, and  
5 an account of all certificates issued or destroyed shall be  
6 maintained by the municipality. The department shall audit the  
7 records of the deduction provided by this section and  
8 maintained by the municipality on a periodic basis to ensure  
9 effective administration of the credit and compliance with the  
10 Tax Administration Act and this section.

11 G. The economic development department shall track  
12 job creation as a result of the credit provided by this  
13 section. A taxpayer claiming the credit provided by this  
14 section shall submit to the economic development department the  
15 total number of employees or contractors of the taxpayer and  
16 any other information required by the secretary of economic  
17 development to maintain a record of jobs created or lost.

18 H. To claim the credit provided in this section,  
19 the taxpayer shall provide to the department the certificate of  
20 eligibility issued by the municipality pursuant to this section  
21 to the taxpayer for the taxable year for which the credit is  
22 claimed.

23 I. The department may allow a maximum annual  
24 aggregate of two million dollars (\$2,000,000) in business  
25 improvement benefit tax credits provided pursuant to this

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1 section and the Income Tax Act. Applications for the business  
2 improvement benefit tax credit shall be considered in the order  
3 received by the department.

4 J. The economic development department and the  
5 taxation and revenue department shall compile an annual report  
6 with the number of taxpayers who claim the credit provided by  
7 this section, the number of jobs created as a result of the  
8 credit, the aggregate amount of the credit, the net revenue to  
9 the state as a result of the credit and any other information  
10 required by the legislature to aid in evaluating the  
11 effectiveness of the credit. A taxpayer that claims the credit  
12 shall provide the economic development department and the  
13 taxation and revenue department with the information required  
14 to compile the report. The economic development department and  
15 the taxation and revenue department shall present the report  
16 before the interim revenue stabilization and tax policy  
17 committee and the legislative finance committee by November of  
18 each year. Notwithstanding any other section of law to the  
19 contrary, the economic development department and the taxation  
20 and revenue department may disclose the number of applicants  
21 for the credit, the amount of the credit approved, the total  
22 income tax liability of the taxpayer, the number of employees  
23 of the taxpayer and any other information required by the  
24 legislature or the taxation and revenue department to aid in  
25 evaluating the effectiveness of the credit.

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1           K. An appropriate legislative committee shall  
2 review the effectiveness of the credit provided by this section  
3 every four years beginning in 2015.

4           L. As used in this section:

5                   (1) "business improvement district" means an  
6 entity having a contiguous area of clearly defined boundaries  
7 within an incorporated municipality in which at least  
8 three-fourths of the area is zoned and used for business or  
9 mixed commercial or retail use, that is established pursuant to  
10 the Business Improvement District Act, in which the  
11 improvements are to be constructed and upon which the business  
12 improvement benefit fee for the costs of the improvements is to  
13 be imposed;

14                   (2) "qualified business improvement benefit  
15 fee" means the business improvement benefit fee assessed  
16 pursuant to the Business Improvement District Act by a business  
17 improvement district that is within an incorporated  
18 municipality with a population, as shown by the most recent  
19 federal decennial census, of greater than twenty thousand and  
20 less than twenty-five thousand and located in a class B county  
21 with a net taxable value used for rate-setting purposes for the  
22 2009 property tax year of greater than three hundred million  
23 dollars (\$300,000,000) but less than seven hundred fifty  
24 million dollars (\$750,000,000); and

25                   (3) "tax incentive" means a credit, deduction,

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1 rebate or exemption of any otherwise applicable tax or other  
2 tax benefit."

3 SECTION 3. APPLICABILITY.--The provisions of this act  
4 apply to taxable years beginning on or after January 1, 2013.