

1 HOUSE BILL 165

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Anna M. Crook

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6
7
8 FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

9
10 AN ACT

11 RELATING TO TAXATION; PROVIDING CONSISTENT DEFINITIONS OF
12 "MODIFIED COMBINED TAX LIABILITY" FOR TAX DEDUCTION PURPOSES.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 7-1-3 NMSA 1978 (being Laws 1965,
16 Chapter 248, Section 3, as amended) is amended to read:

17 "7-1-3. DEFINITIONS.--Unless the context clearly
18 indicates a different meaning, the definitions of words and
19 phrases as they are stated in this section are to be used, and
20 whenever in the Tax Administration Act these words and phrases
21 appear, the singular includes the plural and the plural
22 includes the singular:

23 A. "automated clearinghouse transaction" means an
24 electronic credit or debit transmitted through an automated
25 clearinghouse, payable to the state treasurer and deposited

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1 with the fiscal agent of New Mexico;

2 B. "department" means the taxation and revenue
3 department, the secretary or any employee of the department
4 exercising authority lawfully delegated to that employee by the
5 secretary;

6 C. "electronic payment" means a payment made by
7 automated clearinghouse deposit, any funds wire transfer system
8 or a credit card, debit card or electronic cash transaction
9 through the internet;

10 D. "employee of the department" means any employee
11 of the department, including the secretary, or any person
12 acting as agent or authorized to represent or perform services
13 for the department in any capacity with respect to any law made
14 subject to administration and enforcement under the provisions
15 of the Tax Administration Act;

16 E. "financial institution" means any state or
17 federally chartered, federally insured depository institution;

18 F. "Internal Revenue Code" means the Internal
19 Revenue Code of 1986, as that code may be amended or its
20 sections renumbered;

21 G. "levy" means the lawful power, hereby invested
22 in the secretary, to take into possession or to require the
23 present or future surrender to the secretary or the secretary's
24 delegate of any property or rights to property belonging to a
25 delinquent taxpayer;

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1 H. "local option gross receipts tax" means a tax
2 authorized to be imposed by a county or municipality upon the
3 taxpayer's gross receipts, as that term is defined in the Gross
4 Receipts and Compensating Tax Act, and required to be collected
5 by the department at the same time and in the same manner as
6 the gross receipts tax; "local option gross receipts tax"
7 includes the taxes imposed pursuant to the Municipal Local
8 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
9 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,
10 Local Hospital Gross Receipts Tax Act, County Correctional
11 Facility Gross Receipts Tax Act and such other acts as may be
12 enacted authorizing counties or municipalities to impose taxes
13 on gross receipts, which taxes are to be collected by the
14 department in the same time and in the same manner as it
15 collects the gross receipts tax;

16 I. "managed audit" means a review and analysis
17 conducted by a taxpayer under an agreement with the department
18 to determine the taxpayer's compliance with a tax administered
19 pursuant to the Tax Administration Act and the presentation of
20 the results to the department for assessment of tax found to be
21 due;

22 J. "net receipts" means the total amount of money
23 paid by taxpayers to the department in a month pursuant to a
24 tax or tax act less any refunds disbursed in that month with
25 respect to that tax or tax act; provided that, for the purposes

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1 of determining the distributions and transfers required by the
2 Tax Administration Act with respect to the gross receipts tax
3 imposed pursuant to Section 7-9-4 NMSA 1978, the compensating
4 tax imposed pursuant to Section 7-9-7 NMSA 1978 and the
5 withholding tax imposed on wages pursuant to Section 7-3-3 NMSA
6 1978, "net receipts" also includes the amount of a tax credit
7 claimed and allowed in the month against the tax or tax act;

8 K. "overpayment" means an amount paid, pursuant to
9 any law subject to administration and enforcement under the
10 provisions of the Tax Administration Act, by a person to the
11 department or withheld from the person in excess of tax due
12 from the person to the state at the time of the payment or at
13 the time the amount withheld is credited against tax due;

14 L. "paid" includes the term "paid over";

15 M. "pay" includes the term "pay over";

16 N. "payment" includes the term "payment over";

17 O. "person" means any individual, estate, trust,
18 receiver, cooperative association, club, corporation, company,
19 firm, partnership, limited liability company, limited liability
20 partnership, joint venture, syndicate, other association or
21 gas, water or electric utility owned or operated by a county or
22 municipality; "person" also means, to the extent permitted by
23 law, a federal, state or other governmental unit or
24 subdivision, or an agency, department or instrumentality
25 thereof; and "person", as used in Sections 7-1-72 through

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1 7-1-74 NMSA 1978, also includes an officer or employee of a
2 corporation, a member or employee of a partnership or any
3 individual who, as such, is under a duty to perform any act in
4 respect of which a violation occurs;

5 P. "property" means property or rights to property;

6 Q. "property or rights to property" means any
7 tangible property, real or personal, or any intangible property
8 of a taxpayer;

9 R. "return" means any tax or information return,
10 declaration of estimated tax or claim for refund, including any
11 amendments or supplements to the return, required or permitted
12 pursuant to a law subject to administration and enforcement
13 pursuant to the Tax Administration Act and filed with the
14 secretary or the secretary's delegate by or on behalf of any
15 person;

16 S. "return information" means a taxpayer's name,
17 address, government-issued identification number and other
18 identifying information; any information contained in or
19 derived from a taxpayer's return; any information with respect
20 to any actual or possible administrative or legal action by an
21 employee of the department concerning a taxpayer's return, such
22 as audits, managed audits, denial of credits or refunds,
23 assessments of tax, penalty or interest, protests of
24 assessments or denial of refunds or credits, levies or liens;
25 or any other information with respect to a taxpayer's return or

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1 tax liability that was not obtained from public sources or that
2 was created by an employee of the department; but "return
3 information" does not include statistical data or other
4 information that cannot be associated with or directly or
5 indirectly identify a particular taxpayer;

6 T. "secretary" means the secretary of taxation and
7 revenue and, except for purposes of Subsection B of Section
8 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978,
9 also includes the deputy secretary or a division director or
10 deputy division director delegated by the secretary;

11 U. "secretary or the secretary's delegate" means
12 the secretary or any employee of the department exercising
13 authority lawfully delegated to that employee by the secretary;

14 V. "security" means money, property or rights to
15 property or a surety bond;

16 W. "state" means any state of the United States,
17 the District of Columbia, the commonwealth of Puerto Rico and
18 any territory or possession of the United States;

19 X. "tax" means the total amount of each tax imposed
20 and required to be paid, withheld and paid or collected and
21 paid under provision of any law made subject to administration
22 and enforcement according to the provisions of the Tax
23 Administration Act and, unless the context otherwise requires,
24 includes the amount of any interest or civil penalty relating
25 thereto; "tax" also means any amount of any abatement of tax

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1 made or any credit, rebate or refund paid or credited by the
2 department under any law subject to administration and
3 enforcement under the provisions of the Tax Administration Act
4 to any person contrary to law and includes, unless the context
5 requires otherwise, the amount of any interest or civil penalty
6 relating thereto;

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

12 Z. "tax return preparer" means a person who
13 prepares for others for compensation or who employs one or more
14 persons to prepare for others for compensation any return of
15 income tax, a substantial portion of any return of income tax,
16 any claim for refund with respect to income tax or a
17 substantial portion of any claim for refund with respect to
18 income tax; provided that a person shall not be a "tax return
19 preparer" merely because such person:

20 (1) furnishes typing, reproducing or other
21 mechanical assistance;

22 (2) is an employee who prepares an income tax
23 return or claim for refund with respect to an income tax return
24 of the employer, or of an officer or employee of the employer,
25 by whom the person is regularly and continuously employed; or

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1 (3) prepares as a trustee or other fiduciary
2 an income tax return or claim for refund with respect to income
3 tax for any person."

4 SECTION 2. Section 7-2E-1.1 NMSA 1978 (being Laws 2007,
5 Chapter 172, Section 2) is amended to read:

6 "7-2E-1.1. TAX CREDIT--RURAL JOB TAX CREDIT.--

7 A. The tax credit created by this section may be
8 referred to as the "rural job tax credit". Every eligible
9 employer may apply for, and the taxation and revenue department
10 may allow, a tax credit for each qualifying job the employer
11 creates. The maximum tax credit amount with respect to each
12 qualifying job is equal to:

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

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

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

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

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

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

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

17 E. To receive a rural job tax credit with respect
18 to any qualifying period, an eligible employer must apply to
19 the taxation and revenue department on forms and in the manner
20 the department may prescribe. The application shall include a
21 certification made pursuant to Subsection C of this section.
22 If all the requirements of this section have been complied
23 with, the taxation and revenue department may issue to the
24 applicant a document granting a tax credit for the appropriate
25 qualifying period. The tax credit document shall be numbered

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1 for identification and declare its date of issuance and the
2 amount of rural job tax credit allowed for the respective jobs
3 created. The tax credit documents may be sold, exchanged or
4 otherwise transferred and may be carried forward for a period
5 of three years from the date of issuance. The parties to such
6 a transaction to sell, exchange or transfer a rural job tax
7 credit document shall notify the department of the transaction
8 within ten days of the sale, exchange or transfer.

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

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

23 H. The secretary of economic development, the
24 secretary of taxation and revenue and the secretary of [~~labor~~
25 workforce solutions] or their designees shall annually evaluate

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1 the effectiveness of the rural job tax credit in stimulating
2 economic development in the rural areas of New Mexico and make
3 a joint report of their findings to each session of the
4 legislature so long as the rural job tax credit is in effect.

5 I. An eligible employer that creates a qualifying
6 job in the period beginning on or after July 1, 2006 but before
7 July 1, 2007 or creates a qualifying job, the qualifying period
8 of which includes a part of the period between July 1, 2006 and
9 July 1, 2007, for which the eligible employer has not received
10 a rural job tax credit document pursuant to this section may
11 submit an application for, and the taxation and revenue
12 department may issue to the eligible employer applying, a
13 document granting a tax credit for the appropriate qualifying
14 period. Claims for a rural job tax credit submitted pursuant
15 to the provisions of this subsection shall be submitted within
16 three years from the date of issuance of the rural job tax
17 credit document.

18 J. As used in this section:

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

21 (a) bears any of the relationships
22 described in Paragraphs (1) through (8) of 26 U.S.C. Section
23 152(a) to the employer or, if the employer is a corporation, to
24 an individual who owns, directly or indirectly, more than fifty
25 percent in value of the outstanding stock of the corporation

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1 or, if the employer is an entity other than a corporation, to
2 any individual who owns, directly or indirectly, more than
3 fifty percent of the capital and profits interests in the
4 entity;

5 (b) if the employer is an estate or
6 trust, is a grantor, beneficiary or fiduciary of the estate or
7 trust or is an individual who bears any of the relationships
8 described in Paragraphs (1) through (8) of 26 U.S.C. Section
9 152(a) to a grantor, beneficiary or fiduciary of the estate or
10 trust; or

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

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

24 (3) "metropolitan statistical area" means a
25 metropolitan statistical area in New Mexico as determined by

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1 the United States bureau of the census;

2 (4) "modified combined tax liability" means
3 the total liability of the taxpayer for the reporting period
4 for the gross receipts tax imposed ~~[by]~~ pursuant to Section
5 7-9-4 NMSA 1978, ~~[together with any tax collected at the same~~
6 ~~time and in the same manner as that gross receipts tax, such~~
7 ~~as]~~ the compensating tax imposed pursuant to Section 7-9-7 NMSA
8 1978 and the withholding tax [the interstate telecommunications
9 gross receipts tax, the surcharges imposed by Section 63-9D-5
10 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA
11 1978, minus the amount of any credit other than the rural job
12 tax credit applied against any or all of these taxes or
13 surcharges; but] imposed on wages pursuant to Section 7-3-3
14 NMSA 1978, notwithstanding any distribution or transfer
15 pursuant to the Tax Administration Act with respect to net
16 receipts from those liabilities; "modified combined tax
17 liability" excludes [all amounts collected with respect to] any
18 liability resulting from a local option gross receipts [taxes]
19 tax;

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

23 (6) "qualifying period" means the period of
24 twelve months beginning on the day an eligible employee begins
25 working in a qualifying job or the period of twelve months

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1 beginning on the anniversary of the day an eligible employee
2 began working in a qualifying job;

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

5 (a) an H class county;

6 (b) the state fairgrounds;

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

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

14 (8) "tier one area" means:

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

18 (b) any part of the rural area that is
19 not within the exterior boundaries of a municipality;

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

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

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1 SECTION 3. Section 7-9A-3 NMSA 1978 (being Laws 1979,
2 Chapter 347, Section 3, as amended) is amended to read:

3 "7-9A-3. DEFINITIONS.--As used in the Investment Credit
4 Act:

5 A. "department" means the taxation and revenue
6 department, the secretary of taxation and revenue or any
7 employee of the department exercising authority lawfully
8 delegated to that employee by the secretary;

9 B. "equipment" means an essential machine,
10 mechanism or tool, or a component or fitting thereof, used
11 directly and exclusively in a manufacturing operation and
12 subject to depreciation for purposes of the Internal Revenue
13 Code by the taxpayer carrying on the manufacturing operation.
14 "Equipment" does not include any vehicle that leaves the site
15 of the manufacturing operation for purposes of transporting
16 persons or property or any property for which the taxpayer
17 claims the credit pursuant to Section 7-9-79 NMSA 1978;

18 C. "manufacturing" means combining or processing
19 components or materials, including recyclable materials, to
20 increase their value for sale in the ordinary course of
21 business, including genetic testing and production, but not
22 including:

- 23 (1) construction;
- 24 (2) farming;
- 25 (3) power generation, except for electricity

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1 generation at a facility other than one for which both location
2 approval and a certificate of convenience and necessity are
3 required prior to commencing construction or operation of the
4 facility, pursuant to the Public Utility Act [~~and the Electric~~
5 ~~Utility Industry Restructuring Act of 1999~~]; or

6 (4) processing natural resources, including
7 hydrocarbons;

8 D. "manufacturing operation" means a plant,
9 including a genetic testing and production facility, employing
10 personnel to perform production tasks, in conjunction with
11 equipment not previously existing at the site, to produce
12 goods;

13 E. "modified combined tax liability" means the
14 total liability of the taxpayer for the reporting period for
15 the gross receipts tax imposed pursuant to Section 7-9-4 NMSA
16 1978, the compensating tax imposed pursuant to Section 7-9-7
17 NMSA 1978 and the withholding tax imposed on wages pursuant to
18 Section 7-3-3 NMSA 1978, notwithstanding any distribution or
19 transfer pursuant to the Tax Administration Act with respect to
20 net receipts from those liabilities; "modified combined tax
21 liability" excludes any liability resulting from a local option
22 gross receipts tax;

23 [~~E.~~] F. "recyclable materials" means materials that
24 would otherwise become solid waste if not recycled and that can
25 be collected, separated or processed and placed in use in the

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1 form of raw materials or products; and

2 [F-] G. "taxpayer" means a person liable for
3 payment of any tax, a person responsible for withholding and
4 payment over or for collection and payment over of any tax or a
5 person to whom an assessment has been made, if the assessment
6 remains unabated or the amount thereof has not been paid."

7 SECTION 4. Section 7-9A-5 NMSA 1978 (being Laws 1979,
8 Chapter 347, Section 5, as amended by Laws 1991, Chapter 159,
9 Section 4 and also by Laws 1991, Chapter 162, Section 4) is
10 amended to read:

11 "7-9A-5. INVESTMENT CREDIT--AMOUNT--CLAIMANT.--The
12 investment credit provided for in the Investment Credit Act
13 is an amount equal to the percent of the compensating tax
14 rate provided for in the Gross Receipts and Compensating Tax
15 Act applied to the value of the qualified equipment and may
16 be claimed against a taxpayer's modified combined tax
17 liability by the taxpayer carrying on a manufacturing
18 operation in New Mexico."

19 SECTION 5. Section 7-9F-1 NMSA 1978 (being Laws 2000
20 (2nd S.S.), Chapter 22, Section 1) is amended to read:

21 "7-9F-1. SHORT TITLE.--~~[This act]~~ Chapter 7, Article 9F
22 NMSA 1978 may be cited as the "Technology Jobs Tax Credit
23 Act"."

24 SECTION 6. Section 7-9F-3 NMSA 1978 (being Laws 2000
25 (2nd S.S.), Chapter 22, Section 3) is amended to read:

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1 "7-9F-3. DEFINITIONS.--As used in the Technology Jobs
2 Tax Credit Act:

3 A. "affiliate" means a person who directly or
4 indirectly owns or controls, is owned or controlled by or is
5 under common ownership or control with another person through
6 ownership of voting securities or other ownership interests
7 representing a majority of the total voting power of the
8 entity;

9 B. "annual payroll expense" means the wages paid
10 or payable by the taxpayer for the one-year period ending on
11 the day the taxpayer applies for an additional credit
12 pursuant to the Technology Jobs Tax Credit Act;

13 C. "base payroll expense" means the wages paid or
14 payable by the taxpayer for the one-year period ending on the
15 day one year prior to the day the taxpayer applies for an
16 additional credit pursuant to the Technology Jobs Tax Credit
17 Act, adjusted for any increase in the consumer price index
18 for the United States for all items as published by the
19 United States department of labor since that day;

20 D. "department" means the taxation and revenue
21 department, the secretary of taxation and revenue or any
22 employee of the department exercising authority lawfully
23 delegated to that employee by the secretary;

24 E. "facility" means a factory, mill, plant,
25 refinery, warehouse, dairy, feedlot, building or complex of

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1 buildings located within the state, including the land on
2 which ~~[the facility]~~ it is located and all machinery,
3 equipment and other real and tangible personal property
4 located at or within ~~[the facility]~~ it and used in connection
5 with ~~[the]~~ its operation ~~[of the facility]~~;

6 F. "modified combined tax liability" means the
7 total liability of the taxpayer for the reporting period for
8 the gross receipts tax imposed pursuant to Section 7-9-4 NMSA
9 1978, the compensating tax imposed pursuant to Section 7-9-7
10 NMSA 1978 and the withholding tax imposed on wages pursuant
11 to Section 7-3-3 NMSA 1978, notwithstanding any distribution
12 or transfer pursuant to the Tax Administration Act with
13 respect to net receipts from those liabilities; "modified
14 combined tax liability" excludes any liability resulting from
15 a local option gross receipts tax;

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

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

13 [~~G.~~] H. "qualified facility" means a facility in
14 New Mexico at which qualified research is conducted other
15 than a facility operated by a taxpayer for the United States
16 or any agency, department or instrumentality thereof;

17 [~~H.~~] I. "qualified research" means research:

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

20 (a) that is technological in nature;

21 and

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

25 (2) substantially all of the activities of

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

5 ~~[F.]~~ J. "rural area" means any area of the state
6 other than a class A county, a class B county that has a net
7 taxable value for rate-setting purposes for any property tax
8 year of more than three billion dollars (\$3,000,000,000), the
9 municipality of Rio Rancho and the area within three miles of
10 the exterior boundaries of a class A county;

11 ~~[G.]~~ K. "taxpayer" means any of the following
12 persons, other than a federal, state or other governmental
13 unit or subdivision or an agency, department, institution or
14 instrumentality thereof:

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

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

18 (3) a person to whom an assessment has been
19 made if the assessment remains unabated or the assessed
20 amount has not been paid; or

21 (4) for purposes of the additional credit
22 against the taxpayer's income tax pursuant to the Technology
23 Jobs Tax Credit Act and to the extent of their respective
24 interest in that entity, the shareholders, members, partners
25 or other owners of:

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1 (a) a small business corporation that
2 has elected to be treated as an S corporation for federal
3 income tax purposes; or

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

6 [~~K-~~] L. "wages" means remuneration [~~in cash or~~
7 ~~other form~~] for services performed by an employee for an
8 employer."

9 SECTION 7. Section 7-9F-5 NMSA 1978 (being Laws 2000
10 (2nd S.S.), Chapter 22, Section 5) is amended to read:

11 "7-9F-5. BASIC CREDIT--ADDITIONAL CREDIT--AMOUNTS--
12 CLAIMANT.--

13 A. The basic credit provided for in the
14 Technology Jobs Tax Credit Act [~~is~~] may be claimed against a
15 taxpayer's modified combined tax liability due to the state
16 in an amount equal to four percent of the amount of qualified
17 expenditures made by a taxpayer [~~conducting qualified~~
18 ~~research at a qualified facility~~].

19 B. The additional credit provided for in the
20 Technology Jobs Tax Credit Act [~~is~~] may be claimed against a
21 taxpayer's tax liability due pursuant to the Income Tax Act
22 or the taxpayer's corporate income tax liability due pursuant
23 to the Corporate Income and Franchise Tax Act in an amount
24 equal to four percent of the amount of qualified expenditures
25 made by a taxpayer [~~conducting qualified research at a~~

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1 ~~qualified facility~~]."

2 SECTION 8. Section 7-9F-9 NMSA 1978 (being Laws 2000
3 (2nd S.S.), Chapter 22, Section 9) is amended to read:

4 "7-9F-9. CLAIMING ~~[THE CREDIT FOR]~~ CREDITS AGAINST
5 CERTAIN TAXES.--

6 A. A taxpayer may apply for approval of a credit
7 within one year following the end of the calendar year in
8 which the qualified expenditure was made.

9 B. A taxpayer having applied for and been granted
10 approval for a basic credit by the department pursuant to the
11 Technology Jobs Tax Credit Act may claim the amount of the
12 approved basic credit against the taxpayer's ~~[compensating~~
13 ~~tax, gross receipts tax or withholding tax]~~ modified combined
14 tax liability due to the state of New Mexico; provided that
15 no taxpayer may claim an amount of approved basic credit for
16 any reporting period that exceeds the sum of the taxpayer's
17 ~~[gross receipts tax, compensating tax and withholding tax]~~
18 modified combined tax liability due for that reporting
19 period.

20 C. A taxpayer who has applied for and been
21 granted approval for an additional credit by the department
22 pursuant to the Technology Jobs Tax Credit Act may claim the
23 amount of the approved additional credit against the
24 taxpayer's income tax or corporate income tax due the state
25 of New Mexico; provided that:

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1 (1) no taxpayer may claim an amount of
2 approved additional credit for any reporting period that
3 exceeds the amount of the taxpayer's income tax or corporate
4 income tax due for that reporting period; and

5 (2) a husband and wife who file separate
6 returns pursuant to the Income Tax Act for a taxable year in
7 which they could have filed a joint return may each claim
8 only one-half of the additional credit that would have been
9 allowed them on a joint return.

10 D. Any amount of approved basic credit not
11 claimed against the taxpayer's [~~gross receipts tax,~~
12 ~~compensating tax or withholding tax~~] modified combined tax
13 liability due and any amount of approved additional credit
14 not claimed against the taxpayer's income tax or corporate
15 income tax due for a reporting period may be claimed in
16 subsequent reporting periods; provided that a husband and
17 wife who file separate returns pursuant to the Income Tax Act
18 for a taxable year in which they could have filed a joint
19 return may each claim only one-half of the additional credit
20 that would have been allowed them on a joint return."

21 SECTION 9. Section 7-9F-11 NMSA 1978 (being Laws 2000
22 (2nd S.S.), Chapter 22, Section 11) is amended to read:

23 "7-9F-11. RECAPTURE.--If the taxpayer or a successor in
24 business of the taxpayer ceases operations in New Mexico for
25 at least one hundred eighty consecutive days within a two-

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1 year period after the taxpayer has claimed a basic credit or
2 an additional credit at a facility [~~with respect to which the~~
3 ~~taxpayer has claimed the basic credit or the additional~~
4 ~~credit~~], the department shall grant no further basic credit
5 or additional credit to the taxpayer with respect to that
6 facility. In addition, any amount of approved basic credit
7 not claimed against the taxpayer's [~~gross receipts tax,~~
8 ~~compensating tax or withholding tax~~] modified combined tax
9 liability and any amount of approved additional credit not
10 claimed against the taxpayer's income tax or corporate income
11 tax shall be extinguished, and within thirty days after the
12 one hundred eightieth day of the cessation of operations, the
13 taxpayer shall pay the amount of any [~~gross receipts tax,~~
14 ~~compensating tax or withholding tax~~] modified combined tax
15 liability for which an approved basic credit was taken and
16 any income tax or corporate income tax against which an
17 approved additional credit was taken. For purposes of this
18 section, a taxpayer shall not be deemed to have ceased
19 operations during reasonable periods for maintenance or
20 retooling or for the repair or replacement of facilities
21 damaged or destroyed or during the continuance of labor
22 disputes."

23 SECTION 10. Section 7-9G-1 NMSA 1978 (being Laws 2004,
24 Chapter 15, Section 1, as amended) is amended to read:

25 "7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING

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1 HIGH-WAGE JOBS.--

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

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

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

17 D. A new high-wage economic-based job shall not
18 be eligible for a credit pursuant to this section unless the
19 eligible employer's total number of employees with new high-
20 wage economic-based jobs on the last day of the qualifying
21 period at the location at which the job is performed or based
22 is at least one more than the number on the day prior to the
23 date the job was created.

24 E. With respect to each new high-wage economic-
25 based job for which an eligible employer seeks the high-wage

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1 jobs tax credit, the employer shall certify:

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

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

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

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

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

23 G. The credit provided in this section may be
24 deducted from the modified combined tax liability of a
25 taxpayer. If the credit exceeds the modified combined tax

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1 liability of the taxpayer, the excess shall be refunded to
2 the taxpayer.

3 H. The economic development department shall
4 report to the appropriate interim legislative committee
5 before November 1 of each year the cost of this tax credit to
6 the state and its impact on company recruitment and job
7 creation.

8 I. As used in this section:

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

12 (2) "eligible employee" means an individual
13 who is employed by an eligible employer and who is a resident
14 of New Mexico; "eligible employee" does not include an
15 individual who:

16 (a) bears any of the relationships
17 described in Paragraphs (1) through (8) of 26 U.S.C. Section
18 152(a) to the employer or, if the employer is a corporation,
19 to an individual who owns, directly or indirectly, more than
20 fifty percent in value of the outstanding stock of the
21 corporation or, if the employer is an entity other than a
22 corporation, to an individual who owns, directly or
23 indirectly, more than fifty percent of the capital and
24 profits interest in the entity;

25 (b) if the employer is an estate or

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

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

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

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

25 (a) made more than fifty percent of

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1 its sales to persons outside New Mexico during the most
2 recent twelve months of the employer's modified combined tax
3 liability reporting periods ending prior to claiming a high-
4 wage jobs tax credit; or

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

8 (4) "modified combined tax liability" means
9 the total liability of the taxpayer for the reporting period
10 for the gross receipts tax imposed ~~[by]~~ pursuant to Section
11 7-9-4 NMSA 1978, ~~[together with any tax collected at the same~~
12 ~~time and in the same manner as the gross receipts tax, such~~
13 ~~as]~~ the compensating tax imposed pursuant to Section 7-9-7
14 NMSA 1978 and the withholding tax [the interstate
15 ~~telecommunications gross receipts tax, the surcharges imposed~~
16 ~~by Section 63-9D-5 NMSA 1978 and the surcharge imposed by~~
17 ~~Section 63-9F-11 NMSA 1978, minus the amount of any credit~~
18 ~~other than the high-wage jobs tax credit applied against any~~
19 ~~or all of these taxes or surcharges; but]~~ imposed on wages
20 pursuant to Section 7-3-3 NMSA 1978, notwithstanding any
21 distribution or transfer pursuant to the Tax Administration
22 Act with respect to net receipts from those liabilities;
23 "modified combined tax liability" excludes ~~[all amounts~~
24 ~~collected with respect to]~~ any liability resulting from a
25 local option gross receipts ~~[taxes]~~ tax;

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1 (5) "new high-wage economic-based job" means
2 a job created by an eligible employer on or after July 1,
3 2004 and prior to July 1, 2015 that is occupied for at least
4 forty-eight weeks of a qualifying period by an eligible
5 employee who is paid wages calculated for the qualifying
6 period to be at least:

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

11 (b) twenty-eight thousand dollars
12 (\$28,000) if the job is performed or based in a municipality
13 with a population of less than forty thousand according to the
14 most recent federal decennial census or in the unincorporated
15 area of a county;

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

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

24 SECTION 11. Section 7-9I-2 NMSA 1978 (being Laws 2005,
25 Chapter 104, Section 18, as amended) is amended to read:

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1 "7-9I-2. DEFINITIONS.--As used in the Affordable
2 Housing Tax Credit Act:

3 A. "affordable housing project" means land
4 acquisition, construction, building acquisition, remodeling,
5 improvement, rehabilitation, conversion or weatherization for
6 residential housing that is approved by the authority and that
7 includes single-family housing or multifamily housing;

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

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

12 D. "modified combined tax liability" means the
13 total liability of a taxpayer for the reporting period for the
14 gross receipts tax imposed [by] pursuant to Section 7-9-4 NMSA
15 1978, ~~[together with any tax collected at the same time and in~~
16 ~~the same manner as the gross receipts tax, such as]~~ the
17 compensating tax imposed pursuant to Section 7-9-7 NMSA 1978
18 and the withholding tax ~~[the interstate telecommunications~~
19 ~~gross receipts tax, the surcharges imposed by Section 63-9D-5~~
20 ~~NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA~~
21 ~~1978, minus the amount of any credit other than the affordable~~
22 ~~housing tax credit applied against any or all of these taxes~~
23 ~~or surcharges; but]~~ imposed on wages pursuant to Section 7-3-3
24 NMSA 1978, notwithstanding any distribution or transfer
25 pursuant to the Tax Administration Act with respect to net

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1 receipts from those liabilities; "modified combined tax
2 liability" excludes [~~all amounts collected with respect to~~
3 any liability resulting from a local option gross receipts
4 [~~taxes and governmental gross receipts taxes~~] tax; and

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

9 SECTION 12. Section 7-9J-1 NMSA 1978 (being Laws 2007,
10 Chapter 204, Section 11) is amended to read:

11 "7-9J-1. SHORT TITLE.--~~[Sections 11 through 18 of this~~
12 ~~act]~~ Chapter 7, Article 9J NMSA 1978 may be cited as the
13 "Alternative Energy Product Manufacturers Tax Credit Act".

14 SECTION 13. Section 7-9J-2 NMSA 1978 (being Laws 2007,
15 Chapter 204, Section 12) is amended to read:

16 "7-9J-2. DEFINITIONS.--As used in the Alternative
17 Energy Product Manufacturers Tax Credit Act:

18 A. "alternative energy product" means an
19 alternative energy vehicle, fuel cell system, renewable energy
20 system or any component of an alternative energy vehicle, fuel
21 cell system or renewable energy system or components for
22 integrated gasification combined cycle coal facilities and
23 equipment related to the sequestration of carbon from
24 integrated gasification combined cycle plants;

25 B. "alternative energy vehicle" means a motor

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1 vehicle manufactured by an original equipment manufacturer
2 that fully warrants and certifies that the motor vehicle meets
3 the federal motor vehicle safety standards and is designed to
4 be propelled in whole or in part by electricity; "alternative
5 energy vehicle" includes a gasoline-electric hybrid motor
6 vehicle [~~exempt from the motor vehicle excise tax pursuant to~~
7 ~~Subsection F of Section 7-14-6 NMSA 1978~~];

8 C. "component" means a part, assembly of parts,
9 material, ingredient or supply that is incorporated directly
10 into an end product;

11 D. "department" means the taxation and revenue
12 department, the secretary of taxation and revenue or an
13 employee of the department exercising authority lawfully
14 delegated to that employee by the secretary;

15 E. "fuel cell system" means a system that converts
16 hydrogen, natural gas or waste gas to electricity without
17 combustion, including:

18 (1) a fuel cell or a system used to generate
19 or reform hydrogen for use in a fuel cell; or

20 (2) a system used to generate or reform
21 hydrogen for use in a fuel cell, including:

22 (a) electrolyzers that use renewable
23 energy; and

24 (b) reformers that use natural gas as
25 the feedstock;

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1 F. "manufacturing" means combining or processing
2 components or materials to increase their value for sale in
3 the ordinary course of business, but "manufacturing" does not
4 include construction, farming, power generation or processing
5 natural resources;

6 G. "manufacturing equipment" means an essential
7 machine, mechanism or tool or a component of an essential
8 machine, mechanism or tool used directly and exclusively in a
9 taxpayer's manufacturing operation and that is subject to
10 depreciation pursuant to the Internal Revenue Code of 1986 by
11 the taxpayer carrying on the manufacturing; provided that
12 "manufacturing equipment" does not include a vehicle that
13 leaves the site of a manufacturing operation for the purpose
14 of transporting persons or property, including property for
15 which the taxpayer claims a credit pursuant to Section 7-9-79
16 NMSA 1978;

17 H. "manufacturing operation" means a plant
18 employing personnel to perform production tasks, in
19 conjunction with manufacturing equipment not previously
20 existing at the site, to produce alternative energy products;

21 I. "modified combined tax liability" means the
22 total liability of a taxpayer for the reporting period for the
23 gross receipts tax imposed by Section 7-9-4 NMSA 1978,
24 [~~together with any tax collected at the same time and in the~~
25 ~~same manner as that gross receipts tax, such as~~] the

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1 compensating tax imposed pursuant to Section 7-9-7 NMSA 1978
2 and the withholding tax [the interstate telecommunications
3 gross receipts tax, the surcharge imposed by Section 63-9D-5
4 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA
5 1978, minus the amount of any credit other than the
6 alternative energy product manufacturers tax credit applied
7 against any or all of those taxes or surcharges; provided
8 that] imposed on wages pursuant to Section 7-3-3 NMSA 1978,
9 notwithstanding any distribution or transfer pursuant to the
10 Tax Administration Act with respect to net receipts from those
11 liabilities; provided that "modified combined tax liability"
12 excludes [all amounts collected with respect to] any liability
13 resulting from a local option gross receipts [taxes] tax;

14 J. "pass-through entity" means a business
15 association other than:

16 (1) a sole proprietorship;
17 (2) an estate or trust;
18 (3) a corporation, limited liability
19 company, partnership or other entity that is not a sole
20 proprietorship taxed as a corporation for federal income tax
21 purposes for the taxable year; or

22 (4) a partnership that is organized as an
23 investment partnership in which the partner's income is
24 derived solely from interest, dividends and sales of
25 securities;

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1 K. "qualified expenditure" means an expenditure
2 for the purchase of manufacturing equipment made after July 1,
3 2006 by a taxpayer approved by the department;

4 L. "renewable energy" means energy from solar
5 heat, solar light, wind, geothermal energy, landfill gas or
6 biomass either singly or in combination that produces low or
7 zero emissions and has substantial long-term production
8 potential;

9 M. "renewable energy system" means a system using
10 only renewable energy to produce hydrogen or to generate
11 electricity, including related cogeneration systems that
12 create mechanical energy or that produce heat or steam for
13 space or water heating and agricultural or small industrial
14 processes and includes a:

- 15 (1) photovoltaic energy system;
- 16 (2) solar-thermal energy system;
- 17 (3) biomass energy system;
- 18 (4) wind energy system;
- 19 (5) hydrogen production system; or
- 20 (6) battery cell energy system; and

21 N. "taxpayer" means a person, including a
22 shareholder, member, partner or other owner of a pass-through
23 entity, who is liable for payment of a tax or to whom an
24 assessment has been made if the assessment remains unabated or
25 the amount thereof has not been paid."

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SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.