

1 SENATE BILL 323

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO TAXATION; CREATING THE SMALL BUSINESS INVESTMENT  
12 INCOME TAX CREDIT.

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

15 SECTION 1. A new section of the Income Tax Act is enacted  
16 to read:

17 "[NEW MATERIAL] SMALL BUSINESS INVESTMENT INCOME TAX  
18 CREDIT.--

19 A. A taxpayer who files a New Mexico income tax  
20 return, is not a dependent of another taxpayer, is an  
21 accredited investor and makes a qualified investment may claim  
22 a credit in an amount not to exceed twenty-five percent of not  
23 more than two hundred fifty thousand dollars (\$250,000) of the  
24 qualified investment against the taxpayer's tax liability  
25 imposed pursuant to the Income Tax Act. The tax credit

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1 provided in this section shall be known as the "small business  
2 investment income tax credit".

3 B. The purpose of the small business investment  
4 income tax credit is to stimulate investment in small and  
5 emerging businesses in New Mexico.

6 C. A taxpayer may claim the small business  
7 investment income tax credit for not more than five qualified  
8 investments in a taxable year; provided that each investment is  
9 in a different qualified business. A taxpayer may claim the  
10 small business investment income tax credit for qualified  
11 investments made in the same qualified business or successor of  
12 that business for not more than three taxable years.

13 D. A taxpayer may claim the small business  
14 investment income tax credit no later than one year following  
15 the end of the calendar year in which the qualified investment  
16 was made; provided that a claim for the credit may not be made  
17 or allowed with respect to any investment made after December  
18 31, 2021.

19 E. A taxpayer may not claim a small business  
20 investment income tax credit with respect to a reporting period  
21 if the taxpayer claims, with respect to that same reporting  
22 period, a credit pursuant to Section 7-2-18.17 NMSA 1978, the  
23 Investment Credit Act, the Technology Jobs Tax Credit Act or  
24 the Research and Development Small Business Tax Credit Act.

25 F. A taxpayer shall apply for certification of

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1 eligibility for the small business investment income tax credit  
2 from the economic development department. Completed  
3 applications shall be considered in the order received. If the  
4 economic development department determines that the taxpayer is  
5 an accredited investor and the investment is a qualified  
6 investment, it shall issue a certificate of eligibility to the  
7 taxpayer, subject to the limitation in Subsection G of this  
8 section. The certificate shall be dated and shall include a  
9 calculation of the amount of the small business investment  
10 income tax credit for which the taxpayer is eligible. The  
11 economic development department may issue rules governing the  
12 procedure for administering the provisions of this subsection.

13 G. The economic development department may issue a  
14 certificate of eligibility pursuant to Subsection F of this  
15 section only if the total amount of small business investment  
16 income tax credits represented by certificates of eligibility  
17 issued by the economic development department in any calendar  
18 year will not exceed two million dollars (\$2,000,000). If the  
19 applications for certificates of eligibility for small business  
20 investment income tax credits represent an aggregate amount  
21 exceeding two million dollars (\$2,000,000) for any calendar  
22 year, certificates shall be issued in the order that the  
23 completed applications were received. The excess applications  
24 that would have been certified, but for the limit imposed by  
25 this subsection, shall be certified, subject to the same limit,

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1 in subsequent calendar years.

2 H. To claim the small business investment income  
3 tax credit, the taxpayer must provide to the taxation and  
4 revenue department a certificate of eligibility issued by the  
5 economic development department pursuant to Subsection F of  
6 this section and any other information the taxation and revenue  
7 department may require to determine the amount of the tax  
8 credit due the taxpayer. If the requirements of this section  
9 have been complied with, the taxation and revenue department  
10 shall approve the claim for the credit.

11 I. That portion of a small business investment  
12 income tax credit that exceeds a taxpayer's tax liability in  
13 the taxable year in which the credit is claimed may be carried  
14 forward for a maximum of five consecutive taxable years.

15 J. Married individuals filing separate returns for  
16 a taxable year for which they could have filed a joint return  
17 may each claim only one-half of the small business investment  
18 income tax credit that would have been claimed on a joint  
19 return.

20 K. A taxpayer may be allocated the right to claim a  
21 small business investment income tax credit in proportion to  
22 the taxpayer's ownership interest if the taxpayer owns an  
23 interest in a business entity that is taxed for federal income  
24 tax purposes as a partnership and that business entity has met  
25 all of the requirements to be eligible for the credit. The

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1 total credit claimed by all members of the partnership or  
2 limited liability company shall not exceed the allowable credit  
3 pursuant to Subsection A of this section.

4 L. The economic development department shall report  
5 annually to the revenue stabilization and tax policy committee  
6 and the legislative finance committee on the utilization and  
7 effectiveness of the small business investment income tax  
8 credit. The report shall include, at a minimum, the number of  
9 accredited investors to whom certificates of eligibility were  
10 issued by the department in the previous year, the names of  
11 those investors, the amount of small business investment income  
12 tax credit for which each investor was certified eligible and  
13 the number and names of the businesses that the department has  
14 determined are qualified businesses for purposes of an  
15 investment by an accredited investor. The report shall also  
16 include an evaluation of the success of the small business  
17 investment income tax credit as an incubator of new businesses  
18 in New Mexico and of the continued viability and operation in  
19 New Mexico of businesses in which investments eligible for the  
20 small business investment income tax credit have been made.

21 M. As used in this section:

22 (1) "accredited investor" means a person who  
23 is an accredited investor within the meaning of Rule 501 issued  
24 by the federal securities and exchange commission pursuant to  
25 the federal Securities Act of 1933, as amended;

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1                   (2) "business" means a corporation, general  
2 partnership, limited partnership, limited liability company or  
3 other similar entity, but excludes an entity that is a  
4 government or a nonprofit organization designated as such by  
5 the federal government or any state;

6                   (3) "equity" means common or preferred stock  
7 of a corporation, a partnership interest in a limited  
8 partnership or a membership interest in a limited liability  
9 company, including debt subject to an option in favor of the  
10 creditor to convert the debt into common or preferred stock, a  
11 partnership interest or a membership interest;

12                   (4) "qualified business" means a business  
13 that:

14                   (a) maintains its principal place of  
15 business and employs a majority of its full-time employees, if  
16 any, in New Mexico and a majority of its tangible assets, if  
17 any, in New Mexico;

18                   (b) is not primarily engaged in or is  
19 not primarily organized as any of the following types of  
20 businesses: credit or finance services, including banks,  
21 savings and loan associations, credit unions, small loan  
22 companies or title loan companies; financial brokering or  
23 investment; professional services, including accounting, legal  
24 services, engineering and any other service the practice of  
25 which requires a license; insurance; real estate; construction

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1 or construction contracting; consulting or brokering; mining;  
2 wholesale or retail trade; providing utility service, including  
3 water, sewerage, electricity, natural gas, propane or butane;  
4 publishing, including publishing newspapers or other  
5 periodicals; broadcasting; or providing internet operating  
6 services;

7 (c) has not issued securities registered  
8 pursuant to Section 6 of the federal Securities Act of 1933, as  
9 amended; has not issued securities traded on a national  
10 securities exchange; is not subject to reporting requirements  
11 of the federal Securities Exchange Act of 1934, as amended; and  
12 is not registered pursuant to the federal Investment Company  
13 Act of 1940, as amended, at the time of the investment;

14 (d) has one hundred or fewer employees  
15 calculated on a full-time-equivalent basis at the time of the  
16 investment; and

17 (e) has not had gross revenues in excess  
18 of five million dollars (\$5,000,000) in any fiscal year ending  
19 on or before the date of the investment; and

20 (5) "qualified investment" means a cash  
21 investment in a qualified business for equity, but does not  
22 include an investment by a taxpayer if the taxpayer, a member  
23 of the taxpayer's immediate family or an entity affiliated with  
24 the taxpayer receives compensation from the qualified business  
25 in exchange for services provided to the qualified business

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1 within one year of investment in the qualified business."

2 SECTION 2. APPLICABILITY.--The provisions of this act  
3 apply to taxable years beginning on or after January 1, 2014.

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