

SENATE BILL 97

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

INTRODUCED BY

Michael Padilla

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.

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 indirectly owns or controls, is owned or controlled by or is

1 under common ownership or control with another person through
2 ownership of voting securities or other ownership interests
3 representing a majority of the total voting power of the
4 entity;

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

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

25 D. "department" means the taxation and revenue

1 department, the secretary of taxation and revenue or any
2 employee of the department exercising authority lawfully
3 delegated to that employee by the secretary;

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

10 F. "local option gross receipts tax" means a tax
11 authorized to be imposed by a county or municipality upon a
12 taxpayer's gross receipts, as that term is defined in the Gross
13 Receipts and Compensating Tax Act, and required to be collected
14 by the department at the same time and in the same manner as
15 the gross receipts tax;

16 G. "qualified expenditure" means an expenditure or
17 an allocated portion of an expenditure by a taxpayer in
18 connection with qualified research at a qualified facility,
19 including expenditures for depletable land and rent paid or
20 incurred for land, improvements, the allowable amount paid or
21 incurred to operate or maintain a facility, buildings,
22 equipment, computer software, computer software upgrades,
23 consultants and contractors performing work in New Mexico,
24 payroll, technical books and manuals and test materials, but
25 not including any expenditure ~~[on property that is owned by a~~

1 ~~municipality or county in connection with an industrial revenue~~
2 ~~bond project]~~ for property for which the taxpayer has received
3 any credit pursuant to the Investment Credit Act, property that
4 was owned by the taxpayer or an affiliate before July 3, 2000
5 or research and development expenditures reimbursed by a person
6 who is not an affiliate of the taxpayer. If a "qualified
7 expenditure" is an allocation of an expenditure, the cost
8 accounting methodology used for the allocation of the
9 expenditure shall be the same cost accounting methodology used
10 by the taxpayer in its other business activities;

11 H. "qualified facility" means a facility in New
12 Mexico at which qualified research is conducted. ~~[other than]~~
13 "Qualified facility" does not mean a facility operated by a
14 taxpayer for the United States or any agency, department or
15 instrumentality thereof, a facility in New Mexico designated as
16 a national laboratory by an act of congress or a research
17 facility in New Mexico that is owned by the state;

18 I. "qualified research" means research:

19 (1) that is undertaken for the purpose of
20 discovering information:

21 (a) that is technological in nature; and
22 (b) the application of which is intended
23 to be useful in the development of a new or improved business
24 component of the taxpayer; and

25 (2) substantially all of the activities of

1 which constitute elements of a process of experimentation
2 related to a new or improved function, performance, reliability
3 or quality, but not related to style, taste or cosmetic or
4 seasonal design factors;

5 J. "qualified research and development small
6 business" means a taxpayer that:

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

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

14 (3) did not have more than fifty percent of
15 its voting securities or other equity interest with the right
16 to designate or elect the board of directors or other governing
17 body of the business owned directly or indirectly by another
18 business;

19 K. "rural area" means any area of the state other
20 than the state fairgrounds, an incorporated municipality with a
21 population of thirty thousand or more according to the most
22 recent federal decennial census and any area within three miles
23 of the external boundaries of an incorporated municipality with
24 a population of thirty thousand or more according to the most
25 recent federal decennial census;

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1 L. "taxpayer" means any of the following persons,
2 other than a federal, state or other governmental unit or
3 subdivision or an agency, department, institution or
4 instrumentality thereof:

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

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

8 (3) a person to whom an assessment has been
9 made if the assessment remains unabated or the assessed amount
10 has not been paid; or

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

16 (a) a small business corporation that
17 has elected to be treated as an S corporation for federal
18 income tax purposes; or

19 (b) an entity treated as a partnership
20 or disregarded entity for federal income tax purposes; and

21 M. "wages" means remuneration for services
22 performed by an employee in New Mexico for an employer."

23 SECTION 2. Section 7-9F-9.1 NMSA 1978 (being Laws 2015
24 (1st S.S.), Chapter 2, Section 17) is amended to read:

25 "7-9F-9.1. CLAIMING THE ADDITIONAL CREDIT.--

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1 A. A taxpayer may apply for approval of an
2 additional credit pursuant to the Technology Jobs and Research
3 and Development Tax Credit Act within one year following the
4 end of the taxable year in which the qualified expenditure was
5 made.

6 B. A taxpayer that has applied for and been granted
7 approval for an additional credit by the department pursuant to
8 the Technology Jobs and Research and Development Tax Credit Act
9 may claim the amount of the approved additional credit against
10 the taxpayer's income tax or corporate income tax liability.
11 Except as provided in Subsection C of this section, no taxpayer
12 may claim an amount of approved additional credit for a taxable
13 year in which the additional credit is being claimed that
14 exceeds the amount of the taxpayer's income tax or corporate
15 income tax due for that taxable year.

16 C. If a taxpayer is a qualified research and
17 development small business and the amount of approved
18 additional credit for the taxable year in which the additional
19 credit is being claimed exceeds the taxpayer's income tax
20 liability or corporate income tax liability, the excess shall
21 be refunded to the taxpayer pursuant to Paragraphs (1) through
22 (3) of this subsection. If the taxpayer's total qualified
23 expenditures for the taxable year for which the claim is made
24 is:

25 (1) less than three million dollars

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1 (\$3,000,000), the excess additional credit shall be refunded to
2 the taxpayer;

3 (2) greater than or equal to three million
4 dollars (\$3,000,000) and less than four million dollars
5 (\$4,000,000), two-thirds of the excess additional credit shall
6 be refunded to the taxpayer; and

7 (3) greater than or equal to four million
8 dollars (\$4,000,000) and less than or equal to five million
9 dollars (\$5,000,000), one-third of the excess additional credit
10 shall be refunded to the taxpayer.

11 D. Any amount of approved additional credit not
12 claimed against the taxpayer's income tax or corporate income
13 tax due for a taxable year or refunded to the taxpayer may be
14 claimed in subsequent reporting periods for a period of up to
15 [~~three~~] ten years from the date of the original claim.

16 E. Married individuals filing separate returns for
17 a taxable year for which they could have filed a joint return
18 may each claim only one-half of the additional credit that
19 would have been claimed on a joint return."

20 SECTION 3. A new section of the Technology Jobs and
21 Research and Development Tax Credit Act, Section 7-9F-9.2 NMSA
22 1978, is enacted to read:

23 "7-9F-9.2. [NEW MATERIAL] TRANSFERABILITY OF
24 CREDITS.--The tax credits provided pursuant to the Technology
25 Jobs and Research and Development Tax Credit Act may be sold,

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1 exchanged or otherwise transferred to another taxpayer for the
2 full value of the credit. The parties to such a transaction
3 shall notify the department of the sale, exchange or transfer
4 within ten days of the sale, exchange or transfer."

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

7 - 9 -