

HOUSE BILL 208

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Luis M. Terrazas and Linda Serrato and Jenifer Jones

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; CREATING THE RAIL INFRASTRUCTURE INCOME TAX CREDIT AND THE RAIL INFRASTRUCTURE CORPORATE INCOME TAX CREDIT.

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

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

"[NEW MATERIAL] RAIL INFRASTRUCTURE INCOME TAX CREDIT.--

.224179.1AIC February 10, 2023 (9:23am)

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A. For taxable years prior to January 1, 2034, a taxpayer that is a railroad that is classified by the federal surface transportation board as a class two or class three railroad located in the state, or an owner or lessee of a rail siding, yard track, industrial spur or industry track located adjacent to HTPWC ~~such a~~ HTPWC HTPWC ~~any~~ HTPWC railroad HTPWC ~~in the state~~ HTPWC , that incurs qualified reconstruction or replacement expenditures or qualified new rail infrastructure expenditures for the maintenance, reconstruction, replacement or new construction of railroad track infrastructure in New Mexico may apply for, and the department may allow, a tax credit against the taxpayer's tax liability pursuant to the Income Tax Act for the taxable year in which the credit is approved by the department pursuant to this section. The tax credit provided by this section may be referred to as the "rail infrastructure income tax credit".

B. The amount of credit that may be allowed pursuant to this section shall be equal to fifty percent of a taxpayer's qualified reconstruction or replacement expenditures or qualified new rail infrastructure expenditures; provided that:

(1) for qualified reconstruction or replacement expenditures, the amount of tax credit shall not exceed an amount equal to the product of five thousand dollars (\$5,000) multiplied by the number of miles of railroad track

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owned or leased in the state by the taxpayer as of the close of the taxable year; and

(2) for qualified new rail infrastructure expenditures, the amount of tax credit shall not exceed one million dollars (\$1,000,000) for each new rail-served customer project of the taxpayer; provided that the total amount of credits that may be allowed in a calendar year shall not exceed five million dollars (\$5,000,000).

C. A taxpayer that seeks to claim a tax credit provided by this section shall apply for a certificate of eligibility from the department of transportation after completion of the maintenance, reconstruction, replacement or new construction of railroad track infrastructure in New Mexico for which qualified reconstruction or replacement expenditures or qualified new rail infrastructure expenditures are made to determine if the taxpayer is eligible to receive the tax credit provided by this section. The department of transportation may certify a maximum annual aggregate amount of credits of six million dollars (\$6,000,000) per calendar year. Completed applications shall be made on forms and in the manner prescribed by that department and considered in the order received.

D. If the department of transportation determines that the taxpayer meets the requirements to claim a tax credit pursuant to this section, that department may issue a

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certificate of eligibility to the taxpayer. The certificate shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The certificate may be submitted by the taxpayer with that taxpayer's return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

E. That portion of a tax credit that exceeds a taxpayer's tax liability in the taxable year in which the tax credit is claimed shall not be refunded but may be carried forward for a maximum of five consecutive taxable years.

F. To receive a tax credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department within twelve months following the calendar year in which the qualified expenditures are incurred. The application shall include a certificate of eligibility issued by the department of transportation pursuant to this section.

G. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of a tax credit that would have been claimed on a joint return.

H. A taxpayer may be allocated the right to claim a tax credit provided by this section in proportion to the

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taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable amount of credit pursuant to this section.

I. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the taxation and revenue department in a manner required by that department.

J. The taxation and revenue department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit and whether the credit is performing the purpose for which the credit was created.

K. As used in this section:

(1) "qualified new rail infrastructure expenditures" means gross expenditures for new rail infrastructure incurred by a taxpayer, including the new construction of industrial leads, switches, sidings, rail

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loading docks and transloading structures involved with servicing new customer locations or existing customer expansions adjacent to a railroad located in New Mexico; and

(2) "qualified reconstruction or replacement expenditures" means gross expenditures for maintenance, reconstruction or replacement of railroad infrastructure, including track, roadbed, bridges, industrial leads, sidings and track-related structures in New Mexico owned or leased by a taxpayer claiming the credit provided by this section. "Qualified railroad reconstruction or replacement expenditures" does not include expenditures used to generate a federal tax credit or expenditures funded by a state or federal grant."

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

"[NEW MATERIAL] RAIL INFRASTRUCTURE CORPORATE INCOME TAX CREDIT.--

A. For taxable years prior to January 1, 2034, a taxpayer that is a railroad that is classified by the federal surface transportation board as a class two or class three railroad located in the state, or an owner or lessee of a rail siding, yard track, industrial spur or industry track located adjacent to HTPWC ~~such a~~ HTPWC HTPWC ~~any~~ HTPWC railroad HTPWC ~~in the state~~ HTPWC , that incurs qualified reconstruction or replacement expenditures or qualified new rail infrastructure expenditures for the maintenance,

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reconstruction, replacement or new construction of railroad track infrastructure in New Mexico may apply for, and the department may allow, a tax credit against the taxpayer's tax liability pursuant to the Corporate Income and Franchise Tax Act for the taxable year in which the credit is approved by the department pursuant to this section. The tax credit provided by this section may be referred to as the "rail infrastructure corporate income tax credit".

B. The amount of credit that may be allowed pursuant to this section shall be equal to fifty percent of a taxpayer's qualified reconstruction or replacement expenditures or qualified new rail infrastructure expenditures; provided that:

(1) for qualified reconstruction or replacement expenditures, the amount of tax credit shall not exceed an amount equal to the product of five thousand dollars (\$5,000) multiplied by the number of miles of railroad track owned or leased in the state by the taxpayer as of the close of the taxable year; and

(2) for qualified new rail infrastructure expenditures, the amount of tax credit shall not exceed one million dollars (\$1,000,000) for each new rail-served customer project of the taxpayer; provided that the total amount of credits that may be allowed in a calendar year shall not exceed five million dollars (\$5,000,000).

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C. A taxpayer that seeks to claim a tax credit provided by this section shall apply for a certificate of eligibility from the department of transportation after completion of the maintenance, reconstruction, replacement or new construction of railroad track infrastructure in New Mexico for which qualified reconstruction or replacement expenditures or qualified new rail infrastructure expenditures are made to determine if the taxpayer is eligible to receive the tax credit provided by this section. The department of transportation may certify a maximum annual aggregate amount of credits of six million dollars (\$6,000,000) per calendar year. Completed applications shall be made on forms and in the manner prescribed by that department and considered in the order received.

D. If the department of transportation determines that the taxpayer meets the requirements to claim a tax credit pursuant to this section, that department may issue a certificate of eligibility to the taxpayer. The certificate shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The certificate may be submitted by the taxpayer with that taxpayer's return or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

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E. That portion of a tax credit that exceeds a taxpayer's tax liability in the taxable year in which the tax credit is claimed shall not be refunded but may be carried forward for a maximum of five consecutive taxable years.

F. To receive a tax credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department within twelve months following the calendar year in which the qualified expenditures are incurred. The application shall include a certificate of eligibility issued by the department of transportation pursuant to this section.

G. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the taxation and revenue department in a manner required by that department.

H. The taxation and revenue department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the tax credit and whether the credit is performing the purpose for which the credit was created.

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(1) "qualified new rail infrastructure expenditures" means gross expenditures for new rail infrastructure incurred by a taxpayer, including the new construction of industrial leads, switches, sidings, rail loading docks and transloading structures involved with servicing new customer locations or existing customer expansions adjacent to a railroad located in New Mexico; and

(2) "qualified reconstruction or replacement expenditures" means gross expenditures for maintenance, reconstruction or replacement of railroad infrastructure, including track, roadbed, bridges, industrial leads, sidings and track-related structures in New Mexico and owned or leased by a taxpayer claiming the credit provided by this section. "Qualified railroad reconstruction or replacement expenditures" does not include expenditures used to generate a federal tax credit or expenditures funded by a state or federal grant."

SECTION 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2023.