

SENATE TAX, BUSINESS AND TRANSPORTATION  
COMMITTEE SUBSTITUTE FOR  
SENATE BILL 97

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

AN ACT

RELATING TO TAXATION; EXPANDING THE DEFINITION OF "QUALIFIED EXPENDITURE" IN THE TECHNOLOGY JOBS AND RESEARCH AND DEVELOPMENT TAX CREDIT ACT TO INCLUDE EXPENDITURES FOR PROPERTY THAT IS OWNED BY A MUNICIPALITY OR COUNTY IN CONNECTION WITH AN INDUSTRIAL REVENUE BOND PROJECT; ALLOWING TRANSFERABILITY FOR A LIMITED PERIOD.

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

SECTION 1. Section 7-9F-3 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 22, Section 3, as amended by Laws 2019, Chapter 270, Section 38 and by Laws 2019, Chapter 274, Section 12) is amended to read:

"7-9F-3. DEFINITIONS.--As used in the Technology Jobs and Research and Development Tax Credit Act:

A. "affiliate" means a person who directly or

1 indirectly owns or controls, is owned or controlled by or is  
2 under common ownership or control with another person through  
3 ownership of voting securities or other ownership interests  
4 representing a majority of the total voting power of the  
5 entity;

6 B. "annual payroll expense" means the wages paid or  
7 payable to employees in the state by the taxpayer in the  
8 taxable year for which the taxpayer applies for an additional  
9 credit pursuant to the Technology Jobs and Research and  
10 Development Tax Credit Act;

11 C. "base payroll expense" means the wages paid or  
12 payable by the taxpayer in the taxable year prior to the  
13 taxable year for which the taxpayer applies for an additional  
14 credit pursuant to the Technology Jobs and Research and  
15 Development Tax Credit Act, adjusted for any increase from the  
16 preceding taxable year in the consumer price index for the  
17 United States for all items as published by the United States  
18 department of labor in the taxable year for which the  
19 additional credit is claimed. In a taxable year during which a  
20 taxpayer has been part of a business merger or acquisition or  
21 other change in business organization, the taxpayer's base  
22 payroll expense shall include the payroll expense of all  
23 entities included in the reorganization for all positions that  
24 are included in the business entity resulting from the  
25 reorganization;

.233469.1

1           D. "data center" means a facility that primarily  
2 contains electronic equipment used to process, store and  
3 transmit digital information;

4           ~~[D.]~~ E. "department" means the taxation and revenue  
5 department, the secretary of taxation and revenue or any  
6 employee of the department exercising authority lawfully  
7 delegated to that employee by the secretary;

8           ~~[E.]~~ F. "facility" means a factory, mill, plant,  
9 refinery, warehouse, dairy, feedlot, building or complex of  
10 buildings located within the state, including the land on which  
11 it is located and all machinery, equipment and other real and  
12 tangible personal property located at or within it and used in  
13 connection with its operation;

14           ~~[F.]~~ G. "local option gross receipts tax" means a  
15 tax authorized to be imposed by a county or municipality upon a  
16 taxpayer's gross receipts, as that term is defined in the Gross  
17 Receipts and Compensating Tax Act, and required to be collected  
18 by the department at the same time and in the same manner as  
19 the gross receipts tax;

20           ~~[G.]~~ H. "qualified expenditure" means an  
21 expenditure or an allocated portion of an expenditure by a  
22 taxpayer in connection with qualified research at a qualified  
23 facility, including expenditures for depletable land and rent  
24 paid or incurred for land, improvements, the allowable amount  
25 paid or incurred to operate or maintain a facility, buildings,

.233469.1

1 equipment, computer software, computer software upgrades,  
2 consultants and contractors performing work in New Mexico,  
3 payroll, technical books and manuals and test materials, but  
4 not including any expenditure on property that is owned by a  
5 municipality or county in connection with an industrial revenue  
6 bond project issued prior to January 1, 2025 for property for  
7 which the taxpayer has received any credit pursuant to the  
8 Investment Credit Act, property that was owned by the taxpayer  
9 or an affiliate before July 3, 2000 or research and development  
10 expenditures reimbursed by a person who is not an affiliate of  
11 the taxpayer. If a "qualified expenditure" is an allocation of  
12 an expenditure, the cost accounting methodology used for the  
13 allocation of the expenditure shall be the same cost accounting  
14 methodology used by the taxpayer in its other business  
15 activities;

16 [~~H.~~] I. "qualified facility" means a facility in  
17 New Mexico at which qualified research is conducted. [~~other~~  
18 than] "Qualified facility" does not mean a facility operated by  
19 a taxpayer for the United States or any agency, department or  
20 instrumentality thereof, a facility in New Mexico designated as  
21 a national laboratory by an act of congress, a research  
22 facility in New Mexico that is owned by the state or a facility  
23 that is a data center;

24 [~~I.~~] J. "qualified research" means research:

25 (1) that is undertaken for the purpose of

1 discovering information:

2 (a) that is technological in nature; and

3 (b) the application of which is intended  
4 to be useful in the development of a new or improved business  
5 component of the taxpayer; and

6 (2) substantially all of the activities of  
7 which constitute elements of a process of experimentation  
8 related to a new or improved function, performance, reliability  
9 or quality, but not related to style, taste or cosmetic or  
10 seasonal design factors;

11 [~~J.~~] K. "qualified research and development small  
12 business" means a taxpayer that:

13 (1) employed no more than fifty employees as  
14 determined by the number of employees for which the taxpayer  
15 was liable for unemployment insurance coverage in the taxable  
16 year for which an additional credit is claimed;

17 (2) had total qualified expenditures of no  
18 more than five million dollars (\$5,000,000) in the taxable year  
19 for which an additional credit is claimed; and

20 (3) did not have more than fifty percent of  
21 its voting securities or other equity interest with the right  
22 to designate or elect the board of directors or other governing  
23 body of the business owned directly or indirectly by another  
24 business;

25 [~~K.~~] L. "rural area" means any area of the state

.233469.1

1 other than the state fairgrounds, an incorporated municipality  
2 with a population of thirty thousand or more according to the  
3 most recent federal decennial census and any area within three  
4 miles of the external boundaries of an incorporated  
5 municipality with a population of thirty thousand or more  
6 according to the most recent federal decennial census;

7 ~~[E.]~~ M. "taxpayer" means any of the following  
8 persons, other than a federal, state or other governmental unit  
9 or subdivision or an agency, department, institution or  
10 instrumentality thereof:

11 (1) a person liable for payment of any tax;

12 (2) a person responsible for withholding and  
13 payment or collection and payment of any tax;

14 (3) a person to whom an assessment has been  
15 made if the assessment remains unabated or the assessed amount  
16 has not been paid; or

17 (4) for purposes of the additional credit  
18 against the taxpayer's income tax pursuant to the Technology  
19 Jobs and Research and Development Tax Credit Act and to the  
20 extent of their respective interest in that entity, the  
21 shareholders, members, partners or other owners of:

22 (a) a small business corporation that  
23 has elected to be treated as an S corporation for federal  
24 income tax purposes; or

25 (b) an entity treated as a partnership

.233469.1

1 or disregarded entity for federal income tax purposes; and

2 [M-] N. "wages" means remuneration for services  
3 performed by an employee in New Mexico for an employer."

4 **SECTION 2.** Section 7-9F-9 NMSA 1978 (being Laws 2000 (2nd  
5 S.S.), Chapter 22, Section 9, as amended) is amended to read:

6 "7-9F-9. CLAIMING THE BASIC CREDIT.--

7 A. A taxpayer may apply for approval of [~~a~~] the  
8 basic credit within one year following the end of the reporting  
9 period in which the qualified expenditure was made. An  
10 application shall include the certificate of eligibility  
11 pursuant to Subsection B of this section.

12 B. If all of the requirements for the basic credit  
13 have been complied with, the department shall issue to the  
14 applicant a certificate of eligibility for the appropriate  
15 taxable year. The certificate of eligibility shall be numbered  
16 for identification and declare its date of issuance and the  
17 amount of tax credit allowed.

18 C. For basic credits allowed for taxable years 2026  
19 through 2028, a certificate of eligibility may be sold,  
20 exchanged or otherwise transferred to another taxpayer;  
21 provided that certificates for basic credits and additional  
22 credits that exceed fifty million dollars (\$50,000,000) for a  
23 taxable year shall not be transferred. The transfer of a  
24 certificate of eligibility shall be allowed in the order that a  
25 claim for the basic credit is received. The parties to a

.233469.1

1 transaction to sell, exchange or transfer an additional credit  
2 shall notify the department of the transaction within ten days  
3 of the sale, exchange or transfer.

4 ~~[B.]~~ D. A taxpayer having applied for and been  
5 granted approval for a basic credit by the department pursuant  
6 to the Technology Jobs and Research and Development Tax Credit  
7 Act may claim the amount of the approved basic credit against  
8 the taxpayer's compensating tax, withholding tax or gross  
9 receipts tax, excluding local option gross receipts tax, due to  
10 the state of New Mexico; provided that no taxpayer may claim an  
11 amount of approved basic credit for a reporting period in which  
12 the basic credit is being claimed that exceeds the sum of the  
13 taxpayer's compensating tax, withholding tax and gross receipts  
14 tax, excluding local option gross receipts tax, due for that  
15 reporting period.

16 ~~[C.]~~ E. Any amount of approved basic credit not  
17 claimed against the taxpayer's compensating tax, withholding  
18 tax or gross receipts tax, excluding local option gross  
19 receipts tax, due may be claimed in subsequent reporting  
20 periods for a period of up to ~~[three]~~ seven years from the date  
21 of the original claim."

22 **SECTION 3.** Section 7-9F-9.1 NMSA 1978 (being Laws 2015  
23 (1st S.S.), Chapter 2, Section 17) is amended to read:

24 "7-9F-9.1. CLAIMING THE ADDITIONAL CREDIT.--

25 A. A taxpayer may apply for approval of an

1 additional credit pursuant to the Technology Jobs and Research  
2 and Development Tax Credit Act within one year following the  
3 end of the taxable year in which the qualified expenditure was  
4 made. An application shall include the certificate of  
5 eligibility pursuant to Subsection B of this section.

6 B. If all of the requirements for the additional  
7 credit have been complied with, the department shall issue to  
8 the applicant a certificate of eligibility for the appropriate  
9 taxable year. The certificate of eligibility shall be numbered  
10 for identification and declare its date of issuance and the  
11 amount of tax credit allowed.

12 C. For additional credits allowed for taxable years  
13 2026 through 2028, a certificate of eligibility may be sold,  
14 exchanged or otherwise transferred to another taxpayer;  
15 provided that certificates for basic credits and additional  
16 credits that exceed fifty million dollars (\$50,000,000) for a  
17 taxable year shall not be transferred. The transfer of a  
18 certificate of eligibility shall be allowed in the order a  
19 claim for the additional credit is received. The parties to a  
20 transaction to sell, exchange or transfer an additional credit  
21 shall notify the department of the transaction within ten days  
22 of the sale, exchange or transfer.

23 [~~B.~~] D. A taxpayer that has applied for and been  
24 granted approval for an additional credit by the department  
25 pursuant to the Technology Jobs and Research and Development

.233469.1

1 Tax Credit Act may claim the amount of the approved additional  
2 credit against the taxpayer's income tax or corporate income  
3 tax liability. Except as provided in Subsection [G] E of this  
4 section, no taxpayer may claim an amount of approved additional  
5 credit for a taxable year in which the additional credit is  
6 being claimed that exceeds the amount of the taxpayer's income  
7 tax or corporate income tax due for that taxable year.

8 ~~[G-]~~ E. If a taxpayer is a qualified research and  
9 development small business and the amount of approved  
10 additional credit for the taxable year in which the additional  
11 credit is being claimed exceeds the taxpayer's income tax  
12 liability or corporate income tax liability, the excess shall  
13 be refunded to the taxpayer pursuant to Paragraphs (1) through  
14 (3) of this subsection. If the taxpayer's total qualified  
15 expenditures for the taxable year for which the claim is made  
16 is:

17 (1) less than three million dollars  
18 (\$3,000,000), the excess additional credit shall be refunded to  
19 the taxpayer;

20 (2) greater than or equal to three million  
21 dollars (\$3,000,000) and less than four million dollars  
22 (\$4,000,000), two-thirds of the excess additional credit shall  
23 be refunded to the taxpayer; and

24 (3) greater than or equal to four million  
25 dollars (\$4,000,000) and less than or equal to five million

1 dollars (\$5,000,000), one-third of the excess additional credit  
2 shall be refunded to the taxpayer.

3 ~~[D.]~~ F. Any amount of approved additional credit  
4 not claimed against the taxpayer's income tax or corporate  
5 income tax due for a taxable year or refunded to the taxpayer  
6 may be claimed in subsequent reporting periods for a period of  
7 up to ~~[three]~~ seven years from the date of the original claim.

8 ~~[E.]~~ G. Married individuals filing separate returns  
9 for a taxable year for which they could have filed a joint  
10 return may each claim only one-half of the additional credit  
11 that would have been claimed on a joint return."

12 **SECTION 4. APPLICABILITY.**--The provisions of this act  
13 apply to taxable years beginning on or after January 1, 2026.

14 - 11 -  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

underscored material = new  
[bracketed material] = delete