

AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS FROM CERTAIN MILITARY CONTRACTS TO IMPLEMENT MISSION TRANSITION PROJECTS; PROVIDING FOR THE ANGEL INVESTMENT CREDIT FOR INVESTMENT IN CERTAIN BUSINESSES; ENACTING THE RURAL JOB TAX CREDIT; CLARIFYING THE APPLICABILITY AND AMENDING THE DEFINITIONS OF THE FILM PRODUCTION TAX CREDIT; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS FROM SERVICES PROVIDED FOR THE OPERATIONALLY RESPONSIVE SPACE PROGRAM; EXTENDING THE DEADLINE BY WHICH A TRADE SUPPORT COMPANY MUST LOCATE IN NEW MEXICO TO BE ELIGIBLE FOR GROSS RECEIPTS TAX DEDUCTIONS; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR CERTAIN RECEIPTS OF AIRCRAFT MANUFACTURERS; EXPANDING THE SCOPE OF THE GROSS RECEIPTS TAX DEDUCTION FOR SALES OF AGRICULTURAL IMPLEMENTS TO INCLUDE IRRIGATION TOOLS, UTENSILS OR INSTRUMENTS; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR PROFESSIONAL BOXING, WRESTLING OR MARTIAL ARTS CONTESTS; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR FEES FOR CERTAIN FINANCIAL MANAGEMENT OR INVESTMENT ADVISORY SERVICES; PROVIDING FOR A DEDUCTION FROM GROSS RECEIPTS FOR MEDICAL SERVICES AND MEDICAL SUPPLIES FOR CATTLE; PROVIDING EXEMPTIONS FROM GROSS RECEIPTS TAX AND COMPENSATING TAX FOR CERTAIN LOCOMOTIVE ENGINE FUEL; PROVIDING FOR INCREASED TAX CREDITS PURSUANT TO THE LABORATORY PARTNERSHIP WITH SMALL BUSINESS TAX CREDIT ACT AND ADDING

ELIGIBILITY REQUIREMENTS AND INCREASING THE AMOUNT OF COSTS THAT MAY BE CLAIMED AS QUALIFIED EXPENDITURES; PROVIDING FOR COORDINATION OF EFFORTS BETWEEN NATIONAL LABORATORIES PROVIDING SMALL BUSINESS ASSISTANCE PURSUANT TO THE LABORATORY PARTNERSHIP WITH SMALL BUSINESS TAX CREDIT ACT AND PROVIDING REPORTING REQUIREMENTS FOR THOSE NATIONAL LABORATORIES; MAKING PERMANENT THE HIGH-WAGE JOBS TAX CREDIT; AMENDING THE LEASED VEHICLE GROSS RECEIPTS TAX ACT TO EXEMPT TEMPORARY REPLACEMENT VEHICLES FROM THE LEASED VEHICLE SURCHARGE; REPEALING A SECTION OF LAWS 2004; DECLARING AN EMERGENCY.

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:

"ANGEL INVESTMENT CREDIT.--

A. A taxpayer who files a New Mexico income tax return, is not a dependent of another taxpayer, is an accredited investor and makes a qualified investment may claim a credit in an amount not to exceed twenty-five percent of not more than one hundred thousand dollars (\$100,000) of the qualified investment. The tax credit provided in this section shall be known as the "angel investment credit".

B. A taxpayer may claim the angel investment credit for not more than two qualified investments in a taxable year; provided that each investment is in a different

qualified business. A taxpayer may claim the angel investment credit for qualified investments made in the same qualified business or successor of that business for not more than three taxable years. The angel investment credit shall not exceed twenty-five thousand dollars (\$25,000) for each qualified investment by the taxpayer.

C. A taxpayer may claim the angel investment credit no later than one year following the end of the calendar year in which the qualified investment was made; provided that a claim for the credit may not be made or allowed with respect to any investment made after December 31, 2011.

D. A taxpayer shall apply for certification of eligibility for the angel investment credit from the economic development department. Applications shall be considered in the order received. If the economic development department determines that the taxpayer is an accredited investor and the investment is a qualified investment, it shall issue a certificate of eligibility to the taxpayer, subject to the limitation in Subsection E of this section. The certificate shall be dated and shall include a calculation of the amount of the angel investment credit for which the taxpayer is eligible. The economic development department may issue rules governing the procedure for administering the provisions of this subsection.

E. The economic development department may issue a certificate of eligibility pursuant to Subsection D of this section only if the total amount of angel investment credits represented by certificates of eligibility issued by the economic development department in any calendar year will not exceed seven hundred fifty thousand dollars (\$750,000). If the applications for certificates of eligibility for angel investment credits represent an aggregate amount exceeding seven hundred fifty thousand dollars (\$750,000) for any calendar year, certificates shall be issued in the order that the applications were received. The excess applications that would have been certified, but for the limit imposed by this subsection, shall be certified, subject to the same limit, in subsequent calendar years.

F. The economic development department shall report annually to the legislative finance committee on the utilization and effectiveness of the angel investment credit. The report shall include, at a minimum: the number of accredited investors to whom certificates of eligibility were issued by the department in the previous year; the names of those investors; the amount of angel investment credit for which each investor was certified eligible; and the number and names of the businesses that the department has determined are qualified businesses for purposes of an investment by an accredited investor. The report shall also include an

evaluation of the success of the angel investment credit as an incubator of new businesses in New Mexico and of the continued viability and operation in New Mexico of businesses in which investments eligible for the angel investment credit have been made.

G. To claim the angel investment credit, the taxpayer must provide to the taxation and revenue department a certificate of eligibility issued by the economic development department pursuant to Subsection D of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer. If the requirements of this section have been complied with, the taxation and revenue department shall approve the claim for the credit.

H. A taxpayer who otherwise qualifies for and claims a credit pursuant to this section for a qualified investment made by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or business association. The total credit claimed in the aggregate by all members of the partnership or business association in a taxable year with respect to a qualified investment shall not exceed twenty-five thousand dollars (\$25,000).

I. A husband and wife who file separate returns

for a taxable year in which they could have filed a joint return may each claim one-half of the credit that would have been allowed on a joint return.

J. The angel investment credit may only be deducted from the taxpayer's income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive years.

K. As used in this section:

(1) "accredited investor" means a person who is an accredited investor within the meaning of Rule 501 issued by the federal securities and exchange commission pursuant to the federal Securities Act of 1933, as amended;

(2) "business" means a corporation, general partnership, limited partnership, limited liability company or other similar entity, but excludes an entity that is a government or a nonprofit organization designated as such by the federal government or any state;

(3) "equity" means common or preferred stock of a corporation, a partnership interest in a limited partnership or a membership interest in a limited liability company, including debt subject to an option in favor of the creditor to convert the debt into common or preferred stock, a partnership interest or a membership interest;

(4) "high-technology research" means

research:

(a) 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 qualified business; and

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

(5) "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(a) construction;

(b) farming;

(c) processing natural resources, including hydrocarbons; or

(d) preparing meals for immediate consumption, on- or off-premises;

(6) "qualified business" means a business that:

(a) maintains its principal place of business in New Mexico;

(b) engages in high-technology research

or manufacturing activities in New Mexico;

(c) is not primarily engaged in or is not primarily organized as any of the following types of businesses: credit or finance services, including banks, savings and loan associations, credit unions, small loan companies or title loan companies; financial brokering or investment; professional services, including accounting, legal services, engineering and any other service the practice of which requires a license; insurance; real estate; construction or construction contracting; consulting or brokering; mining; wholesale or retail trade; providing utility service, including water, sewerage, electricity, natural gas, propane or butane; publishing, including publishing newspapers or other periodicals; broadcasting; or providing internet operating services;

(d) has not issued securities registered pursuant to Section 6 of the federal Securities Act of 1933, as amended; has not issued securities traded on a national securities exchange; is not subject to reporting requirements of the federal Securities Exchange Act of 1934, as amended; and is not registered pursuant to the federal Investment Company Act of 1940, as amended, at the time of the investment;

(e) has one hundred or fewer employees calculated on a full-time-equivalent basis at the time of the

investment; and

(f) has not had gross revenues in excess of five million dollars (\$5,000,000) in any fiscal year ending on or before the date of the investment; and

(7) "qualified investment" means a cash investment in a qualified business for equity, but does not include an investment by a taxpayer if the taxpayer, a member of the taxpayer's immediate family or an entity affiliated with the taxpayer receives compensation from the qualified business in exchange for services provided to the qualified business within one year of investment in the qualified business."

Section 2. A new Section 7-2E-1.1 NMSA 1978 is enacted to read:

"7-2E-1.1. TAX CREDIT--RURAL JOB TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "rural job tax credit". Every eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each qualifying job the employer creates. 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. 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.

C. 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.

D. 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.

E. To receive a rural job tax credit with respect to any qualifying period, an eligible employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification made pursuant to Subsection C 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 appropriate 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. The tax credit documents may be sold, exchanged or otherwise transferred and may be carried forward for a period of three years from the date of issuance. The parties to such a transaction to sell, exchange or transfer a rural job tax credit document shall notify the department of the transaction within ten days of the sale, exchange or transfer.

F. 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.

G. 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.

H. 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 effect.

I. An eligible employer that creates a qualifying job in the period beginning on or after July 1, 2006 but before July 1, 2007 or creates a qualifying job, the qualifying period of which includes a part of the period between July 1, 2006 and July 1, 2007, for which the eligible employer has not received a rural job tax credit document pursuant to this section may submit an application for, and the department may issue to the eligible employer applying, a document granting a tax credit for the appropriate qualifying period. Claims for a rural job tax credit submitted pursuant

to the provisions of this subsection shall be submitted within three years from the date of issuance of the rural job tax credit document.

J. 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, 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 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 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)."

Section 3. 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 the percentage specified in Subsection B of this section of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico; and

(c) exclude direct production expenditures for which another taxpayer claims the film

production tax credit; and

(2) postproduction expenditures made in New Mexico that:

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

(b) are for services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico; and

(d) exclude postproduction expenditures for which another taxpayer claims the film production tax credit.

B. Except as provided in Subsections C and J of this section, the percentage to be applied in calculating the amount of the film production tax credit is twenty-five percent.

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the film production tax credit is twenty percent.

D. 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.

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

F. 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.

G. 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.

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

I. 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.

J. As applied to direct production expenditures for the services of performing artists, the film production tax credit authorized by this section shall not exceed five million dollars (\$5,000,000) for services rendered by all performing artists in a production for which the film production tax credit is claimed."

Section 4. Section 7-2F-2 NMSA 1978 (being Laws 2003, Chapter 127, Section 2, as amended) 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;

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 gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; 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, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure;

(g) food or lodging;

(h) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production;

(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;

C. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;

D. "film" means a single media or multimedia program, excluding advertising messages other than national or 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;

E. "film production company" means a person that produces one or more films or any part of a film; and

F. "postproduction expenditure" means 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 5. Section 7-9-54.2 NMSA 1978 (being Laws 1995, Chapter 183, Section 2, as amended) is amended to read:

"7-9-54.2. GROSS RECEIPTS--DEDUCTION--SPACEPORT OPERATION--SPACE OPERATIONS--LAUNCHING, OPERATING AND RECOVERING SPACE VEHICLES OR PAYLOADS--PAYLOAD SERVICES-- OPERATIONALLY RESPONSIVE SPACE PROGRAM SERVICES.--

A. Receipts from launching, operating or recovering space vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload in New Mexico are deductible from gross receipts.

C. Receipts from operating a spaceport in New Mexico are deductible from gross receipts.

D. Receipts from the provision of research, development, testing and evaluation services for the United States air force operationally responsive space program may be deducted from gross receipts.

E. As used in this section:

(1) "operationally responsive space program" means a program authorized pursuant to 10 U.S.C. 2273a;

(2) "payload" means a system, subsystem or other mechanical structure or material to be conveyed into space that is designed, constructed or intended to perform a function in space;

(3) "space" means any location beyond

altitudes of sixty thousand feet above the earth's mean sea level;

(4) "space operations" means the process of commanding and controlling payloads in space; and

(5) "spaceport" means an installation and related facilities used for the launching, landing, operating, recovering, servicing and monitoring of vehicles capable of entering or returning from space.

F. Receipts from the sale of tangible personal property that will become an ingredient or component part of a construction project or from performing construction services may not be deducted under this section."

Section 6. Section 7-9-56.3 NMSA 1978 (being Laws 2003, Chapter 232, Section 1) is amended to read:

"7-9-56.3. DEDUCTION--GROSS RECEIPTS--TRADE-SUPPORT COMPANY IN A BORDER ZONE.--

A. The receipts of a trade-support company may be deducted from gross receipts if:

(1) the trade-support company first locates in New Mexico within twenty miles of a port of entry on New Mexico's border with Mexico on or after July 1, 2003 but before July 1, 2013;

(2) the receipts are received by the company within a five-year period beginning on the date the trade-support company locates in New Mexico and the receipts are

derived from its business activities and operations at its border zone location; and

(3) the trade-support company employs at least two employees in New Mexico.

B. As used in this section:

(1) "employee" means an 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 an individual who owns, 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, an 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) "port of entry" means an international port of entry in New Mexico at which customs services are provided by United States customs and border protection; and

(3) "trade-support company" means a customs brokerage firm or a freight forwarder."

Section 7. Section 7-9-62 NMSA 1978 (being Laws 1969, Chapter 144, Section 52, as amended) is amended to read:

"7-9-62. DEDUCTION--GROSS RECEIPTS TAX--AGRICULTURAL IMPLEMENTS--AIRCRAFT MANUFACTURERS--VEHICLES THAT ARE NOT REQUIRED TO BE REGISTERED.--

A. Except for receipts deductible under Subsection B of this section, fifty percent of the receipts from selling agricultural implements, farm tractors, aircraft or vehicles that are not required to be registered under the Motor Vehicle Code may be deducted from gross receipts; provided that, with respect to agricultural implements, the sale is made to a person who states in writing that the person is regularly engaged in the business of farming or ranching. Any deduction

allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

B. Receipts of an aircraft manufacturer or affiliate from selling aircraft or aircraft parts or from selling services performed on aircraft or aircraft components or from selling aircraft flight support, pilot training or maintenance training services may be deducted from gross receipts. Any deduction allowed under Section 7-9-71 NMSA 1978 must be taken before the deduction allowed by this subsection is computed.

C. As used in this section:

(1) "affiliate" means a business entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the aircraft manufacturer;

(2) "agricultural implement" means a tool, utensil or instrument that is:

(a) designed to irrigate agricultural crops above ground or below ground at the place where the crop is grown; or

(b) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural crops at the place where the crop is grown; in raising poultry or livestock; or in obtaining or processing food or fiber,

such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose; and

(c) depreciable for federal income tax purposes;

(3) "aircraft manufacturer" means a business entity that in the ordinary course of business designs and builds private or commercial aircraft certified by the federal aviation administration;

(4) "business entity" means a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate investment trust, but does not mean an individual or a joint venture;

(5) "control" means equity ownership in a business entity that:

(a) represents at least fifty percent of the total voting power of that business entity; and

(b) has a value equal to at least fifty percent of the total equity of that business entity; and

(6) "flight support" means providing navigation data, charts, weather information, online maintenance records and other aircraft or flight-related information and the software needed to access the information."

Compensating Tax Act is enacted to read:

"DEDUCTION--MILITARY CONSTRUCTION SERVICES.--

A. Receipts from military construction services provided at New Mexico military installations to implement special operations mission transition projects pursuant to contracts entered into with the United States department of defense may be deducted from gross receipts; provided that the military installation is located in a class B county with a population greater than forty-two thousand according to the most recent federal decennial census and with a net taxable value for rate-setting purposes of less than one billion dollars (\$1,000,000,000) as determined by the local government division of the department of finance and administration for the 2006 property tax year.

B. The deduction provided in this section applies to reporting periods beginning July 1, 2007 and ending December 31, 2010.

Section 9. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--PRODUCTION OR STAGING OF PROFESSIONAL CONTESTS.--Receipts from producing or staging a professional boxing, wrestling or martial arts contest that occurs in New Mexico, including receipts from ticket sales and broadcasting, may be deducted from gross receipts."

Section 10. A new section of the Gross Receipts and

Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS--RECEIPTS FROM PERFORMING MANAGEMENT OR INVESTMENT ADVISORY SERVICES FOR MUTUAL FUNDS, HEDGE FUNDS OR REAL ESTATE INVESTMENT TRUSTS.--

A. Receipts from fees received for performing management or investment advisory services for a mutual fund, hedge fund or real estate investment trust may be deducted from gross receipts.

B. As used in this section:

(1) "hedge fund" means a private investment fund or pool, the assets of which are managed by a professional management firm, that:

(a) trades or invests, through public market or private transactions, in securities, commodities, currency, derivatives or similar classes of financial assets; or

(b) is not an investment company pursuant to the provisions of 15 U.S.C. 80a-3(c)(1) or 15 U.S.C. 80a-3(c)(7);

(2) "mutual fund" means an entity registered pursuant to the federal Investment Company Act of 1940, as amended; and

(3) "real estate investment trust" means an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended, the investments of which are limited

to interests in mortgages on real property and shares of or transferable certificates of beneficial interest in an entity described in Section 856(a) of the Internal Revenue Code of 1986, as amended."

Section 11. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--VETERINARY MEDICAL SERVICES, MEDICINE OR MEDICAL SUPPLIES USED IN MEDICAL TREATMENT OF CATTLE.--

A. Receipts from sales of veterinary medical services, medicine or medical supplies used in the medical treatment of cattle may be deducted from gross receipts if the sale is made to a person who states in writing that the person is regularly engaged in the business of ranching or farming, including dairy farming, in New Mexico or if the sale is made to a veterinarian who holds a valid license pursuant to the Veterinary Practice Act and who is providing veterinary medical services, medicine or medical supplies in the treatment of cattle owned by that person.

B. As used in this section, "cattle" means animals of the genus bos, including dairy cattle, and does not include any other kind of livestock."

Section 12. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"EXEMPTION--GROSS RECEIPTS TAX--LOCOMOTIVE ENGINE

FUEL.--Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine are exempted from the gross receipts tax. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks."

Section 13. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"EXEMPTION--COMPENSATING TAX--LOCOMOTIVE ENGINE FUEL.-- Exempted from the compensating tax is the use of fuel to be loaded or used by a common carrier in a locomotive engine. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks."

Section 14. Section 7-9E-1 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 20, Section 1) is amended to read:

"7-9E-1. SHORT TITLE.--Chapter 7, Article 9E NMSA 1978 may be cited as the "Laboratory Partnership with Small Business Tax Credit Act"."

Section 15. Section 7-9E-3 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 20, Section 3) is amended to read:

"7-9E-3. DEFINITIONS.--As used in the Laboratory Partnership with Small Business Tax Credit Act:

A. "contractor":

(1) means a person that:

(a) has the capability to provide small business assistance; and

(b) may enter into a contract with a national laboratory to provide small business assistance; and

(2) includes:

(a) a gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(b) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "national laboratory" means a prime contractor designated as a national laboratory by act of congress that is operating a facility in New Mexico;

D. "qualified expenditure" means an expenditure by a national laboratory in providing small business assistance, limited to the following expenditures incurred in providing the assistance:

(1) employee salaries, wages, fringe benefits and employer payroll taxes;

(2) administrative costs related directly to

the provision of small business assistance, the total of which is limited to forty-nine percent of employee salaries, wages, fringe benefits and employer payroll taxes;

(3) in-state travel expenses, including per diem and mileage at the internal revenue service standard rates; and

(4) supplies and services of contractors related to the provision of small business assistance;

E. "rural area" means an area of the state outside of the exterior boundaries of a class A county that has a net taxable value for rate-setting purposes for any property tax year of more than seven billion dollars (\$7,000,000,000);

F. "small business" means a business in New Mexico that conforms to the definition of small business found in the federal Small Business Act; and

G. "small business assistance" means assistance rendered by a national laboratory related to the transfer of technology, including software, manufacturing, mining, oil and gas, environmental, agricultural, information and solar and other alternative energy source technologies. "Small business assistance" includes nontechnical assistance related to expanding the New Mexico base of suppliers, including training and mentoring individual small businesses; assistance in developing business systems to meet audit, reporting and quality assurance requirements; and other supplier development

initiatives for individual small businesses."

Section 16. Section 7-9E-5 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 20, Section 5) is amended to read:

"7-9E-5. ELIGIBILITY REQUIREMENTS.--A national laboratory is eligible for a tax credit in an amount equal to qualified expenditures if:

A. the small business assistance is rendered to a small business located in New Mexico;

B. the small business assistance is completed;

C. the small business certifies to the national laboratory that the small business assistance provided is not otherwise available to the small business at a reasonable cost through private industry;

D. the national laboratory provides written notice to each small business to which it is providing small business assistance of the option that the small business has to obtain ownership of or license to tangible or intangible property developed from the small business assistance;

E. the national laboratory requires small businesses to which it is providing small business assistance to acknowledge only after the small business assistance is completed that the small business assistance has been rendered; and

F. the national laboratory provides forms for small business requests and for completion of small business

assistance that are in accordance with the Laboratory Partnership with Small Business Tax Credit Act and other applicable state and federal laws."

Section 17. Section 7-9E-7 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 20, Section 7) is amended to read:

"7-9E-7. TAX CREDITS--AMOUNTS.--A tax credit provided pursuant to the Laboratory Partnership with Small Business Tax Credit Act shall be in an amount equal to the qualified expenditure incurred by the national laboratory to provide small business assistance to a specific small business, not to exceed ten thousand dollars (\$10,000) for each small business located outside of a rural area for which small business assistance is rendered in a calendar year or twenty thousand dollars (\$20,000) if the small business assistance was provided to a small business located in a rural area."

Section 18. Section 7-9E-8 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 20, Section 8) is amended to read:

"7-9E-8. CLAIMING THE TAX CREDIT--LIMITATION.--

A. A national laboratory eligible for the tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act may claim the amount of each tax credit by crediting that amount against gross receipts taxes otherwise due pursuant to the Gross Receipts and Compensating Tax Act. The tax credit shall be taken on each monthly gross receipts tax return filed by the laboratory against gross

receipts taxes due the state and shall not impact any local government tax distribution. In no event shall the tax credits taken by an individual national laboratory exceed two million four hundred thousand dollars (\$2,400,000) in a given calendar year.

B. Tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act by all national laboratories in the aggregate for qualified expenditures for a specific small business not located in a rural area shall not exceed ten thousand dollars (\$10,000).

C. Tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act by all national laboratories in the aggregate for qualified expenditures for a specific small business located in a rural area shall not exceed twenty thousand dollars (\$20,000)."

Section 19. A new section of the Laboratory Partnership with Small Business Tax Credit Act is enacted to read:

"COORDINATION BETWEEN NATIONAL LABORATORIES.--If more than one national laboratory is eligible for a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act, a national laboratory shall not file a tax credit claim pursuant to the Laboratory Partnership with Small Business Tax Credit Act until:

A. coordination is developed between the national laboratories providing small business assistance pursuant to

the Laboratory Partnership with Small Business Tax Credit Act that generates a joint small business assistance operational plan and a plan to ensure that the small business assistance provided by a national laboratory suits the small business's needs and challenges; and

B. a written copy of each plan formed pursuant to this section is provided to the department."

Section 20. A new section of the Laboratory Partnership with Small Business Tax Credit Act is enacted to read:

"REPORTING.--

A. By October 15 of each year, a national laboratory that has claimed a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the previous calendar year shall submit an annual report in writing to the department, the economic development department and an appropriate legislative interim committee.

B. If more than one national laboratory claims a tax credit pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the previous calendar year, those laboratories shall jointly submit an annual report to the department, the economic development department and an appropriate legislative interim committee no later than October 15 following the calendar year in which the small business assistance was provided.

C. An annual report shall summarize activities

related to and the results of the small business assistance programs that were provided by one or more national laboratories and shall include:

(1) a summary of the program results and the number of small businesses assisted in each county;

(2) a description of the projects involving multiple small businesses;

(3) results of surveys of small businesses to which small business assistance is provided;

(4) the total amount of the tax credits claimed pursuant to the Laboratory Partnership with Small Business Tax Credit Act for the year on which the report is based; and

(5) an economic impact study of jobs created, jobs retained, cost savings and increased sales generated by small businesses for which small business assistance is provided.

D. At any time after receipt of an annual report required pursuant to this section from one or more national laboratories eligible for tax credits authorized pursuant to the Laboratory Partnership with Small Business Tax Credit Act, the department or the economic development department may provide written instructions to a national laboratory identifying future improvements in the laboratory's small business assistance program for which it receives that tax

credit."

Section 21. Section 7-9G-1 NMSA 1978 (being Laws 2004, Chapter 15, Section 1) is amended to read:

"7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING HIGH-WAGE JOBS.--

A. A taxpayer who is an eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each new high-wage economic-based job. The credit provided in this section may be referred to as the "high-wage jobs tax credit".

B. The high-wage jobs tax credit may be claimed and allowed in an amount equal to ten percent of the wages and benefits distributed to an eligible employee in a new high-wage economic-based job, but shall not exceed twelve thousand dollars (\$12,000).

C. The high-wage jobs tax credit may be claimed by an eligible employer for each new high-wage economic-based job performed for the year in which the new high-wage economic-based job is created and for the three following qualifying periods.

D. A new high-wage economic-based job shall not be eligible for a credit pursuant to this section unless the eligible employer's total number of employees with new high-wage economic-based jobs on the last day of the qualifying period at the location at which the job is performed or based

is at least one more than the number on the day prior to the date the job was created.

E. With respect to each new high-wage economic-based job for which an eligible employer seeks the high-wage jobs tax credit, the employer shall certify:

(1) the amount of wages paid to each eligible employee in a new high-wage economic-based job during each qualifying period;

(2) the number of weeks the position was occupied during the qualifying period;

(3) whether the new high-wage economic-based job was in a municipality with a population of forty thousand or more or with a population of less than forty thousand according to the most recent federal decennial census and whether the job was in the unincorporated area of a county; and

(4) the total number of employees employed by the employer at the job location on the day prior to the qualifying period and on the last day of the qualifying period.

F. To receive a high-wage jobs tax credit with respect to any qualifying period, an eligible employer shall apply to the taxation and revenue department on forms and in the manner prescribed by the department. The application shall include a certification made pursuant to Subsection E of

this section.

G. The credit provided in this section may be deducted from the modified combined tax liability of a taxpayer. If the credit exceeds the modified combined tax liability of the taxpayer, the excess shall be refunded to the taxpayer.

H. As used in this section:

(1) "benefits" means any employee benefit plan as defined in Title 1, Section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002;

(2) "eligible employee" means an individual who is employed by an eligible employer and who is a resident of New Mexico; "eligible employee" does not include 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 an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or

HB 839
Page 42

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;

(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 an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust; or

(d) is working or has worked as an employee or as an independent contractor for an entity that directly or indirectly owns stock in a corporation of the eligible employer or other interest of the eligible employer that represents fifty percent or more of the total voting power of that entity or has a value equal to fifty percent or more of the capital and profits interest in the entity;

(3) "eligible employer" means an employer that:

(a) made more than fifty percent of its sales to persons outside New Mexico during the most recent

twelve months of the employer's modified combined tax liability reporting periods ending prior to claiming a high-wage jobs tax credit; or

(b) is eligible for development training program assistance pursuant to Section 21-19-7 NMSA 1978;

(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 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 high-wage jobs 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;

(5) "new high-wage economic-based job" means a job created by an eligible employer on or after July 1, 2004 and prior to July 1, 2009 that is occupied for at least forty-eight weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least:

(a) forty thousand dollars (\$40,000) if the job is performed or based in a municipality with a population of forty thousand or more according to the most recent federal decennial census; and

(b) twenty-eight thousand dollars (\$28,000) if the job is performed or based in a municipality with a population of less than forty thousand according to the most recent federal decennial census or in the unincorporated area of a county;

(6) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a new high-wage economic-based job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a new high-wage economic-based job; and

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

Section 22. Section 7-14A-3.1 NMSA 1978 (being Laws 1993, Chapter 359, Section 1) is amended to read:

"7-14A-3.1. IMPOSITION AND RATE--LEASED VEHICLE SURCHARGE.--

A. Except as provided in Subsection B of this section, there is imposed a surcharge on the leasing of a vehicle to another person by a person engaging in business in New Mexico if the lease is subject to the leased vehicle gross

receipts tax. The amount of this surcharge is two dollars (\$2.00) for each day the vehicle is leased by the person. The surcharge may be referred to as the "leased vehicle surcharge".

B. The leased vehicle surcharge imposed in Subsection A of this section shall not apply to the lease of a temporary replacement vehicle if the lessee signs a statement that the temporary replacement vehicle is to be used as a replacement for another vehicle that is being repaired, serviced or replaced. For the purposes of this section, "temporary replacement vehicle" means a vehicle that is:

(1) used by an individual in place of another vehicle that is unavailable for use by the individual due to loss, damage, mechanical breakdown or need for servicing; and

(2) leased temporarily by or on behalf of the individual or loaned temporarily to the individual by a vehicle repair facility or dealer while the other vehicle is being repaired, serviced or replaced."

Section 23. TEMPORARY PROVISION.--In taxable years 2013 through 2015, a taxpayer may carry forward amounts resulting from angel investment credits claimed and approved for qualified investments made in the calendar year 2009, 2010 or 2011.

Section 24. DELAYED REPEAL.--Section 1 of this act is

repealed effective January 1, 2013.

Section 25. REPEAL.--Laws 2004, Chapter 15, Section 2 is repealed.

Section 26. CONTINUED APPLICABILITY OF RURAL JOB TAX CREDIT.--The balance of a rural job tax credit granted by and remaining on a tax credit document issued prior to July 1, 2006 may be applied after that date in the manner provided in Section 2 of this act against a holder's modified combined tax liability or personal income tax or corporate income tax liability.

Section 27. APPLICABILITY OF RURAL JOB TAX CREDIT.--The provisions of Section 2 of this act apply to tax returns filed on or after the effective date of that section:

A. for rural job tax credit claims against a taxpayer's modified combined tax liability, for qualified jobs created in the calendar quarters beginning on or after July 1, 2006; and

B. for rural job tax credit claims against a taxpayer's personal income tax liability or corporate income tax liability, for qualified jobs created in taxable years beginning on or after January 1, 2006.

Section 28. APPLICABILITY.--The provisions of Sections 1, 3 and 4 of this act apply to taxable years beginning on or after January 1, 2007.

Section 29. CONTINGENT EFFECTIVE DATE--NOTIFICATION.--

The effective date of the provisions of Sections 12 and 13 of this act is July 1, 2009, provided that prior to January 1, 2009, the economic development department certifies to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county has commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction. The taxation and revenue department shall notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2009 as to whether the certification from the economic development department has been received.

Section 30. EFFECTIVE DATE.--The effective date of the provisions of Sections 3 through 5, 7 through 11 and 14 through 22 of this act is July 1, 2007.

Section 31. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
