

1 SENATE BILL 198

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Pete Campos

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9  
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, 2018, a taxpayer who files a New Mexico income tax return,  
21 is not a dependent of another taxpayer and makes a qualified  
22 investment may claim a credit against the taxpayer's tax  
23 liability imposed by the Income Tax Act in an amount up to  
24 twenty-five percent of up to one hundred thousand dollars  
25 (\$100,000) of the qualified investment. The credit provided by

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1 this section may be referred to as the "frontier community  
2 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 more than one qualified  
11 investment, in more than one qualified business and in more  
12 than one taxable year, but the credit amount shall not exceed  
13 twenty-five thousand dollars (\$25,000) per qualified investment  
14 made by the taxpayer, and the aggregate amount of frontier  
15 community investment income tax credits the taxpayer claims  
16 shall not exceed one hundred thousand dollars (\$100,000).

17 D. A taxpayer may claim the frontier community  
18 investment income tax credit:

19 (1) no later than one year following the date  
20 of the taxpayer's certificate of eligibility issued in  
21 accordance with Subsection E of this section; or

22 (2) in a subsequent taxable year, if the  
23 taxpayer could have received the credit had the limit imposed  
24 by Subsection F of this section not been reached.

25 E. A taxpayer who wishes to claim the frontier

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1 community investment income tax credit shall apply to the  
2 economic development department for certification within two  
3 years following the end of the calendar year in which the  
4 taxpayer made a qualified investment. The economic development  
5 department shall consider applications in the order received.

6 If the economic development department determines that the  
7 taxpayer made a qualified investment within the allowable time  
8 period, it shall, subject to the credit limit in Subsection F  
9 of this section, issue the taxpayer a dated certificate of  
10 eligibility that includes a calculation of the amount of the  
11 credit for which the taxpayer is eligible.

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

25 G. To claim the frontier community investment

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

9 H. A taxpayer who is a co-owner of a business that  
10 is treated as a pass-through entity for federal income tax  
11 purposes, including a partner in a partnership, a member in a  
12 limited liability company or a shareholder in an S corporation,  
13 as defined in Section 1361 of the Internal Revenue Code, and  
14 that makes a qualified investment may claim a frontier  
15 community investment income tax credit in proportion to the  
16 taxpayer's interest in the business entity if the business  
17 entity meets all of the requirements of eligibility for the  
18 credit. The total amount of credit claimed by all members of  
19 the business entity for a qualified investment shall not exceed  
20 the amount set forth in Subsection C of this section.

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

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1           J. The frontier community investment income tax  
2 credit may only be deducted from the taxpayer's income tax  
3 liability. Any portion of the credit that remains unused at  
4 the end of the taxpayer's taxable year may be carried forward  
5 for up to three consecutive years.

6           K. The economic development department shall  
7 compile an annual report on the frontier community investment  
8 income tax credit that includes the number of taxpayers  
9 approved by the department to receive the credit, the aggregate  
10 amount of credits approved, the number of eligible employees  
11 hired by taxpayers receiving the credit and any other  
12 information necessary to evaluate the effectiveness of the  
13 credit. Beginning in 2023 and every five years thereafter, the  
14 economic development department shall present the annual  
15 reports to the revenue stabilization and tax policy committee  
16 and the legislative finance committee with an analysis of the  
17 effectiveness and cost of the credit and whether the credit is  
18 performing the purposes for which it was created.

19           L. If a taxpayer or a successor in business of the  
20 taxpayer ceases operations of a qualified business for which  
21 the taxpayer claimed a frontier community investment income tax  
22 credit for one hundred eighty consecutive days or more within a  
23 two-year period after the taxpayer claimed the credit, the  
24 department shall grant no further frontier community investment  
25 income tax credits to the taxpayer with respect to the business

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

11 M. As used in this section:

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

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

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

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1 an individual who owns, directly or indirectly, more than fifty  
2 percent of the capital and profits interest in the entity;

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

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

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

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

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

11 (5) "new full-time-equivalent job" means the  
12 job of a single employee or the jobs of more than one part-time  
13 employee created by a business on or after July 1, 2018 but  
14 before January 1, 2028 for which work has been performed in the  
15 aggregate for at least thirty-two hours per week for forty-  
16 eight consecutive weeks, but does not include a job:

17 (a) for which the functional equivalent  
18 is eliminated by the business within one year before that job's  
19 creation; or

20 (b) created due to a business merger or  
21 acquisition or other change in business organization or a  
22 taxpayer entering into a contract or becoming a subcontractor  
23 to a contract with a governmental entity that replaces one or  
24 more entities performing functionally equivalent services for  
25 the governmental entity unless the job was not being performed

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1 by an employee of the replaced entity; and performed by: 1)  
2 the person who performed the job or its functional equivalent  
3 before the business merger or acquisition or other change in  
4 business organization; or 2) a person replacing the person who  
5 performed the job or its functional equivalent before a  
6 business merger or acquisition or other change in business  
7 organization;

8 (6) "qualified business" means a business  
9 that:

10 (a) maintains its principal place of  
11 business in New Mexico;

12 (b) as a result of a qualified  
13 investment in it, creates at least three new full-time-  
14 equivalent jobs; and

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

19 (7) "qualified investment" means a cash  
20 investment made after the effective date of this 2018 act but  
21 before January 1, 2027 for equity in a qualified business, but  
22 does not include an investment by a taxpayer claiming the  
23 frontier community investment corporate income tax credit if  
24 the taxpayer, a member of the taxpayer's immediate family or an  
25 entity affiliated with the taxpayer receives compensation from

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1 the qualified business in exchange for services provided to the  
2 qualified business within one year of investment in the  
3 qualified business."

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

6 "[NEW MATERIAL] FRONTIER COMMUNITY INVESTMENT CORPORATE  
7 INCOME TAX CREDIT.--

8 A. For taxable years beginning on or after January  
9 1, 2018, a taxpayer that is a qualified business and that makes  
10 a qualified investment may claim a credit against the  
11 taxpayer's tax liability imposed by the Corporate Income and  
12 Franchise Tax Act in an amount up to twenty-five percent of up  
13 to one hundred thousand dollars (\$100,000) of the qualified  
14 investment. The credit provided by this section may be  
15 referred to as the "frontier community investment corporate  
16 income tax credit".

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

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

21 (2) create new jobs and provide needed  
22 services for frontier communities.

23 C. A taxpayer may claim the frontier community  
24 investment corporate income tax credit for more than one  
25 qualified investment, in more than one qualified business and

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1 in more than one taxable year, but the credit amount shall not  
2 exceed twenty-five thousand dollars (\$25,000) per qualified  
3 investment made by the taxpayer, and the aggregate amount of  
4 frontier community investment corporate income tax credits the  
5 taxpayer claims shall not exceed one hundred thousand dollars  
6 (\$100,000).

7 D. A taxpayer may claim the frontier community  
8 investment corporate income tax credit:

9 (1) no later than one year following the date  
10 of the taxpayer's certificate of eligibility issued in  
11 accordance with Subsection E of this section; or

12 (2) in a subsequent taxable year, if the  
13 taxpayer could have received the credit had the limit imposed  
14 by Subsection F of this section not been reached.

15 E. A taxpayer that wishes to claim the frontier  
16 community investment corporate income tax credit shall apply to  
17 the economic development department for certification within  
18 two years following the end of the calendar year in which the  
19 taxpayer made a qualified investment. The economic development  
20 department shall consider applications in the order received.  
21 If the economic development department determines that the  
22 taxpayer is a qualified business that made a qualified  
23 investment within the allowable time period, it shall, subject  
24 to the limitation in Subsection F of this section, issue a  
25 dated certificate of eligibility to the taxpayer that includes

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1 a calculation of the amount of the credit for which the  
2 taxpayer is eligible.

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

16 G. To claim the frontier community investment  
17 corporate income tax credit, a taxpayer shall provide to the  
18 taxation and revenue department a certificate of eligibility  
19 issued by the economic development department in accordance  
20 with Subsection E of this section and any other information the  
21 taxation and revenue department may require to determine the  
22 amount of the credit due the taxpayer. If the requirements of  
23 this section have been complied with, the taxation and revenue  
24 department shall approve the claim for the credit.

25 H. The frontier community investment corporate

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1 income tax credit may only be deducted from the taxpayer's  
2 corporate income tax liability. Any portion of the credit that  
3 remains unused at the end of the taxpayer's taxable year may be  
4 carried forward for up to three consecutive years.

5 I. The economic development department shall  
6 compile an annual report on the frontier community investment  
7 corporate income tax credit that includes the number of  
8 taxpayers approved by the department to receive the credit, the  
9 aggregate amount of credits approved, the number of eligible  
10 employees hired by taxpayers receiving the credit and any other  
11 information necessary to evaluate the effectiveness of the  
12 credit. Beginning in 2023 and every five years thereafter, the  
13 economic development department shall present the annual  
14 reports to the revenue stabilization and tax policy committee  
15 and the legislative finance committee with an analysis of the  
16 effectiveness and cost of the credit and whether the credit is  
17 performing the purposes for which it was created.

18 J. If a taxpayer or a successor in business of the  
19 taxpayer ceases operations of a qualified business for which  
20 the taxpayer claimed a frontier community investment corporate  
21 income tax credit for one hundred eighty consecutive days or  
22 more within a two-year period after the taxpayer claimed the  
23 credit, the department shall grant no further frontier  
24 community investment corporate income tax credits to the  
25 taxpayer with respect to the business that ceased operations.

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

11 K. As used in this section:

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

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

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

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1 an individual who owns, directly or indirectly, more than fifty  
2 percent of the capital and profits interest in the entity;

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

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

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

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

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

11 (5) "new full-time-equivalent job" means the  
12 job of a single employee or the jobs of more than one part-time  
13 employee created by a business on or after July 1, 2018 but  
14 before January 1, 2028 for which work has been performed in the  
15 aggregate for at least thirty-two hours per week for forty-  
16 eight consecutive weeks, but does not include a job:

17 (a) for which the functional equivalent  
18 is eliminated by the business within one year before that job's  
19 creation; or

20 (b) created due to a business merger or  
21 acquisition or other change in business organization or a  
22 taxpayer entering into a contract or becoming a subcontractor  
23 to a contract with a governmental entity that replaces one or  
24 more entities performing functionally equivalent services for  
25 the governmental entity unless the job was not being performed

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1 by an employee of the replaced entity; and performed by: 1)  
2 the person who performed the job or its functional equivalent  
3 before the business merger or acquisition or other change in  
4 business organization; or 2) a person replacing the person who  
5 performed the job or its functional equivalent before a  
6 business merger or acquisition or other change in business  
7 organization;

8 (6) "qualified business" means a business  
9 that:

10 (a) maintains its principal place of  
11 business in New Mexico;

12 (b) as a result of a qualified  
13 investment in it, creates at least three new full-time-  
14 equivalent jobs; and

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

19 (7) "qualified investment" means a cash  
20 investment made after the effective date of this 2018 act but  
21 before January 1, 2027 for equity in a qualified business, but  
22 does not include an investment by a taxpayer claiming the  
23 frontier community investment income tax credit if the  
24 taxpayer, a member of the taxpayer's immediate family or an  
25 entity affiliated with the taxpayer receives compensation from

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1 the qualified business in exchange for services provided to the  
2 qualified business within one year of investment in the  
3 qualified business."

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