

1 SENATE BILL 477

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO TAXATION; CREATING TAX CREDITS FOR INVESTMENTS IN
12 FRONTIER COMMUNITIES.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 7-1-8.8 NMSA 1978 (being Laws 2009,
16 Chapter 243, Section 10) is amended to read:

17 "7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE
18 AGENCIES AND LEGISLATIVE COMMITTEES.--An employee of the
19 department may reveal to:

20 A. a committee of the legislature for a valid
21 legislative purpose, return information concerning any tax or
22 fee imposed pursuant to the Cigarette Tax Act;

23 B. the revenue stabilization and tax policy
24 committee and the legislative finance committee, return
25 information necessary, not including a taxpayer's name, address

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1 or government-issued identification number, to facilitate the
2 compilation of a report to that committee on the effectiveness
3 of a tax credit or deduction that is required pursuant to law;

4 C. the economic development department, return
5 information necessary, not including a taxpayer's name, address
6 or government-issued identification number, to facilitate the
7 compilation of the report required by Sections 2 and 3 of this
8 2015 act;

9 ~~[B-]~~ D. the attorney general, return information
10 acquired pursuant to the Cigarette Tax Act for purposes of
11 Section 6-4-13 NMSA 1978 and the master settlement agreement
12 defined in Section 6-4-12 NMSA 1978;

13 ~~[G-]~~ E. the commissioner of public lands, return
14 information for use in auditing that pertains to rentals,
15 royalties, fees and other payments due the state under land
16 sale, land lease or other land use contracts;

17 ~~[D-]~~ F. the secretary of human services or the
18 secretary's delegate, under a written agreement with the
19 department, the last known address with date of all names
20 certified to the department as being absent parents of children
21 receiving public financial assistance, but only for the purpose
22 of enforcing the support liability of the absent parents by the
23 child support enforcement division or any successor
24 organizational unit;

25 ~~[E-]~~ G. the department of information technology,

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1 by electronic media, a database updated quarterly that contains
2 the names, addresses, county of address and taxpayer
3 identification numbers of New Mexico personal income tax
4 filers, but only for the purpose of producing the random jury
5 list for the selection of petit or grand jurors for the state
6 courts pursuant to Section 38-5-3 NMSA 1978;

7 ~~[F.]~~ H. the state courts, the random jury lists
8 produced by the department of information technology under
9 Subsection ~~[E]~~ G of this section;

10 ~~[G.]~~ I. the director of the New Mexico department
11 of agriculture or the director's authorized representative,
12 upon request of the director or representative, the names and
13 addresses of all gasoline or special fuel distributors,
14 wholesalers and retailers;

15 ~~[H.]~~ J. the public regulation commission, return
16 information with respect to the Corporate Income and Franchise
17 Tax Act required to enable the commission to carry out its
18 duties;

19 ~~[I.]~~ K. the state racing commission, return
20 information with respect to the state, municipal and county
21 gross receipts taxes paid by racetracks;

22 ~~[J.]~~ L. the gaming control board, tax returns of
23 license applicants and their affiliates as provided in
24 Subsection E of Section 60-2E-14 NMSA 1978;

25 ~~[K.]~~ M. the director of the workers' compensation

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1 administration or to the director's representatives authorized
2 for this purpose, return information to facilitate the
3 identification of taxpayers that are delinquent or noncompliant
4 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
5 1978; and

6 ~~[E.]~~ N. the secretary of workforce solutions or the
7 secretary's delegate, return information for use in enforcement
8 of unemployment insurance collections pursuant to the terms of
9 a written reciprocal agreement entered into by the department
10 with the secretary of workforce solutions for exchange of
11 information."

12 SECTION 2. A new section of the Income Tax Act is enacted
13 to read:

14 "[NEW MATERIAL] FRONTIER COMMUNITY INVESTMENT INCOME TAX
15 CREDIT.--

16 A. A taxpayer who files a New Mexico income tax
17 return, is not a dependent of another taxpayer and is a
18 qualified business that makes a qualified investment may claim
19 a credit in an amount not to exceed twenty-five percent of not
20 more than one hundred thousand dollars (\$100,000) of the
21 qualified investment. The tax credit provided in this section
22 may be referred to as the "frontier community investment income
23 tax credit".

24 B. The purposes of the frontier community
25 investment income tax credit are to:

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1 (1) encourage residents of frontier
2 communities to invest in their communities; and

3 (2) create new jobs and provide needed
4 services for frontier communities.

5 C. A taxpayer may claim the frontier community
6 investment income tax credit for not more than two qualified
7 investments in a taxable year; provided that each investment is
8 in a different qualified business and the taxpayer hires at
9 least three eligible employees for each qualified business. A
10 taxpayer may claim the frontier community investment income tax
11 credit for qualified investments made in the same qualified
12 business or successor of that business for not more than three
13 taxable years. The frontier community investment income tax
14 credit shall not exceed twenty-five thousand dollars (\$25,000)
15 for each qualified investment by the taxpayer.

16 D. A taxpayer may claim the frontier community
17 investment income tax credit no later than one year following
18 the end of the calendar year in which the qualified investment
19 was made; provided that a claim for the credit shall not be
20 allowed with respect to any investment made after December 31,
21 2024.

22 E. A taxpayer shall apply for certification of
23 eligibility for the frontier community investment income tax
24 credit to the economic development department. Applications
25 shall be considered in the order received. If the economic

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1 development department determines that the taxpayer is a
2 qualified business that has made a qualified investment, it
3 shall issue a certificate of eligibility to the taxpayer,
4 subject to the limitation in Subsection F of this section. The
5 certificate shall be dated and shall include a calculation of
6 the amount of the frontier community investment income tax
7 credit for which the taxpayer is eligible. The economic
8 development department may issue rules governing the procedure
9 for administering the provisions of this subsection.

10 F. The economic development department may issue a
11 certificate of eligibility pursuant to Subsection E of this
12 section only if the total amount of frontier community
13 investment income tax credits represented by certificates of
14 eligibility issued by the economic development department in
15 any calendar year will not exceed seven hundred fifty thousand
16 dollars (\$750,000). If the applications for certificates of
17 eligibility for frontier community investment income tax
18 credits represent an aggregate amount exceeding seven hundred
19 fifty thousand dollars (\$750,000) for any calendar year,
20 certificates shall be issued in the order that the applications
21 were received. The excess applications that would have been
22 certified, but for the limit imposed by this subsection, shall
23 be certified, subject to the same limit, in subsequent calendar
24 years.

25 G. To claim the frontier community investment

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

9 H. A taxpayer who otherwise qualifies for and
10 claims a frontier community investment income tax credit
11 pursuant to this section for a qualified investment made by a
12 partnership or other business association of which the taxpayer
13 is a member may claim a tax credit only in proportion to the
14 taxpayer's interest in the partnership or business association.
15 The total tax credit claimed in the aggregate by all members of
16 the partnership or business association in a taxable year with
17 respect to a qualified investment shall not exceed twenty-five
18 thousand dollars (\$25,000).

19 I. Married individuals who file separate returns
20 for a taxable year in which they could have filed a joint
21 return may each claim one-half of the credit that would have
22 been allowed on a joint return.

23 J. The frontier community investment income tax
24 credit may only be deducted from the taxpayer's income tax
25 liability. Any portion of the tax credit provided by this

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1 section that remains unused at the end of the taxpayer's
2 taxable year may be carried forward for three consecutive
3 years.

4 K. The economic development department shall
5 compile an annual report on the frontier community investment
6 income tax credit that shall include the number of taxpayers
7 approved by the department to receive the tax credit, the
8 aggregate amount of tax credits approved, the number of
9 eligible employees hired by taxpayers receiving the tax credit
10 and any other information necessary to evaluate the
11 effectiveness of the tax credit. Beginning in 2020 and every
12 five years thereafter, the economic development department
13 shall compile and present the annual reports to the revenue
14 stabilization and tax policy committee and the legislative
15 finance committee with an analysis of the effectiveness and
16 cost of the tax credit and whether the tax credit is performing
17 the purposes for which it was created.

18 L. If the taxpayer or a successor in business of
19 the taxpayer ceases operations in a frontier community for at
20 least one hundred eighty consecutive days within a two-year
21 period after the taxpayer has claimed a frontier community
22 investment income tax credit, the department shall grant no
23 further frontier community investment income tax credits to the
24 taxpayer with respect to the qualified business that has ceased
25 operations. In addition, any amount of the tax credit not

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1 claimed against the taxpayer's income tax shall be
2 extinguished, and within thirty days after the one hundred
3 eightieth day of the cessation of operations, the taxpayer
4 shall pay the amount of any income tax against which an
5 approved tax credit was taken. For purposes of this section, a
6 taxpayer shall not be deemed to have ceased operations during
7 reasonable periods for maintenance or retooling or for the
8 repair or replacement of facilities damaged or destroyed or
9 during the continuance of labor disputes.

10 M. As used in this section:

11 (1) "business" means a corporation, general
12 partnership, limited partnership, limited liability company or
13 other similar entity, but excludes an entity that is a
14 government or a nonprofit organization designated as such by
15 the federal government or any state;

16 (2) "eligible employee" means a resident of
17 New Mexico who is employed in a frontier community, but does
18 not include an individual who:

19 (a) bears any of the relationships
20 described in Paragraphs (1) through (8) of 26 U.S.C. Section
21 152(a) to the employer or, if the employer is a corporation, to
22 an individual who owns, directly or indirectly, more than fifty
23 percent in value of the outstanding stock of the corporation
24 or, if the employer is an entity other than a corporation, to
25 an individual who owns, directly or indirectly, more than fifty

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1 percent of the capital and profits interest in the entity;

2 (b) if the employer is an estate or
3 trust, is a grantor, beneficiary or fiduciary of the estate or
4 trust or is an individual who bears any of the relationships
5 described in Paragraphs (1) through (8) of 26 U.S.C. Section
6 152(a) to a grantor, beneficiary or fiduciary of the estate or
7 trust;

8 (c) is a dependent, as that term is
9 described in 26 U.S.C. Section 152(a)(9), of the employer or,
10 if the taxpayer is a corporation, of an individual who owns,
11 directly or indirectly, more than fifty percent in value of the
12 outstanding stock of the corporation or, if the employer is an
13 entity other than a corporation, of an individual who owns,
14 directly or indirectly, more than fifty percent of the capital
15 and profits interest in the entity or, if the employer is an
16 estate or trust, of a grantor, beneficiary or fiduciary of the
17 estate or trust; or

18 (d) is working or has worked as an
19 employee or as an independent contractor for an entity that
20 directly owns stock in a corporation of the eligible employer
21 or other interest of the eligible employer that represents
22 fifty percent or more of the total voting power of that entity
23 or has a value equal to fifty percent or more of the capital
24 and profits interest in the entity;

25 (3) "equity" means common or preferred stock

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1 of a corporation, a partnership interest in a limited
2 partnership or a membership interest in a limited liability
3 company, including debt subject to an option in favor of the
4 creditor to convert the debt into common or preferred stock, a
5 partnership interest or a membership interest;

6 (4) "frontier community" means an area
7 designated by the economic development department as a frontier
8 community on the basis of its economic and rural
9 characteristics;

10 (5) "new full-time job" means a job created by
11 a business on or after July 1, 2015 but before December 31,
12 2016 for which work has been performed for at least thirty-two
13 hours per week for forty-eight weeks, but does not include a
14 job:

15 (a) for which the functional equivalent
16 is eliminated by the business within one year prior to that
17 job's creation; or

18 (b) created due to a business merger or
19 acquisition or other change in business organization or a
20 taxpayer entering into a contract or becoming a subcontractor
21 to a contract with a governmental entity that replaces one or
22 more entities performing functionally equivalent services for
23 the governmental entity unless the job was not being performed
24 by an employee of the replaced entity; and performed by: 1)
25 the person who performed the job or its functional equivalent

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1 prior to the business merger or acquisition or other change in
2 business organization; or 2) a person replacing the person who
3 performed the job or its functional equivalent prior to a
4 business merger or acquisition or other change in business
5 organization;

6 (6) "qualified business" means a business
7 that:

8 (a) maintains its principal place of
9 business in New Mexico;

10 (b) has created at least three new full-
11 time jobs; and

12 (c) has not had gross revenues in excess
13 of five million dollars (\$5,000,000) in any fiscal year ending
14 on or before the date of the investment; and

15 (7) "qualified investment" means a cash
16 investment in a qualified business for equity, but does not
17 include an investment by a taxpayer if the taxpayer, a member
18 of the taxpayer's immediate family or an entity affiliated with
19 the taxpayer receives compensation from the qualified business
20 in exchange for services provided to the qualified business
21 within one year of investment in the qualified business."

22 SECTION 3. A new section of the Corporate Income and
23 Franchise Tax Act is enacted to read:

24 "[NEW MATERIAL] FRONTIER COMMUNITY INVESTMENT CORPORATE
25 INCOME TAX CREDIT.--

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1 A. A taxpayer that is a qualified business and
2 makes a qualified investment may claim a credit in an amount
3 not to exceed twenty-five percent of not more than one hundred
4 thousand dollars (\$100,000) of the qualified investment. The
5 tax credit provided in this section may be referred to as the
6 "frontier community investment corporate income tax credit".

7 B. The purposes of the frontier community
8 investment corporate income tax credit are to:

9 (1) encourage residents of frontier
10 communities to invest in their communities; and

11 (2) create new jobs and provide needed
12 services for frontier communities.

13 C. A taxpayer may claim the frontier community
14 investment corporate income tax credit for not more than two
15 qualified investments in a taxable year; provided that each
16 investment is in a different qualified business and the
17 taxpayer hires at least three eligible employees for each
18 qualified business. A taxpayer may claim the frontier
19 community investment corporate income tax credit for qualified
20 investments made in the same qualified business or successor of
21 that business for not more than three taxable years. The
22 frontier community investment corporate income tax credit shall
23 not exceed twenty-five thousand dollars (\$25,000) for each
24 qualified investment by the taxpayer.

25 D. A taxpayer may claim the frontier community

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1 investment corporate income tax credit no later than one year
2 following the end of the calendar year in which the qualified
3 investment was made; provided that a claim for the credit shall
4 not be made or allowed with respect to any investment made
5 after December 31, 2024.

6 E. A taxpayer shall apply for certification of
7 eligibility for the frontier community investment corporate
8 income tax credit from the economic development department.
9 Applications shall be considered in the order received. If the
10 economic development department determines that the taxpayer is
11 a qualified business that has made a qualified investment, it
12 shall issue a certificate of eligibility to the taxpayer,
13 subject to the limitation in Subsection F of this section. The
14 certificate shall be dated and shall include a calculation of
15 the amount of the frontier community investment corporate
16 income tax credit for which the taxpayer is eligible. The
17 economic development department may issue rules governing the
18 procedure for administering the provisions of this subsection.

19 F. The economic development department may issue a
20 certificate of eligibility pursuant to Subsection E of this
21 section only if the total amount of frontier community
22 investment corporate income tax credits represented by
23 certificates of eligibility issued by the economic development
24 department in any calendar year will not exceed seven hundred
25 fifty thousand dollars (\$750,000). If the applications for

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1 certificates of eligibility for frontier community investment
2 corporate income tax credits represent an aggregate amount
3 exceeding seven hundred fifty thousand dollars (\$750,000) for
4 any calendar year, certificates shall be issued in the order
5 that the applications were received. The excess applications
6 that would have been certified, but for the limit imposed by
7 this subsection, shall be certified, subject to the same limit,
8 in subsequent calendar years.

9 G. To claim the frontier community investment
10 corporate income tax credit, the taxpayer shall provide to the
11 taxation and revenue department a certificate of eligibility
12 issued by the economic development department pursuant to
13 Subsection E of this section and any other information that the
14 taxation and revenue department may require to determine the
15 amount of the tax credit due the taxpayer. If the requirements
16 of this section have been complied with, the taxation and
17 revenue department shall approve the claim for the credit.

18 H. The frontier community investment corporate
19 income tax credit may only be deducted from the taxpayer's
20 corporate income tax liability. Any portion of the tax credit
21 provided by this section that remains unused at the end of the
22 taxpayer's taxable year may be carried forward for three
23 consecutive years.

24 I. The economic development department shall
25 compile an annual report on the frontier community investment

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1 corporate income tax credit that shall include the number of
2 taxpayers approved by the department to receive the tax credit,
3 the aggregate amount of tax credits approved, the number of
4 eligible employees hired by taxpayers receiving the tax credit
5 and any other information necessary to evaluate the
6 effectiveness of the tax credit. Beginning in 2020 and every
7 five years thereafter, the economic development department
8 shall compile and present the annual reports to the revenue
9 stabilization and tax policy committee and the legislative
10 finance committee with an analysis of the effectiveness and
11 cost of the tax credit and whether the tax credit is performing
12 the purposes for which it was created.

13 J. If the taxpayer or a successor in business of
14 the taxpayer ceases operations in a frontier community for at
15 least one hundred eighty consecutive days within a two-year
16 period after the taxpayer has claimed a frontier community
17 investment corporate income tax credit, the department shall
18 grant no further frontier community investment corporate income
19 tax credits to the taxpayer with respect to the qualified
20 business that has ceased operations. In addition, any amount
21 of the tax credit not claimed against the taxpayer's corporate
22 income tax shall be extinguished, and within thirty days after
23 the one hundred eightieth day of the cessation of operations,
24 the taxpayer shall pay the amount of any corporate income tax
25 against which an approved tax credit was taken. For purposes

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1 of this section, a taxpayer shall not be deemed to have ceased
2 operations during reasonable periods for maintenance or
3 retooling or for the repair or replacement of facilities
4 damaged or destroyed or during the continuance of labor
5 disputes.

6 K. As used in this section:

7 (1) "business" means a corporation, general
8 partnership, limited partnership, limited liability company or
9 other similar entity, but excludes an entity that is a
10 government or a nonprofit organization designated as such by
11 the federal government or any state;

12 (2) "eligible employee" means a resident of
13 New Mexico who is employed in a frontier community, but does
14 not include an individual who:

15 (a) bears any of the relationships
16 described in Paragraphs (1) through (8) of 26 U.S.C. Section
17 152(a) to the employer or, if the employer is a corporation, to
18 an individual who owns, directly or indirectly, more than fifty
19 percent in value of the outstanding stock of the corporation
20 or, if the employer is an entity other than a corporation, to
21 an individual who owns, directly or indirectly, more than fifty
22 percent of the capital and profits interest in the entity;

23 (b) if the employer is an estate or
24 trust, is a grantor, beneficiary or fiduciary of the estate or
25 trust or is an individual who bears any of the relationships

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1 described in Paragraphs (1) through (8) of 26 U.S.C. Section
2 152(a) to a grantor, beneficiary or fiduciary of the estate or
3 trust;

4 (c) is a dependent, as that term is
5 described in 26 U.S.C. Section 152(a)(9), of the employer or,
6 if the taxpayer is a corporation, of an individual who owns,
7 directly or indirectly, more than fifty percent in value of the
8 outstanding stock of the corporation or, if the employer is an
9 entity other than a corporation, of an individual who owns,
10 directly or indirectly, more than fifty percent of the capital
11 and profits interest in the entity or, if the employer is an
12 estate or trust, of a grantor, beneficiary or fiduciary of the
13 estate or trust; or

14 (d) is working or has worked as an
15 employee or as an independent contractor for an entity that
16 directly owns stock in a corporation of the eligible employer
17 or other interest of the eligible employer that represents
18 fifty percent or more of the total voting power of that entity
19 or has a value equal to fifty percent or more of the capital
20 and profits interest in the entity;

21 (3) "equity" means common or preferred stock
22 of a corporation, a partnership interest in a limited
23 partnership or a membership interest in a limited liability
24 company, including debt subject to an option in favor of the
25 creditor to convert the debt into common or preferred stock, a

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1 partnership interest or a membership interest;

2 (4) "frontier community" means an area
3 designated by the economic development department as a frontier
4 community on the basis of its economic and rural
5 characteristics;

6 (5) "new full-time job" means a job created by
7 a business on or after July 1, 2015 but before December 31,
8 2016 for which work has been performed for at least thirty-two
9 hours per week for forty-eight weeks, but does not include a
10 job:

11 (a) for which the functional equivalent
12 is eliminated by the business within one year prior to that
13 job's creation; or

14 (b) created due to a business merger or
15 acquisition or other change in business organization or a
16 taxpayer entering into a contract or becoming a subcontractor
17 to a contract with a governmental entity that replaces one or
18 more entities performing functionally equivalent services for
19 the governmental entity unless the job was not being performed
20 by an employee of the replaced entity; and performed by: 1)
21 the person who performed the job or its functional equivalent
22 prior to the business merger or acquisition or other change in
23 business organization; or 2) a person replacing the person who
24 performed the job or its functional equivalent prior to a
25 business merger or acquisition or other change in business

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1 organization;

2 (6) "qualified business" means a business
3 that:

4 (a) maintains its principal place of
5 business in New Mexico;

6 (b) has created at least three new full-
7 time jobs; and

8 (c) has not had gross revenues in excess
9 of five million dollars (\$5,000,000) in any fiscal year ending
10 on or before the date of the investment; and

11 (7) "qualified investment" means a cash
12 investment in a qualified business for equity, but does not
13 include an investment by a taxpayer if the taxpayer, a member
14 of the taxpayer's immediate family or an entity affiliated with
15 the taxpayer receives compensation from the qualified business
16 in exchange for services provided to the qualified business
17 within one year of investment in the qualified business."

18 SECTION 4. APPLICABILITY.--The provisions of this act
19 apply to taxable years beginning on or after January 1, 2015.