

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 184

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO TAXATION; HTRC→~~EXTENDING THE DATE OF A TAX CREDIT PROVIDED IN THE INVESTMENT CREDIT ACT; PROVIDING A TERMINATION DATE FOR THE CREDIT; INCLUDING A CALCULATION FOR THE CREDIT IF THE SALE OF QUALIFIED EQUIPMENT FOR WHICH THE CREDIT IS ALLOWED IS SUBJECT TO THE GROSS RECEIPTS TAX; INCLUDING A CALCULATION FOR THE CREDIT IF THE QUALIFIED EQUIPMENT IS NOT SUBJECT TO THE GROSS RECEIPTS TAX OR THE COMPENSATING TAX~~ ←HTRC HTRC→~~SFC~~→; PROVIDING THAT THE CREDIT WILL BE CLAIMED AGAINST A TAXPAYER'S STATE AND LOCAL TAX LIABILITIES←SFC←HTRC. HTRC→EXPANDING CERTAIN GROSS RECEIPTS TAX DEDUCTIONS FOR MANUFACTURERS TO

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PROVIDE AN ALTERNATIVE TO A CREDIT PROVIDED IN THE INVESTMENT CREDIT ACT; MODIFYING EMPLOYMENT REQUIREMENTS FOR THE CREDIT; LIMITING WHO CAN CLAIM THE CREDIT AFTER A CERTAIN DATE. ←HTRC

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

HTRC → SECTION 1. ~~Section 7-9A-5 NMSA 1978 (being Laws 1979, Chapter 347, Section 5, as amended by Laws 1991, Chapter 159, Section 4 and also by Laws 1991, Chapter 162, Section 4) is amended to read:~~

~~"7-9A-5. INVESTMENT CREDIT--AMOUNT--CLAIMANT.--~~

~~A. The investment credit provided for in the Investment Credit Act [is an] may be claimed by a taxpayer carrying on a manufacturing operation in New Mexico in an amount equal to [the percent of]:~~

~~(1) the product of the sum of the compensating tax rate [provided for in the Gross Receipts and Compensating Tax Act applied to] and, beginning July 1, 2021, any municipal or county compensating tax rate multiplied by the value of the qualified equipment [and may be claimed by the taxpayer carrying on a manufacturing operation in New Mexico]; or~~

~~(2) if the sale is subject to the gross receipts tax, the product of the sum of the gross receipts tax rate and, beginning July 1, 2021, any municipal or county local option gross receipts tax rates multiplied by the seller's gross receipts from the sale of the qualified equipment.--~~

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~~B. If the purchase or the introduction into New Mexico of the qualified equipment is not subject to the gross receipts tax or compensating tax, the rate to determine the amount of the credit shall be equal to a rate of five and one-eighth percent.~~ ←HTRC

HTRC → SECTION 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 2019, Chapter 270, Section 23 and by Laws 2019, Chapter 274, Section 11) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating Tax Act:

A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

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. "digital good" means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone;

D. "financial corporation" means a savings and loan association or an incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

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E. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

(1) observation of tests conducted by the performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

F. "leasing" means an arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is licensing and is not a lease;

G. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon a taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax;

H. "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be

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towed on its own chassis and designed to be installed with or without a permanent foundation;

I. "manufacturing" means combining or processing ~~[components or materials to increase their value for sale in the ordinary course of business, but does not include construction]~~ tangible personal property, including components and materials, to increase its value or marketability for ultimate sale in the ordinary course of business, and includes manufacturing done for others, but does not include construction. "Manufacturing" begins at the point the tangible personal property to be combined or processed is introduced into that manufacturing process by a person engaged in the business of manufacturing. "Manufacturing" ends when the combining or processing to complete the product for sale, including packaging by the manufacturer, is finished. "Manufacturing" includes any portion of the manufacturing process between the beginning and the end of the process;

J. "marketplace provider" means a person who facilitates the sale, lease or license of tangible personal property or services or licenses for use of real property on a marketplace seller's behalf, or on the marketplace provider's own behalf, by:

(1) listing or advertising the sale, lease or license, by any means, whether physical or electronic, including by catalog, internet website or television or radio

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broadcast; and

(2) either directly or indirectly, through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider's services;

K. "marketplace seller" means a person who sells, leases or licenses tangible personal property or services or who licenses the use of real property through a marketplace provider;

L. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

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

M. "property" means:

(1) real property;

(2) tangible personal property, including

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electricity and manufactured homes;

(3) licenses, including licenses of digital goods, but not including the licenses of copyrights, trademarks or patents; and

(4) franchises;

N. "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) developing a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) developing new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) developing analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

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(6) designing and developing prototypes or integrating systems incorporating the advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

O. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

P. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. That tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. Sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property; and

Q. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary

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course of business or for use solely outside this state."

SECTION 2. Section 7-9-46 NMSA 1978 (being Laws 1969, Chapter 144, Section 36, as amended) is repealed and a new Section 7-9-46 NMSA 1978 is enacted to read:

"7-9-46. [NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--
GOVERNMENTAL GROSS RECEIPTS--SALES TO MANUFACTURERS.--

A. Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross receipts if the sale is made to a manufacturer who delivers a nontaxable transaction certificate to the seller. The manufacturer delivering the nontaxable transaction certificate must incorporate the tangible personal property as an ingredient or component part of a product that the manufacturer produces in a manufacturing operation.

B. Receipts from selling a manufacturing consumable may be deducted from gross receipts or from governmental gross receipts if the sale is made to a manufacturer who delivers a nontaxable transaction certificate to the seller. The manufacturer delivering the nontaxable transaction certificate to the seller must use the manufacturing consumable directly in the process of manufacturing a product in its manufacturing operation.

C. Receipts from selling or leasing durable equipment may be deducted from gross receipts or from governmental gross receipts if the sale is made to, or the

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lease is entered into with, a manufacturer who delivers a nontaxable transaction certificate to the seller or lessor.

The manufacturer delivering the nontaxable transaction certificate must use the durable equipment directly in a manufacturing operation.

D. As used in this section:

(1) "durable equipment" means machinery and equipment with a minimum general useful life of three years that is employed within a manufacturing operation and is essential to the completion of the manufactured product or is necessary and integral to an integrated, synchronized manufacturing system. "Durable equipment":

(a) includes: 1) computer hardware and software utilized to control the manufacturing process, monitor specifications during the manufacturing process or ensure quality control; 2) machinery and equipment that are used in a manufacturing operation that are necessary to reduce, eliminate or mitigate pollution in accordance with state and federal law; and 3) repair parts, spares and other tangibles used to manufacture a product; and

(b) does not include: 1) hand tools; and 2) motor vehicles that are required to be registered in this state pursuant to the Motor Vehicle Code;

(2) "manufacturer" means a person engaged in manufacturing, but does not include a person engaged in:

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(a) generating electric power;

(b) processing natural resources,

including hydrocarbons; or

(c) processing and preparing meals for

immediate consumption;

(3) "manufacturing consumable" means tangible personal property that is consumed, destroyed or depleted directly in the process of manufacturing a product in a manufacturing operation, including electricity, fuels, water and manufacturing aids and supplies, chemicals and gases used to manufacture a product; and

(4) "manufacturing operation" means a facility operated by a manufacturer that employs personnel to perform manufacturing processes, in conjunction with machinery and equipment."

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

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

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

B. "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used

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directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

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

(1) construction;

(2) farming;

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

(4) processing natural resources, including hydrocarbons;

D. "manufacturing operation" means a plant facility that is part of a project for which bonds have been authorized to be issued pursuant to the Industrial Revenue Bond

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Act or the County Industrial Revenue Bond Act prior to July 1, 2025, including a genetic testing and production facility, employing personnel to perform production tasks, in conjunction with equipment not previously existing at the site, to produce goods;

E. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials or products; and

F. "taxpayer" means a person carrying on a manufacturing operation in New Mexico:

(1) liable for payment of any tax; [~~a person~~]

(2) responsible for withholding and payment over or for collection and payment over of any tax; or [~~a person~~]

(3) to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid."←HTRC

SECTION HTRC→2←HTRC HTRC→4←HTRC. Section 7-9A-7 NMSA 1978 (being Laws 1979, Chapter 347, Section 7, as amended) is amended to read:

"7-9A-7. VALUE OF QUALIFIED EQUIPMENT.--[A.] HTRC→Prior to July 1,←HTRC [2020] HTRC→2030, the←HTRC HTRC→The←HTRC value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions

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of the Internal Revenue Code of 1986.

~~[B. After June 30, 2020, the value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars (\$2,000,000).]~~"

SECTION HTRC→3←HTRC HTRC→5←HTRC. Section 7-9A-7.1 NMSA 1978 (being Laws 1983, Chapter 206, Section 6, as amended) is amended to read:

"7-9A-7.1. EMPLOYMENT REQUIREMENTS.--

A. HTRC→~~Prior to July 1,~~←HTRC [2020] HTRC→~~2030,~~ to ←HTRC HTRC→To←HTRC be eligible to claim a credit pursuant to the Investment Credit Act, the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) HTRC→~~{five hundred thousand dollars (\$500,000)}~~ ~~seven hundred fifty thousand dollars (\$750,000),~~ ←HTRC HTRC→**five hundred thousand dollars (\$500,000)**←HTRC or

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portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars (\$30,000,000) HTRC→, for taxable periods beginning prior to January 1, 2021←HTRC;

HTRC→and←HTRC

HTRC→(2) seven hundred fifty thousand dollars (\$750,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars (\$30,000,000), for taxable periods beginning on and after January 1, 2021; and←HTRC

HTRC→(2)←HTRC HTRC→(3)←HTRC one million dollars (\$1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars (\$30,000,000) claimed by the taxpayer in a taxable year in the same claim.

~~[B. After June 30, 2020, for every one hundred thousand dollars (\$100,000) in value of qualified equipment claimed by a taxpayer in a taxable year, the taxpayer shall employ the equivalent of one full-time employee in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for credit.~~

~~6.]~~ B. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on

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which the taxpayer applies for the credit, if the employee was only being trained prior to that date or the employee's employment was necessitated by the use of the qualified equipment."

~~HTRC→SFC→SECTION 4. Section 7-9A-8 NMSA 1978 (being Laws 1979, Chapter 347, Section 8, as amended) is amended to read:~~

~~"7-9A-8. CLAIMING THE CREDIT FOR CERTAIN TAXES.--~~

~~A. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the qualified equipment for the manufacturing operation is purchased or introduced into New Mexico.~~

~~B. A taxpayer having applied for and been granted approval for a credit by the department pursuant to the Investment Credit Act may claim an amount of available credit against the taxpayer's [compensating tax, gross receipts tax or withholding tax due to the state of New Mexico] tax~~

~~liabilities; provided that the credit shall be claimed against the taxpayer's tax liabilities pursuant to the Gross Receipts and Compensating Tax Act, the Municipal Local Option Gross Receipts and Compensating Taxes Act and the County Local Option Gross Receipts and Compensating Taxes Act before being claimed against the taxpayer's tax liabilities pursuant to the Withholding Tax Act; provided further that no taxpayer may claim, except as provided in Subsection C of this section, an amount of available credit for any reporting period that~~

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~~exceeds eighty-five percent of the sum of the taxpayer's [gross receipts tax, compensating tax and withholding] tax [due] liabilities for that reporting period. Any amount of available credit not claimed against the taxpayer's [gross receipts tax, compensating tax or withholding] tax [due] liabilities for a reporting period may be claimed in subsequent reporting periods.~~

~~C. A taxpayer may apply by September 30 of the current calendar year for a refund of the unclaimed balance of the available credit up to a maximum of two hundred fifty thousand dollars (\$250,000) if on January 1 of the current calendar year:~~

~~(1) the taxpayer's available credit is less than five hundred thousand dollars (\$500,000); and~~

~~(2) the sum of the taxpayer's [gross receipts tax, compensating tax and withholding] tax [due] liabilities for the previous calendar year was less than thirty-five percent of the taxpayer's available credit but more than ten thousand dollars (\$10,000).~~

~~D. As used in this section, "tax liabilities" means any tax liability a taxpayer incurs pursuant to the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, the Municipal Local Option Gross Receipts and Compensating Taxes Act or the County Local Option Gross Receipts and Compensating Taxes Act.~~ ←SFG ←HTRC

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HTRC→~~SECTION SFC→4←SFC SFC→5←SFC. APPLICABILITY.--The provisions of Section 3 of this act apply to qualified equipment purchased or introduced to the state on and after July 1, 2020.~~

~~SECTION SFC→5←SFC SFC→6←SFC. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.~~←HTRC

HTRC→SECTION 6. Section 7-9F-3 NMSA 1978 (being Laws 2000 (2nd S.S.), Chapter 22, Section 3, as amended by Laws 2019, Chapter 270, Section 38 and by Laws 2019, Chapter 274, Section 12) is amended to read:

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

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

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

C. "base payroll expense" means the wages paid or

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payable by the taxpayer in the taxable year prior to the taxable year for which the taxpayer applies for an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act, adjusted for any increase from the preceding taxable year in the consumer price index for the United States for all items as published by the United States department of labor in the taxable year for which the additional credit is claimed. In a taxable year during which a taxpayer has been part of a business merger or acquisition or other change in business organization, the taxpayer's base payroll expense shall include the payroll expense of all entities included in the reorganization for all positions that are included in the business entity resulting from the reorganization;

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

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

F. "local option gross receipts tax" means a tax

authorized to be imposed by a county or municipality upon a taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax;

G. "qualified expenditure" means an expenditure or an allocated portion of an expenditure by a taxpayer in connection with qualified research at a qualified facility, including expenditures for depletable land and rent paid or incurred for land, improvements, the allowable amount paid or incurred to operate or maintain a facility, buildings, equipment, computer software, computer software upgrades, consultants and contractors performing work in New Mexico, payroll, technical books and manuals and test materials, but not including any expenditure on property that is owned by a municipality or county in connection with an industrial revenue bond project, property for which the taxpayer has received any credit pursuant to the Investment Credit Act, a manufacturing consumable for which the receipts from its sale may be deducted pursuant to Section 7-9-46 NMSA 1978, property that was owned by the taxpayer or an affiliate before July 3, 2000 or research and development expenditures reimbursed by a person who is not an affiliate of the taxpayer. If a "qualified expenditure" is an allocation of an expenditure, the cost accounting methodology used for the allocation of the expenditure shall be

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the same cost accounting methodology used by the taxpayer in its other business activities;

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

I. "qualified research" means research:

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

(a) that is technological in nature; and

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

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

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

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

(2) had total qualified expenditures of no

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more than five million dollars (\$5,000,000) in the taxable year for which an additional credit is claimed; and

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

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

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

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

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

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

(4) for purposes of the additional credit

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against the taxpayer's income tax pursuant to the Technology Jobs and Research and Development Tax Credit Act and to the extent of their respective interest in that entity, the shareholders, members, partners or other owners of:

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

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

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

SECTION 7. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 3 and 6 of this act is July 1, 2021.

B. The effective date of the provisions of Sections 4 and 5 of this act is July 1, 2020. ←HTRC

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