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SENATE BILL 199

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Clemente Sanchez

AN ACT

RELATING TO TAXATION; MODIFYING PROVISIONS OF THE CULTURAL
PROPERTY INCOME TAX CREDITS; REPEALING AND REENACTING SECTIONS
OF THE NMSA 1978.

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

SECTION 1. Section 7-2-18.2 NMSA 1978 (being Laws 1984,
Chapter 34, Section 1, as amended) is repealed and a new
Section 7-2-18.2 NMSA 1978 is enacted to read:

"7-2-18.2. [NEW MATERIAL] PRESERVATION OF CULTURAL
PROPERTY INCOME TAX CREDIT.--

A. For taxable years beginning on or after January
1, 2016, a taxpayer who is not a dependent of another taxpayer
and who is the owner of a cultural property listed on the
official New Mexico register of cultural properties may claim a
nontransferable credit against the taxpayer's tax liability

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1 imposed by the Income Tax Act in the amount of:

2 (1) fifty percent of the cost of a project on
3 the taxpayer's residential or commercial property;

4 (2) fifty percent of the cost of a project on
5 the taxpayer's residential property if the property is located
6 within an arts and cultural district certified by the state or
7 a municipality in accordance with the Arts and Cultural
8 District Act; is located within an area designated by the
9 economic development department as a frontier community; or is
10 subject to the provisions of the Main Street Act; and

11 (3) for a project on the taxpayer's commercial
12 property that is located within an arts and cultural district
13 certified by the state or a municipality in accordance with the
14 Arts and Cultural District Act; that is located within an area
15 designated by the economic development department as a frontier
16 community; or that is subject to the provisions of the Main
17 Street Act:

18 (a) fifty percent of the cost of a
19 project that costs one hundred thousand dollars (\$100,000) or
20 less;

21 (b) fifty thousand dollars (\$50,000)
22 plus thirty-five percent of the portion of the project cost
23 that is more than one hundred thousand dollars (\$100,000) but
24 not more than two hundred thousand dollars (\$200,000); and

25 (c) eighty-five thousand dollars

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1 (\$85,000) plus twenty-five percent of the project cost that is
2 more than two hundred thousand dollars (\$200,000) but not more
3 than one million dollars (\$1,000,000).

4 B. The credit provided by this section may be
5 referred to as the "preservation of cultural property income
6 tax credit". The purpose of the preservation of cultural
7 property income tax credit is to encourage the restoration,
8 rehabilitation and preservation of cultural properties.

9 C. The preservation of cultural property income tax
10 credit shall not exceed twenty-five thousand dollars (\$25,000)
11 per project described in Paragraph (1) of Subsection A of this
12 section or fifty thousand dollars (\$50,000) per project
13 described in Paragraph (2) of Subsection A of this section.
14 The department shall allow the credit only for a project
15 certified by the committee.

16 D. The department may allow a maximum annual
17 aggregate of one million five hundred thousand dollars
18 (\$1,500,000) in preservation of cultural property income tax
19 credits and preservation of cultural property corporate income
20 tax credits per year. The department shall consider completed
21 applications for the credits in the order it receives them. If
22 the applications for allowable preservation of cultural
23 property tax credits represent an aggregate amount exceeding
24 one million five hundred thousand dollars (\$1,500,000) for any
25 calendar year, the excess applications that would have been

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1 allowed, but for the limit imposed by this subsection, shall be
2 allowed, subject to the same limit, in subsequent calendar
3 years.

4 E. A taxpayer may claim a preservation of cultural
5 property income tax credit for each taxable year in which:

6 (1) the taxpayer submitted a plan and
7 specifications for a project to the committee and received
8 approval from the committee for the plan and specifications
9 before starting the project;

10 (2) the taxpayer received certification from
11 the committee after completing the project, or committee-
12 approved phase, that the project or phase conformed to the plan
13 and specifications and preserved and maintained those qualities
14 of the property that made the property eligible for inclusion
15 in the official register; and

16 (3) the project is completed within twenty-
17 four months after the date the committee approved the project
18 in accordance with Paragraph (1) of this subsection.

19 F. A taxpayer may claim a preservation of cultural
20 property income tax credit for each taxable year in which a
21 project or a phase of a project is carried out, but for no more
22 than ten consecutive taxable years. To receive the credit, a
23 taxpayer shall report the amount of the credit to the
24 department and apply to the department on forms and in the
25 manner prescribed by the department. The application shall

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1 include a certification made in accordance with Paragraph (2)
2 of Subsection E of this section.

3 G. That portion of a preservation of cultural
4 property income tax credit that exceeds a taxpayer's tax
5 liability in the taxable year in which the credit is claimed
6 shall be refunded to the taxpayer.

7 H. Married individuals filing separate returns for
8 a taxable year for which they could have filed a joint return
9 may each claim no more than one-half of the preservation of
10 cultural property income tax credit that could have been
11 claimed on a joint return.

12 I. A taxpayer who owns an interest in a business
13 entity that is taxed for federal income tax purposes as a
14 partnership or a limited liability company and that has met the
15 requirements to be eligible for the preservation of cultural
16 property income tax credit may claim the credit in proportion
17 to the taxpayer's ownership interest in the business entity.
18 The total credit claimed by all members of the business entity
19 shall not exceed the amount allowed by Subsection C of this
20 section.

21 J. The historic preservation division shall issue
22 certificates in the order that applications for the
23 preservation of cultural property income tax credit are
24 received. The division shall promulgate rules for certifying
25 that a project meets the credit's eligibility requirements.

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1 K. The department shall compile an annual report on
2 the preservation of cultural property income tax credit that
3 includes the number of taxpayers approved by the department to
4 receive the tax credit, the aggregate amount of tax credits
5 taken and any other information necessary to evaluate the
6 effectiveness of the credit. The department shall present the
7 report to the revenue stabilization and tax policy committee
8 and the legislative finance committee with an analysis of the
9 effectiveness and cost of the credit and whether the credit is
10 performing the purpose for which it was created.

11 L. As used in this section:

12 (1) "commercial property" means a property in
13 which the majority of square footage is dedicated to a
14 business;

15 (2) "committee" means the cultural properties
16 review committee;

17 (3) "historic preservation division" means the
18 historic preservation division of the cultural affairs
19 department; and

20 (4) "project" means the restoration,
21 rehabilitation or preservation of a cultural property listed on
22 the official New Mexico register of cultural properties."

23 **SECTION 2.** Section 7-2A-8.6 NMSA 1978 (being Laws 1984,
24 Chapter 34, Section 2, as amended) is repealed and a new
25 Section 7-2A-8.6 NMSA 1978 is enacted to read:

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1 "7-2A-8.6. [NEW MATERIAL] PRESERVATION OF CULTURAL
2 PROPERTY CORPORATE INCOME TAX CREDIT.--

3 A. For taxable years beginning on or after January
4 1, 2016, a taxpayer that files a New Mexico corporate income
5 tax return and that is the owner of a cultural property listed
6 on the official New Mexico register of cultural properties may
7 claim a nontransferable credit against the taxpayer's tax
8 liability imposed by the Corporate Income and Franchise Tax Act
9 in the amount of:

10 (1) fifty percent of the cost of a project on
11 the taxpayer's residential or commercial property;

12 (2) fifty percent of the cost of a project on
13 the taxpayer's residential property if the property is located
14 within an arts and cultural district certified by the state or
15 a municipality in accordance with the Arts and Cultural
16 District Act; is located within an area designated by the
17 economic development department as a frontier community; or is
18 subject to the provisions of the Main Street Act; and

19 (3) for a project on the taxpayer's commercial
20 property that is located within an arts and cultural district
21 certified by the state or a municipality in accordance with the
22 Arts and Cultural District Act; that is located within an area
23 designated by the economic development department as a frontier
24 community; or that is subject to the provisions of the Main
25 Street Act:

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1 (a) fifty percent of the cost of a
2 project that costs one hundred thousand dollars (\$100,000) or
3 less;

4 (b) fifty thousand dollars (\$50,000)
5 plus thirty-five percent of the portion of the project cost
6 that is more than one hundred thousand dollars (\$100,000) but
7 not more than two hundred thousand dollars (\$200,000); and

8 (c) eighty-five thousand dollars
9 (\$85,000) plus twenty-five percent of the project cost that is
10 more than two hundred thousand dollars (\$200,000) but not more
11 than one million dollars (\$1,000,000).

12 B. The credit provided by this section may be
13 referred to as the "preservation of cultural property corporate
14 income tax credit". The purpose of the credit is to encourage
15 the restoration, rehabilitation and preservation of cultural
16 properties.

17 C. The preservation of cultural property corporate
18 income tax credit shall not exceed twenty-five thousand dollars
19 (\$25,000) per project described in Paragraph (1) of Subsection
20 A of this section or fifty thousand dollars (\$50,000) per
21 project described in Paragraph (2) of Subsection A of this
22 section. The department shall allow the credit only for a
23 project certified by the committee.

24 D. The department may allow a maximum annual
25 aggregate of one million five hundred thousand dollars

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1 (\$1,500,000) in preservation of cultural property income tax
2 credits and preservation of cultural property corporate income
3 tax credits per year. The department shall consider completed
4 applications for the credits in the order it receives them. If
5 the applications for allowable preservation of cultural
6 property tax credits represent an aggregate amount exceeding
7 one million five hundred thousand dollars (\$1,500,000) for any
8 calendar year, the excess applications that would have been
9 allowed, but for the limit imposed by this subsection, shall be
10 allowed, subject to the same limit, in subsequent calendar
11 years.

12 E. A taxpayer may claim a preservation of cultural
13 property corporate income tax credit for each taxable year in
14 which:

15 (1) the taxpayer submitted a plan and
16 specifications for a project to the committee and received
17 approval from the committee for the plan and specifications
18 before starting the project;

19 (2) the taxpayer received certification from
20 the committee after completing the project, or committee-
21 approved phase, that the project or phase conformed to the plan
22 and specifications and preserved and maintained those qualities
23 of the property that made the property eligible for inclusion
24 in the official register; and

25 (3) the project is completed within twenty-

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1 four months after the date the committee approved the project
2 in accordance with Paragraph (1) of this subsection.

3 F. A taxpayer may claim a preservation of cultural
4 property corporate income tax credit for each taxable year in
5 which a project or a phase of a project is carried out, but for
6 no more than ten consecutive taxable years. To receive the
7 credit, a taxpayer shall report the amount of the credit to the
8 department and apply to the department on forms and in the
9 manner prescribed by the department. The application shall
10 include a certification made in accordance with Paragraph (2)
11 of Subsection E of this section.

12 G. That portion of the preservation of cultural
13 property corporate income tax credit that exceeds a taxpayer's
14 liability in the taxable year in which the credit is claimed
15 shall be refunded to the taxpayer.

16 H. The historic preservation division shall issue
17 certificates in the order that applications for the
18 preservation of cultural property corporate income tax credit
19 are received. The division shall promulgate rules for
20 certifying that a project meets the credit's eligibility
21 requirements.

22 I. The department shall compile an annual report on
23 the preservation of cultural property corporate income tax
24 credit that includes the number of taxpayers approved by the
25 department to receive the tax credit, the aggregate amount of

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1 tax credits taken and any other information necessary to
2 evaluate the effectiveness of the credit. The department shall
3 present the report to the revenue stabilization and tax policy
4 committee and the legislative finance committee with an
5 analysis of the effectiveness and cost of the credit and
6 whether the credit is performing the purpose for which it was
7 created.

8 J. As used in this section:

9 (1) "commercial property" means a property in
10 which the majority of square footage is dedicated to a
11 business;

12 (2) "committee" means the cultural properties
13 review committee;

14 (3) "historic preservation division" means the
15 historic preservation division of the cultural affairs
16 department; and

17 (4) "project" means the restoration,
18 rehabilitation or preservation of a cultural property listed on
19 the official New Mexico register of cultural properties."