

BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 18, 2024

Bill: SB-28

Sponsor: Senators Crystal Diamond Brantley and Siah Correa Hemphill and Representative Rod Montoya

Short Title: Rail Infrastructure Tax Credit

Description: This bill creates a new section of the Income Tax Act providing the “Rail Infrastructure Income Tax Credit” for a taxpayer that is a railroad. The credit is equal to 50% of a taxpayer’s reconstruction or replacement expenditures or qualified new rail infrastructure expenditures. The certification for these credits is done by the Department of Transportation (DOT), who may certify a maximum of \$6 million per calendar year, with the total amount of allowed credits for qualified new rail infrastructure in a calendar year capped at \$5 million. A corresponding credit is also created in the Corporate Income and Franchise Tax Act. The bill also amends Section 7-1-8.8 NMSA 1978 to allow for information sharing between the Taxation and Revenue Department (Tax & Rev) and DOT.

Effective Date: Not specified; 90 days following adjournment (May 15, 2024). Applicable to taxable years beginning on or after January 1, 2024.

Taxation and Revenue Department Analyst Asif Rasool

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
--	(\$3,000) – Up to (\$6,000)	(\$3,000) – Up to (\$6,000)	(\$3,000) – Up to (\$6,000)	(\$3,00) – Up to (\$6,000)	R	General Fund

* In thousands of dollars. Parentheses () indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: New Mexico’s major rail companies have several ongoing and upcoming initiatives to improve rail connectivity, enhance freight movement, and support economic growth. The Belen Yard, a prominent New Mexico rail hub, is a junction for multiple freight rail lines. Plans are underway to expand and modernize the yard to accommodate increased freight traffic, improve operational efficiency, and support economic development in the region. Double-tracking initiatives aim to add a second track along certain sections of existing rail lines. This expansion improves capacity, allows faster and more efficient train movements, and supports increased freight and passenger rail service. Some upcoming double-tracking projects in New Mexico include portions of the Burlington Northern and Santa Fe (BNSF) Railway mainline. In summary, New Mexico’s rail authorities and transportation agencies have ongoing programs to inspect, repair, and upgrade tracks, bridges, signals, and other essential components of the rail network. These endeavors will capture a significant portion of the tax credits offered in the bill.

Policy Issues: While tax incentives can provide support for industries and encourage specific social and economic behaviors, the high cost of railroad projects makes it unlikely for this tax credit to serve as a significant source of incentive. The proliferation of such incentives adds complexity to the tax code, creating special treatment and exceptions that result in increased tax expenditures and a narrower tax base. This can have a negative impact on the General Fund. Additionally, the introduction of more tax incentives increases the compliance burden on both taxpayers and on Tax & Rev. This approach of adding complexity and exceptions to the tax code does not align with the principles of sound tax policy.

Rail companies have historically been responsible for maintaining their own business interests. These companies are actively expanding their operations to generate more profit, and it is reasonable to assume that they would continue to do so even without the presence of this tax credit. The credit therefore imposes an unnecessary distortion to economic activity in New Mexico by incentivizing economic activity that would occur even in the absence of the incentive and by providing state subsidies to a mature and profitable business sector.

The credit has a defined end date to claim the tax credit and thus a sunset date. Tax & Rev supports sunset dates for policymakers to review the impact of tax expenditures before extending them.

Technical Issues: In sections 1 and 2 Subsections A, page 1, line 23, and page 6, line 20, the phrase ‘...a taxpayer that is a railroad’..’ should be clarified to indicate whether it refers to a taxpayer that owns a railroad. Furthermore, it is questionable as to why this credit is included in the personal Income Tax Act; an individual taxpayer, a natural person, cannot be a railroad. Some businesses do file under the personal income tax act, such as LLCs and partnerships; other businesses file under the corporate income tax.

Section 1 and Section 2, Subsection A, is not clear on the division for approval. On page 2 line 6 and on page 7 line 3 after “apply” add “with the department of transportation.”

In sections 1 and 2, Subsection B, the amount of credit is specified. However, it is unclear whether these limits apply to each individual project or if the taxpayer has the option to carry forward any excess credit amounts to subsequent tax years. To provide clarity on this matter, it would be beneficial to include a timeframe within which the taxpayer must apply for the credit, as outlined below and to specify the credit limit per taxpayer:

To address the ambiguity surrounding the application of the credit limits, it is recommended to establish a timeframe within which the taxpayer must apply for the credit. For example, the taxpayer should apply for the credit within the same tax year/calendar year in which the qualified expenditures are incurred. This would help clarify whether the limits apply to each individual project or if any excess credit amounts can be carried forward to subsequent tax years.

In sections 1 and 2, Subsections C, it is directed that the taxpayer should apply for a certificate of eligibility from the DOT after completing the project. However, there is no specified deadline mentioned. It would be helpful to include a deadline to provide clarity regarding the timeframe for applying and determining the credits that have not been utilized or certified. For instance, an example of a deadline could be 'The taxpayer shall apply for a certificate of eligibility from the Department of Transportation within one year after completing 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. This will ascertain the taxpayer's eligibility to receive the tax credit as outlined in this section.'

Also in Subsections C, this bill has a cap of \$5 million per calendar year for credits for qualified new rail infrastructure only but allows DOT to certify \$6 million per calendar year regardless of the type of credit. This is not recommended as the full \$6 million that is certified by DOT must take into account the difference in the types of credits. Tax & Rev would not be able to allow all of those certifications to be claimed as the caps do not match between certification and the credits applied.

In sections 1 and 2, Subsections D, the requirements for the certificate include that it must be numbered, include the date of issuance, and specify the amount of the credit. However, it would be beneficial to also include the tax year for which the certificate is eligible. This additional information would help provide

clarity and ensure that the certificate is used within the correct tax year.

In sections 1 and 2, Subsections E, the language should clarify that the credit cannot be partially claimed, then sold, exchanged or transferred.

In sections 1 and 2, Subsections F, there is a restriction that requires the taxpayer to apply the certificate and claim the credit within one year from the end of the calendar year in which the expenditures occurred. However, the current requirement of completing the certification after the projects are finished may result in some expenditures being excluded from the credit. To address this issue, it is suggested to revise the language as follows: "In order to be eligible for the tax credit provided by this section, the taxpayer must apply to the department within twelve months following the calendar year in which the qualified expenditures were incurred, and the certificate was issued. The application should be submitted on forms provided by the department and in accordance with the prescribed procedures."

For tax credits, it is not recommended to have a certification process with the DOT, the application process with Tax & Rev, and the claim on a return with Tax & Rev. This creates a lot of steps that can be simplified for the purposes of administration. Tax & Rev would suggest that for this credit DOT certifies the credit and manages the cap. With DOT being required to provide Tax & Rev with the certificates of eligibility and specify the amount of credit the taxpayer has been awarded. Then the credit could be claimed on a taxpayer's return. To achieve this, page 4 Subsection G and page 9 Subsection G, should be stricken in full.

In Section 1, Subsection J, and Section 2, Subsection H, it may be advisable to incorporate reporting requirements related to the DOT to provide information on the certification process in addition to requiring the taxpayer to report to the Tax & Rev as the bill language now states.

In Sections 1 and 2, Subsections J and L, the following terms needs to be defined:

- "rail-served customer"
- "replacement" and "maintenance" to clarify in the eligibility of the credit
- "gross" expenditures" to clarify what is included in expenditures.

Other Issues: The bill piggybacks on the classes defined by the federal surface transportation board (STB). Each year the STB applies a deflator factor to determine classes. There are also many other financial reporting requirements, which may impact the amount of credit.

Tax & Rev is now required by Section 7-1-84 NMSA 1978 to compile and present a tax expenditure budget, which includes the number of taxpayers that claim and the amount of claims for a tax expenditure. Credits are seen as a tax expenditure and will be included on this report. For that reason, Tax & Rev recommends that on page 5, lines 13 through 21, page 9 line 25, and page 10 lines 1 through 8 are stricken in full.

If at some point, regulations are needed by DOT, this legislation does not specifically state that they can promulgate regulations. This may be something that needs to be considered. An example of this language is in Subsection F of Section 7-2-18.19 NMSA 1978, "The energy, minerals, and natural resources department may issue rules governing the procedure for administering the provisions of this subsection."

Administrative & Compliance Impact: Tax & Rev will need to make information system changes and update forms, instructions and publications. Staff training to administer the credit will need to take place.

Tax & Rev's Administrative Services Division (ASD) will test credit sourcing and perform other systems testing. It is anticipated this work will take approximately 40 hours split between 2.0 Full-Time

Equivalent (FTE) of a pay band 70 and a pay band 80 at a cost of approximately \$2,900.

Implementing this bill will have a low impact on Tax & Rev’s Information Technology Division (ITD), approximately 300 hours or about one and a half months and an estimated staff workload cost of \$16,550. This implementation will be included in the annual tax year changes.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2024	FY2025	FY2026	3 Year Total Cost		
--	\$16.6	--	\$16.6	NR	Tax & Rev- ITD staff workload
--	\$2.9	--	\$2.9	NR	Tax & Rev – ASD staff workload

* In thousands of dollars. Parentheses () indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).

Related Bills: Duplicate of: SB-221, 2023 Session