

1 SENATE BILL 206

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

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

17 "[NEW MATERIAL] FRONTIER COMMUNITY INVESTMENT INCOME TAX
18 CREDIT.--

19 A. For taxable years beginning on or after January
20 1, 2016, a taxpayer who files a New Mexico income tax return,
21 is not a dependent of another taxpayer and is a qualified
22 business that makes a qualified investment may claim a credit
23 against the taxpayer's tax liability imposed by the Income Tax
24 Act in an amount up to twenty-five percent of up to one hundred
25 thousand dollars (\$100,000) of the qualified investment. The

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1 credit provided by this section may be referred to as the
2 "frontier community investment income tax credit".

3 B. The purposes of the frontier community
4 investment income tax credit are to:

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

7 (2) create new jobs and provide needed
8 services for frontier communities.

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

19 D. A taxpayer may claim the frontier community
20 investment income tax credit no later than one year following
21 the end of the calendar year in which the qualified investment
22 was made.

23 E. A taxpayer shall apply for certification of
24 eligibility for the frontier community investment income tax
25 credit to the economic development department. Applications

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1 shall be considered in the order received. If the economic
2 development department determines that the taxpayer is a
3 qualified business that has made a qualified investment, it
4 shall issue a certificate of eligibility to the taxpayer,
5 subject to the limitation in Subsection F of this section. The
6 certificate shall be dated and shall include a calculation of
7 the amount of the credit for which the taxpayer is eligible.

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

21 G. To claim the frontier community investment
22 income tax credit, a taxpayer shall provide to the taxation and
23 revenue department a certificate of eligibility issued by the
24 economic development department in accordance with Subsection E
25 of this section and any other information that the taxation and

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1 revenue department may require to determine the amount of the
2 credit due the taxpayer. If the requirements of this section
3 have been complied with, the taxation and revenue department
4 shall approve the claim for the credit.

5 H. A taxpayer who owns an interest in a business
6 entity that is taxed for federal income tax purposes as a
7 partnership or limited liability company and that makes a
8 qualified investment may claim a frontier community investment
9 income tax credit in proportion to the taxpayer's interest in
10 the business entity. The total credit claimed by all members
11 of the business entity for a qualified investment shall not
12 exceed twenty-five thousand dollars (\$25,000).

13 I. Married individuals filing separate returns for
14 a taxable year in which they could have filed a joint return
15 may each claim no more than one-half of the frontier community
16 investment income tax credit that could have been allowed on a
17 joint return.

18 J. The frontier community investment income tax
19 credit may only be deducted from the taxpayer's income tax
20 liability. Any portion of the credit that remains unused at
21 the end of the taxpayer's taxable year may be carried forward
22 for up to three consecutive years.

23 K. The economic development department shall
24 compile an annual report on the frontier community investment
25 income tax credit that includes the number of taxpayers

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1 approved by the department to receive the credit, the aggregate
2 amount of credits approved, the number of eligible employees
3 hired by taxpayers receiving the credit and any other
4 information necessary to evaluate the effectiveness of the
5 credit. Beginning in 2021 and every five years thereafter, the
6 economic development department shall present the annual
7 reports 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 purposes for which it was created.

11 L. If a taxpayer or a successor in business of the
12 taxpayer ceases operations of a qualified business for which
13 the taxpayer claimed a frontier community investment income tax
14 credit for one hundred eighty consecutive days or more within a
15 two-year period after the taxpayer claimed the credit, the
16 department shall grant no further frontier community investment
17 income tax credits to the taxpayer with respect to the business
18 that ceased operations. Any amount of the credit not claimed
19 against the taxpayer's income tax shall be extinguished, and
20 within thirty days after the one hundred eightieth day of the
21 cessation of operations, the taxpayer shall pay the amount of
22 any income tax against which an approved frontier community
23 investment income tax credit was taken. For purposes of this
24 section, a taxpayer shall not be deemed to have ceased
25 operations during reasonable periods for maintenance or

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1 retooling or for the repair or replacement of facilities
2 damaged or destroyed or during a labor dispute.

3 M. As used in this section:

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

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

12 (a) bears any of the relationships
13 described in Paragraphs (1) through (8) of 26 U.S.C. Section
14 152(a) to the employer or, if the employer is a corporation, to
15 an individual who owns, directly or indirectly, more than fifty
16 percent in value of the outstanding stock of the corporation
17 or, if the employer is an entity other than a corporation, to
18 an individual who owns, directly or indirectly, more than fifty
19 percent of the capital and profits interest in the entity;

20 (b) if the employer is an estate or
21 trust, is a grantor, beneficiary or fiduciary of the estate or
22 trust or is an individual who bears any of the relationships
23 described in Paragraphs (1) through (8) of 26 U.S.C. Section
24 152(a) to a grantor, beneficiary or fiduciary of the estate or
25 trust;

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

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

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

24 (4) "frontier community" means an area
25 designated by the economic development department as a frontier

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1 community on the basis of its economic and rural
2 characteristics;

3 (5) "new full-time job" means a job created by
4 a business on or after July 1, 2016 but before January 1, 2026
5 for which work has been performed for at least thirty-two hours
6 per week for forty-eight weeks, but does not include a job:

7 (a) for which the functional equivalent
8 is eliminated by the business within one year before that job's
9 creation; or

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

23 (6) "qualified business" means a business
24 that:

25 (a) maintains its principal place of

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1 business in New Mexico;

2 (b) has created at least three new full-
3 time jobs; and

4 (c) has had no more than five million
5 dollars (\$5,000,000) in gross revenues in any fiscal year
6 ending on or before the date of a qualified investment; and

7 (7) "qualified investment" means a cash
8 investment made before January 1, 2026 in a qualified business
9 for equity, but does not include an investment by a taxpayer if
10 the taxpayer, a member of the taxpayer's immediate family or an
11 entity affiliated with the taxpayer receives compensation from
12 the qualified business in exchange for services provided to the
13 qualified business within one year of investment in the
14 qualified business."

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

17 "[NEW MATERIAL] FRONTIER COMMUNITY INVESTMENT CORPORATE
18 INCOME TAX CREDIT.--

19 A. For taxable years beginning on or after January
20 1, 2016, a taxpayer that is a qualified business and that makes
21 a qualified investment may claim a credit against the
22 taxpayer's tax liability imposed by the Corporate Income and
23 Franchise Tax Act in an amount up to twenty-five percent of up
24 to one hundred thousand dollars (\$100,000) of the qualified
25 investment. The credit provided by this section may be

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1 referred to as the "frontier community investment corporate
2 income tax credit".

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

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

7 (2) create new jobs and provide needed
8 services for frontier communities.

9 C. A taxpayer may claim the frontier community
10 investment corporate income tax credit for up to two qualified
11 investments in a taxable year if each of those investments is
12 in a different qualified business and the taxpayer hires at
13 least three eligible employees for each qualified business. A
14 taxpayer may claim the credit for qualified investments made in
15 the same qualified business or successor of that business for
16 up to three taxable years. The credit shall not exceed
17 twenty-five thousand dollars (\$25,000) for each qualified
18 investment made by the taxpayer.

19 D. A taxpayer may claim the frontier community
20 investment corporate income tax credit no later than one year
21 following the end of the calendar year in which the qualified
22 investment was made.

23 E. A taxpayer shall apply for certification of
24 eligibility for the frontier community investment corporate
25 income tax credit from the economic development department.

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1 Applications shall be considered in the order received. If the
2 economic development department determines that the taxpayer is
3 a qualified business that has made a qualified investment, it
4 shall issue a certificate of eligibility to the taxpayer,
5 subject to the limitation in Subsection F of this section. The
6 certificate shall be dated and shall include a calculation of
7 the amount of the credit for which the taxpayer is eligible.

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

22 G. To claim the frontier community investment
23 corporate income tax credit, a taxpayer shall provide to the
24 taxation and revenue department a certificate of eligibility
25 issued by the economic development department in accordance

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1 with Subsection E of this section and any other information
2 that the taxation and revenue department may require to
3 determine the amount of the credit due the taxpayer. If the
4 requirements of this section have been complied with, the
5 taxation and revenue department shall approve the claim for the
6 credit.

7 H. The frontier community investment corporate
8 income tax credit may only be deducted from the taxpayer's
9 corporate income tax liability. Any portion of the credit that
10 remains unused at the end of the taxpayer's taxable year may be
11 carried forward for up to three consecutive years.

12 I. The economic development department shall
13 compile an annual report on the frontier community investment
14 corporate income tax credit that includes the number of
15 taxpayers approved by the department to receive the credit, the
16 aggregate amount of credits approved, the number of eligible
17 employees hired by taxpayers receiving the credit and any other
18 information necessary to evaluate the effectiveness of the
19 credit. Beginning in 2021 and every five years thereafter, the
20 economic development department shall present the annual
21 reports to the revenue stabilization and tax policy committee
22 and the legislative finance committee with an analysis of the
23 effectiveness and cost of the credit and whether the credit is
24 performing the purposes for which it was created.

25 J. If a taxpayer or a successor in business of the

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1 taxpayer ceases operations of a qualified business for which
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3 income tax credit for one hundred eighty consecutive days or
4 more within a two-year period after the taxpayer claimed the
5 credit, the department shall grant no further frontier
6 community investment corporate income tax credits to the
7 taxpayer with respect to the business that ceased operations.
8 Any amount of the credit not claimed against the taxpayer's
9 corporate income tax shall be extinguished, and within thirty
10 days after the one hundred eightieth day of the cessation of
11 operations, the taxpayer shall pay the amount of any corporate
12 income tax against which an approved frontier community
13 investment income tax credit was taken. For purposes of this
14 section, a taxpayer shall not be deemed to have ceased
15 operations during reasonable periods for maintenance or
16 retooling or for the repair or replacement of facilities
17 damaged or destroyed or during a labor dispute.

18 K. As used in this section:

19 (1) "business" means a corporation, general
20 partnership, limited partnership, limited liability company or
21 other similar entity, but excludes an entity that is a
22 government or a nonprofit organization designated as such by
23 the federal government or any state;

24 (2) "eligible employee" means a resident of
25 New Mexico who is employed in a frontier community, but does

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1 not include an individual who:

2 (a) bears any of the relationships
3 described in Paragraphs (1) through (8) of 26 U.S.C. Section
4 152(a) to the employer or, if the employer is a corporation, to
5 an individual who owns, directly or indirectly, more than fifty
6 percent in value of the outstanding stock of the corporation
7 or, if the employer is an entity other than a corporation, to
8 an individual who owns, directly or indirectly, more than fifty
9 percent of the capital and profits interest in the entity;

10 (b) if the employer is an estate or
11 trust, is a grantor, beneficiary or fiduciary of the estate or
12 trust or is an individual who bears any of the relationships
13 described in Paragraphs (1) through (8) of 26 U.S.C. Section
14 152(a) to a grantor, beneficiary or fiduciary of the estate or
15 trust;

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17 described in 26 U.S.C. Section 152(a)(9), of the employer or,
18 if the taxpayer is a corporation, of an individual who owns,
19 directly or indirectly, more than fifty percent in value of the
20 outstanding stock of the corporation or, if the employer is an
21 entity other than a corporation, of an individual who owns,
22 directly or indirectly, more than fifty percent of the capital
23 and profits interest in the entity or, if the employer is an
24 estate or trust, of a grantor, beneficiary or fiduciary of the
25 estate or trust; or

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1 (d) is working or has worked as an
2 employee or as an independent contractor for an entity that
3 directly owns stock in a corporation of the eligible employer
4 or other interest of the eligible employer that represents
5 fifty percent or more of the total voting power of that entity
6 or has a value equal to fifty percent or more of the capital
7 and profits interest in the entity;

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

14 (4) "frontier community" means an area
15 designated by the economic development department as a frontier
16 community on the basis of its economic and rural
17 characteristics;

18 (5) "new full-time job" means a job created by
19 a business on or after July 1, 2016 but before January 1, 2026
20 for which work has been performed for at least thirty-two hours
21 per week for forty-eight weeks, but does not include a job:

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23 is eliminated by the business within one year before that job's
24 creation; or

25 (b) created due to a business merger or

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1 acquisition or other change in business organization or a
2 taxpayer entering into a contract or becoming a subcontractor
3 to a contract with a governmental entity that replaces one or
4 more entities performing functionally equivalent services for
5 the governmental entity unless the job was not being performed
6 by an employee of the replaced entity; and performed by: 1)
7 the person who performed the job or its functional equivalent
8 prior to the business merger or acquisition or other change in
9 business organization; or 2) a person replacing the person who
10 performed the job or its functional equivalent before a
11 business merger or acquisition or other change in business
12 organization;

13 (6) "qualified business" means a business
14 that:
15 (a) maintains its principal place of
16 business in New Mexico;
17 (b) has created at least three new full-
18 time jobs; and
19 (c) has had no more than five million
20 dollars (\$5,000,000) in gross revenues in any fiscal year
21 ending on or before the date of a qualified investment; and

22 (7) "qualified investment" means a cash
23 investment made before January 1, 2026 in a qualified business
24 for equity, but does not include an investment by a taxpayer if
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2 the qualified business in exchange for services provided to the
3 qualified business within one year of investment in the
4 qualified business."

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