

FORTY-SEVENTH LEGISLATURE
FIRST SESSION

March 19, 2005

SENATE FLOOR AMENDMENT number 1 to HOUSE TAXATION AND REVENUE
COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 410, 582, 844 &
1086, as amended

Amendment sponsored by Senator

1. Strike House Taxation and Revenue Committee Amendments 3 through 7.

2. On page 1, line 16, after the semicolon strike the remainder of the line, strike lines 17 through 24 in their entirety, on line 25, strike "DISTRIBUTIONS;" and insert in lieu thereof the following:

"EXPANDING CRITERIA FOR ELIGIBILITY FOR THE RENEWABLE ENERGY PRODUCTION TAX CREDIT; ELIMINATING A TIME LIMITATION ON THE APPLICABILITY OF THE RURAL JOB TAX CREDIT; EXPANDING ELIGIBILITY FOR AND ADDING REQUIREMENTS TO THE FILM PRODUCTION TAX CREDIT; ENACTING THE RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT ACT; ENACTING THE AFFORDABLE HOUSING TAX CREDIT ACT; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR MILITARY TRANSFORMATIONAL ACQUISITION PROGRAMS; EXPANDING A DEDUCTION FROM GROSS RECEIPTS FOR MAINTAINING, REFURBISHING, REMODELING OR MODIFYING TRANSPORT CATEGORY AIRCRAFT; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR RECEIPTS FROM SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY DURING A DESIGNATED THREE-DAY PERIOD IN AUGUST PRIOR TO THE BEGINNING OF EACH SCHOOL YEAR; PROVIDING FOR A GROSS RECEIPTS TAX OR GOVERNMENTAL GROSS RECEIPTS TAX CREDIT FOR THE SALE OF SERVICES FOR RESALE IN THE ORDINARY COURSE OF BUSINESS THAT ARE NOT DEDUCTIBLE; PROVIDING FOR ADJUSTED DISTRIBUTIONS. "

3. On page 6, line 18, strike "2" and insert in lieu thereof "3".

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4. On page 8, line 13, through page 11, line 4, strike Section 5 in its entirety and insert in lieu thereof the following new section to read:

"Section 5. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] EXEMPTION FOR LOW- AND MIDDLE-INCOME TAXPAYERS. --

A. An individual may claim an exemption in an amount specified in Subsections B through D of this section not to exceed an amount equal to the number of federal exemptions multiplied by two thousand five hundred dollars (\$2,500) of income includable, except for this exemption, in net income. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary.

B. For a married individual filing a separate return with adjusted gross income up to twenty thousand three hundred thirty-three dollars (\$20,333):

(1) if the adjusted gross income is not over twelve thousand dollars (\$12,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over twelve thousand dollars (\$12,000) but not over twenty thousand three hundred thirty-three dollars (\$20,333), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars (\$2,500); less

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(b) twenty percent of the amount obtained by subtracting twelve thousand dollars (\$12,000) from the adjusted gross income.

C. For single individuals with adjusted gross income up to twenty-seven thousand one hundred ten dollars (\$27,110):

(1) if the adjusted gross income is not over sixteen thousand dollars (\$16,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over sixteen thousand dollars (\$16,000) but not over twenty-seven thousand one hundred ten dollars (\$27,110), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars (\$2,500); less

(b) fifteen percent of the amount obtained by subtracting sixteen thousand dollars (\$16,000) from the adjusted gross income.

D. For married individuals filing joint returns, surviving spouses or for heads of households with adjusted gross income up to forty thousand six hundred sixty-seven dollars (\$40,667):

(1) if the adjusted gross income is not over twenty-four thousand dollars (\$24,000), the amount of the exemption pursuant to this section shall be two thousand five hundred dollars (\$2,500) for each federal exemption; and

(2) if the adjusted gross income is over twenty-

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four thousand dollars (\$24,000) but not over forty thousand six hundred sixty-seven dollars (\$40,667), the amount of the exemption pursuant to this section for each federal exemption shall be calculated as follows:

(a) two thousand five hundred dollars
(\$2,500); less

(b) ten percent of the amount obtained by subtracting twenty-four thousand dollars (\$24,000) from the adjusted gross income.

E. For the purposes of this section, "federal exemption" means an exemption allowable for federal income tax purposes for an individual included in the return who is domiciled in New Mexico."

5. On page 13, line 13, through page 22, line 24, strike Sections 7 through 11 in their entirety and insert in lieu thereof the following new sections to read:

"Section 7. Section 7-2A-19 NMSA 1978 (being Laws 2002, Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. ~~[A taxpayer that owns a qualified energy generator certified by the energy, minerals and natural resources department is eligible for a tax credit in an amount equal to one cent (\$.01) per kilowatt-hour for the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator using a qualified energy resource in the taxable year.] The tax credit provided in this section may be referred to as the "renewable energy production tax credit".~~

B. A person is eligible for the renewable energy

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production tax credit if the person:

(1) holds title to a qualified energy generator;

or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond.

C. The amount of the tax credit shall equal one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year, provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator in a taxable year shall not exceed one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator.

D. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for ten consecutive years, beginning on the date the qualified energy generator begins producing electricity. [~~The tax credit provided in this section may be referred to as the "renewable energy production tax credit".~~]

~~B.]~~ E. As used in this section:

(1) "biomass" means agricultural or animal waste; thinnings from trees less than fifteen inches in diameter, slash and brush; lumbermill or sawmill residues; and salt cedar and other phreatophytes removed from watersheds or river basins;

(2) "qualified energy generator" means a facility with at least ten megawatts generating capacity located in New Mexico that produces electricity using a qualified energy resource

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and that sells that electricity to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

- (a) solar light;
- (b) solar heat;
- (c) wind; or
- (d) biomass.

~~[C.—A taxpayer]~~ F. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the [applicant] facility is a qualified energy generator; provided that the department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified will not exceed two million megawatt-hours. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the [applicant] facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The

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energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection.

~~[D. To claim a renewable energy production tax credit, a taxpayer that has been certified as eligible pursuant to Subsection C of this section shall submit]~~

G. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of Paragraph (2) of this subsection;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest

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in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department; and

(5) the energy, minerals and natural resources department certifies the allocation in writing to the taxpayer.

H. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

I. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection F or G of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the [taxpayer's] facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

~~[E.]~~ J. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain ~~[its]~~ the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired.

~~[F.]~~ K. The renewable energy production tax credit may be deducted from the taxpayer's New Mexico corporate income tax liability for ~~[the]~~ a taxable year. If the amount of the tax credit

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claimed exceeds the taxpayer's corporate income tax liability, the excess may be carried forward for up to five consecutive taxable years. "

Section 8. Section 7-2E-1 NMSA 1978 (being Laws 1999, Chapter 183, Section 1, as amended) is amended to read:

"7-2E-1. TAX CREDIT--RURAL JOB TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "rural job tax credit". [~~Until June 30, 2006~~] Every eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each qualifying job the employer creates [~~in the period beginning July 1, 2000 and ending June 30, 2005~~]. The maximum tax credit amount with respect to each qualifying job is equal to:

(1) twenty-five percent of the first sixteen thousand dollars (\$16,000) in wages paid for the qualifying job if the job is performed or based at a location in a tier one area; or

(2) twelve and one-half percent of the first sixteen thousand dollars (\$16,000) in wages paid if the qualifying job is performed or based at a location in a tier two area.

B. As used in this section:

(1) "eligible employee" means any individual other than an individual who:

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

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directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

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

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

(2) "eligible employer" means an employer who has been approved for in-plant training assistance pursuant to Section 21-19-7 NMSA 1978;

(3) "metropolitan statistical area" means a metropolitan statistical area in New Mexico as determined by the United States bureau of the census;

(4) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the rural job tax credit applied against any or all of these taxes or

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surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

(5) "qualifying job" means a job established by the employer that is occupied by an eligible employee for at least forty-eight weeks of a qualifying period;

(6) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a qualifying job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a qualifying job;

(7) "rural area" means any part of the state other than:

(a) an H class county;

(b) the state fairgrounds;

(c) an incorporated municipality within a metropolitan statistical area if the municipality's population is thirty thousand or more according to the most recent federal decennial census; and

(d) any area within ten miles of the exterior boundaries of a municipality described in Subparagraph (c) of this paragraph;

(8) "tier one area" means:

(a) any municipality within the rural area if the municipality's population according to the most recent federal decennial census is fifteen thousand or less; or

(b) any part of the rural area that is not

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within the exterior boundaries of a municipality;

(9) "tier two area" means any municipality within the rural area if the municipality's population according to the most recent federal decennial census is more than fifteen thousand; and

(10) "wages" means wages as defined by Paragraphs (1), (2) and (3) of 26 U. S. C. Section 51(c).

C. The amount of the rural job tax credit shall be six and one-fourth percent of the first sixteen thousand dollars (\$16,000) in wages paid for the qualifying job in a qualifying period. The rural job tax credit may be claimed for each qualifying job for a maximum of:

(1) four qualifying periods for each qualifying job performed or based at a location in a tier one area; and

(2) two qualifying periods for each qualifying job performed or based at a location in a tier two area.

D. With respect to each qualifying job for which an eligible employer seeks the rural job tax credit, the employer shall certify the amount of wages paid to each eligible employee during each qualifying period, the number of weeks during the qualifying period the position was occupied and whether the qualifying job was in a tier one or tier two area.

E. The economic development department shall determine which employers are eligible employers and shall report the listing of eligible businesses to the taxation and revenue department in a manner and at times the departments shall agree upon.

F. To receive a rural job tax credit with respect to any qualifying period, an eligible employer must apply to the taxation

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and revenue department on forms and in the manner the department may prescribe. The application shall include a certification made pursuant to Subsection D of this section. If all the requirements of this section have been complied with, the taxation and revenue department may issue to the applicant a document granting a tax credit for the respective qualifying period. The tax credit document shall be numbered for identification and declare its date of issuance and the amount of rural job tax credit allowed for the respective jobs created. [~~Such~~] The tax credit documents may be sold, exchanged or otherwise transferred and [~~can~~] may be carried forward for a period of three years from the date of issuance. 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.

G. The holder of the tax credit document may apply all or a portion of the rural job tax credit granted by the document against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of rural job tax credit granted by the document may be carried forward for up to three years from the date of issuance of the tax credit document. No amount of rural job tax credit may be applied against a gross receipts tax imposed by a municipality or county.

H. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the taxation and revenue department may disclose to any person the balance of rural job tax credit remaining on any tax credit document and the balance of credit remaining on that document for any period.

I. The secretary of economic development, the secretary of taxation and revenue and the secretary of labor or their designees shall annually evaluate the effectiveness of the rural job tax credit in stimulating economic development in the rural areas of New Mexico and make a joint report of their findings to each session of the legislature so long as the rural job tax credit is in

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effect."

Section 9. Section 7-2F-1 NMSA 1978 (being Laws 2002, Chapter 36, Section 1, as amended) is amended to read:

"7-2F-1. FILM PRODUCTION TAX CREDIT. --

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to fifteen percent of:

(1) direct production expenditures made in New Mexico that are directly attributable to the production in New Mexico of a film or commercial audiovisual product and that are subject to taxation by the state of New Mexico; and

(2) postproduction expenditures made in New Mexico that are:

(a) directly attributable to the production of a commercial film or audiovisual product;

(b) for services performed in New Mexico; and

(c) subject to taxation by the state of New Mexico.

B. The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

C. A long-form narrative film production for which the

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film production tax credit is claimed pursuant to Paragraph (1) of Subsection A of this section shall contain an acknowledgment that the production was filmed in New Mexico.

D. To be eligible for the film production tax credit, a film production company shall submit to the New Mexico film division of the economic development department information required by the division to demonstrate conformity with the requirements of this section and shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to publish, at completion of principal photography, a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date;

(3) that outstanding obligations are not waived should a creditor fail to file by the specified date; and

(4) to delay filing of a claim for the film production tax credit until the New Mexico film division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit.

E. The New Mexico film division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon.

~~E.~~ F. To receive a film production tax credit, a film production company shall apply to the taxation and revenue

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department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit. If the requirements of this section have been complied with, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

[F.] G. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded."

Section 10. Section 7-2F-2 NMSA 1978 (being Laws 2003, Chapter 127, Section 2) is amended to read:

"7-2F-2. DEFINITIONS. --As used in Chapter 7, Article 2F NMSA 1978:

A. "commercial audiovisual product" means a film or a videogame intended for commercial exploitation;

[A.] B. "direct production expenditure" means a transaction that is subject to taxation in New Mexico, including:

(1) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident for purposes of the Income Tax Act;

(2) payment to a personal services corporation for the services of a performing artist if:

(a) the personal services corporation pays

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gross receipts tax in New Mexico on those payments; ~~[or]~~ and

(b) the performing artist receiving payments from the personal services corporation pays New Mexico income tax; and

(3) any of the following provided by a vendor:

(a) the story and scenario to be used for a film;

(b) set construction and operations, wardrobe, accessories and related services;

(c) photography, sound synchronization, lighting and related services;

(d) editing and related services;

(e) rental of facilities and equipment;

(f) leasing of vehicles;

(g) food or lodging;

(h) airfare if purchased through a New Mexico-based travel agency or travel company;

(i) insurance coverage and bonding if purchased through a New Mexico-based insurance agent; and

(j) other direct costs of producing a film in accordance with generally accepted entertainment industry practice;

~~[B-]~~ C. "film" means a single media or multimedia program, excluding advertising messages other than national or

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regional advertising messages intended for exhibition, that:

(1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used; [~~and~~

~~C.~~] D. "film production company" means a person that produces one or more films; and

E. "postproduction expenditure" means an expenditure that occurs after the completion of principal and ongoing photography, including an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments. "

Section 11. [NEW MATERIAL] SHORT TITLE. --Sections 11 through 16 of this act may be cited as the "Research and Development Small Business Tax Credit Act".

Section 12. [NEW MATERIAL] DEFINITIONS. --As used in the Research and Development Small Business Tax Credit Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that

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employee by the secretary;

B. "qualified research" means research:

(1) that is undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

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

C. "qualified research and development small business" means a business, including a corporation, general partnership, limited partnership, limited liability company, sole proprietorship or other similar entity, that:

(1) employed no more than twenty-five employees on a full-time-equivalent basis in any prior calendar month;

(2) had total revenues of no more than five million dollars (\$5,000,000) in any prior fiscal year;

(3) did not in any prior calendar month have more than fifty percent of its voting securities or other equity interest with the right to designate or elect the board of directors or other governing body of the qualified business owned directly or indirectly by another business; and

(4) has made qualified research expenditures for the period of twelve calendar months ending with the month for which the credit is sought of at least twenty percent of its total expenditures for those twelve calendar months;

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D. "qualified research expenditure" means an expenditure directly related to qualified research, but does not include any expenditure on research funded by any grant, contract or similar mechanism by another person or governmental entity, and does not include any expenditure on property that is owned by a municipality or county in connection with an industrial revenue bond project or expenditures for which the taxpayer has received any credit pursuant to the Capital Equipment Tax Credit Act, the Investment Credit Act or the Technology Jobs Tax Credit Act; and

E. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or collection and payment of any tax or a person to whom an assessment has been made if the assessment remains unabated or the amount thereof has not been paid.

Section 13. [NEW MATERIAL] RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT-- AMOUNT-- ELIGIBILITY. --

A. Until June 30, 2009, a taxpayer that is a qualified research and development small business is eligible for a credit in a reporting period in an amount equal to the sum of all gross receipts taxes, compensating taxes or withholding taxes due to the state or payable by the taxpayer with respect to that business for that reporting period. The credit provided in this section may be referred to as the "research and development small business tax credit".

B. A taxpayer is not eligible for the credit with respect to a reporting period month:

(1) before July 2005;

(2) that is more than thirty-five consecutive calendar months after the first month for which a claim for the credit is made by the taxpayer or by a person to whom the taxpayer

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is a successor, pursuant to Section 7-1-61 NMSA 1978;

(3) after which the qualified research and development small business employs more than twenty-five employees on a full-time-equivalent basis;

(4) in a fiscal year of the qualified research and development small business after the first fiscal year in which that business has total revenues in excess of five million dollars (\$5,000,000);

(5) after the calendar month in which more than fifty percent of the qualified research and development small business' voting securities or other equity interests having the right to designate or elect the board of directors or other governing body of that business are owned directly or indirectly by another business;

(6) if the business was not a qualified research and development small business in the twelve-calendar-month period ending with that calendar month;

(7) during which the taxpayer is the beneficiary of an industrial revenue bond issued by a municipality or county; or

(8) during which the taxpayer sold any goods of which the taxpayer is not the manufacturer, unless the taxpayer has received an appropriate nontaxable transaction certificate for such sale or sales.

Section 14. [NEW MATERIAL] CLAIMING THE CREDIT--CREDIT CLAIM FORMS.--The taxpayer shall claim the research and development small business tax credit within one year after the end of the reporting period to which the credit is applicable. The department shall provide credit claim forms for the research and development small business tax credit. A credit claim form shall accompany any return

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in which the taxpayer claims the credit, and the claim shall specify the amount of credit intended to apply to each return.

Section 15. [NEW MATERIAL] LIMITATION ON OTHER CREDITS. -- Claiming the research and development small business tax credit with respect to a reporting period renders the taxpayer ineligible to claim a credit with respect to that same reporting period pursuant to the Capital Equipment Tax Credit Act, the Investment Credit Act or the Technology Jobs Tax Credit Act.

Section 16. [NEW MATERIAL] ADMINISTRATION OF THE ACT. -- The department shall administer the Research and Development Small Business Tax Credit Act pursuant to the Tax Administration Act.

Section 17. [NEW MATERIAL] SHORT TITLE. -- Sections 17 through 22 of this act may be cited as the "Affordable Housing Tax Credit Act".

Section 18. [NEW MATERIAL] DEFINITIONS. -- As used in the Affordable Housing Tax Credit Act:

A. "affordable housing project" means land acquisition, construction, building acquisition, remodeling, improvement, rehabilitation, conversion or weatherization for residential housing that is approved by the authority and that includes only single family housing or multifamily housing located in a county with a population of less than one hundred thousand according to the most recent federal decennial census;

B. "authority" means the New Mexico mortgage finance authority;

C. "department" means the taxation and revenue department;

D. "modified combined tax liability" means the total

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liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as the gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the affordable housing tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes and governmental gross receipts taxes; and

E. "person" means an individual, county, municipality, tribal government, housing authority, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization.

Section 19. [NEW MATERIAL] INVESTMENT VOUCHERS--ISSUANCE--
TRANSFER. --

A. The authority may issue an investment voucher to a person who has made an investment of land, buildings, cash or services for an affordable housing project approved by the authority or for a trust fund administered by the authority. The value of the voucher shall equal fifty percent of the amount of cash invested or the fair market value of the land, building or service invested by that person. The authority may approve an investment voucher for any affordable housing project in accordance with Subsection B of this section and in accordance with rules adopted by the authority. An investment voucher that is approved for an affordable housing project shall equal fifty percent of the amount of cash invested or the fair market value of land, buildings or services invested in that affordable housing project by a person upon issuance of that investment voucher.

B. During the calendar year:

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(1) beginning on January 1, 2006, the authority may issue or approve investment vouchers in an amount that shall not exceed two hundred thousand dollars (\$200,000) in aggregate value;

(2) beginning on January 1, 2007, the authority may issue or approve investment vouchers in an amount that shall not exceed five hundred thousand dollars (\$500,000) in aggregate value; and

(3) beginning on January 1, 2008 and during each subsequent calendar year, the authority may issue or approve investment vouchers for each calendar year in an amount that shall not exceed an aggregate value of a base rate of one dollar eighty-five cents (\$1.85) adjusted annually to account for inflation, multiplied by the state population during the calendar year as determined by the United States census bureau.

C. Any limitation on the issuance or approval of investment vouchers for a calendar year pursuant to Subsection B of this section shall not apply to an investment voucher issued by the authority during that calendar year that was approved by the authority during a previous calendar year.

D. At the beginning of each calendar year that begins on or after January 1, 2009, the department shall make an adjustment for inflation pursuant to Paragraph (3) of Subsection B of this section by multiplying the base rate by a fraction, the numerator of which is the consumer price index for the previous calendar year and the denominator of which is the same index for the 2007 calendar year prior to the calendar year for which a maximum aggregate value is determined for the issuance of investment vouchers pursuant to Paragraph (3) of Subsection B of this section.

E. An investment voucher issued by the authority shall be numbered for identification and may be sold, exchanged or otherwise transferred once in whole or in part to one or more

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persons. The parties to such a transaction shall notify the department and the authority of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

F. The authority shall adopt rules for the approval, issuance and administration of investment vouchers pursuant to this section.

Section 20. [NEW MATERIAL] AFFORDABLE HOUSING PROJECT COMPLETION NOTICE. --The authority shall certify to the department approval of an affordable housing project for which an investment voucher is issued pursuant to the Affordable Housing Tax Credit Act within twenty days of issuance of that voucher.

Section 21. [NEW MATERIAL] AFFORDABLE HOUSING TAX CREDIT. --

A. The tax credit provided in this section may be referred to as the "affordable housing tax credit". Except as otherwise provided by the Affordable Housing Tax Credit Act, a holder of an investment voucher that submits the investment voucher to the department may apply for, and the department may allow, a tax credit in an amount not to exceed the value of the investment voucher during the tax year in which the authority certifies to the department:

(1) completion of a service for which an investment voucher has been issued pursuant to the Affordable Housing Tax Credit Act; or

(2) approval by the authority or completion of an affordable housing project for which a land, building or cash donation has been made and for which an investment voucher has been issued pursuant to the Affordable Housing Tax Credit Act.

B. A holder of an investment voucher may apply all or a portion of the affordable housing tax credit against the holder's

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modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of the affordable housing tax credit claimed may be carried forward for up to five years from the calendar year during which the authority certifies to the department approval of the affordable housing project for which the investment voucher used to claim the affordable housing tax credit is issued. No amount of the affordable housing tax credit may be applied against a local option gross receipts tax imposed by a municipality or county or against the government gross receipts tax.

C. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may disclose to a person the balance of the affordable housing tax credit remaining with respect to any investment voucher submitted by that person.

Section 22. [NEW MATERIAL] ADMINISTRATION OF THE ACT. -- Unless otherwise provided by the Affordable Housing Tax Credit Act, the department shall administer the Affordable Housing Tax Credit Act pursuant to the Tax Administration Act.

Section 23. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--MILITARY TRANSFORMATIONAL ACQUISITION PROGRAMS. --

A. Receipts from transformational acquisition programs performing research and development, test and evaluation at New Mexico major range and test facility bases pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts through June 30, 2008.

B. As used in this section, "transformational acquisition program" means a military acquisition program authorized by the office of the secretary of defense force transformation, and

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not physically tested in New Mexico on or before July 1, 2005.

C. The deduction provided in this section does not apply to receipts of a prime contractor operating facilities designated as a national laboratory by act of congress and is not applicable to current force programs as of July 1, 2005. "

Section 24. Section 7-9-62.1 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 4, Section 2) is amended to read:

"7-9-62.1. DEDUCTION--GROSS RECEIPTS TAX--AIRCRAFT SERVICES. --Receipts from maintaining, refurbishing, remodeling or otherwise modifying [~~transport category aircraft~~] a commercial or military carrier over [~~sixty-five thousand~~] ten thousand pounds gross landing weight may be deducted from gross receipts. [~~As used in this section, "refurbishing, remodeling or otherwise modifying" does not include routine line maintenance of such aircraft.~~]"

Section 25. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY--LIMITED PERIOD. --Receipts from the sale at retail of the following types of tangible personal property may be deducted if the sale of the property occurs during the period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Sunday:

A. an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than one hundred dollars (\$100) except:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed; and

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(2) accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items worn or carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

B. a desktop, laptop or notebook computer if the sales price of the computer does not exceed one thousand dollars (\$1,000) and any associated monitor, speaker or set of speakers, printer, keyboard, microphone or mouse if the sales price of the device does not exceed five hundred dollars (\$500); and

C. school supplies that are items normally used by students in a standard classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, backpacks, handheld calculators, maps and globes, but not including watches, radios, compact disc players, headphones, sporting equipment, portable or desktop telephones, copiers, office equipment, furniture or fixtures. "

Section 26. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] CREDIT--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--CERTAIN SALES FOR RESALE. --

A. A taxpayer may claim a credit against gross receipts tax or governmental gross receipts tax due for each reporting period beginning after June 2005 in an amount equal to ten percent of the receipts from selling a service for resale multiplied by:

(1) three and seven hundred seventy-five thousandths percent if the taxpayer's business location is within a municipality; or

(2) five percent if the taxpayer's business location is in the unincorporated area of a county.

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B. A taxpayer may claim a credit pursuant to Subsection A of this section only if:

(1) the buyer resells the service in the ordinary course of business;

(2) the resale is not subject to the gross receipts tax or the governmental gross receipts tax; and

(3) the buyer delivers to the seller documentation in a form prescribed by the department clarifying that the service is purchased for resale in the ordinary course of business.

C. A credit permitted pursuant to this section does not apply to receipts from selling a service to a governmental entity or to a person who is a prime contractor that operates a facility in New Mexico designated as a national laboratory by an act of congress. "

Section 27. REPEAL. -- Section 7-2E-2 NMSA 1978 (being Laws 1999, Chapter 183, Section 2, as amended) is repealed.

Section 28. APPLICABILITY. --

A. The provisions of Section 5 of this act apply to taxable years beginning on or after January 1, 2006.

B. The provisions of Sections 6, 7 and 9 of this act apply to taxable years beginning on or after January 1, 2005.

Section 29. EFFECTIVE DATES. --

A. The effective date of the provisions of Sections 1, 8 and 10 through 26 of this act is July 1, 2005.

B. The effective date of the provisions of Section 2 of

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this act is January 1, 2006.

C. The effective date of the provisions of Section 3 of this act is January 1, 2007.

D. The effective date of the provisions of Section 4 of this act is January 1, 2008."

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____