

1 HOUSE BILL 188

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Nate Gentry

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10 AN ACT

11 RELATING TO TAXATION; ESTABLISHING A CREDIT AGAINST PERSONAL
12 INCOME TAX LIABILITY AND CORPORATE INCOME TAX LIABILITY FOR
13 HOTEL AND RESTAURANT RENOVATION PROJECTS.

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

16 SECTION 1. A new section of the Income Tax Act is enacted
17 to read:

18 "[NEW MATERIAL] HOTEL AND RESTAURANT RENOVATION INCOME TAX
19 CREDIT.--

20 A. For taxable years beginning after December 31,
21 2015 and before January 1, 2026, a taxpayer who is not a
22 dependent of another taxpayer may receive a nontransferable
23 credit against the taxpayer's tax liability imposed by the
24 Income Tax Act:

25 (1) if, after December 31, 2015 and before

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1 January 1, 2026, the taxpayer incurs qualifying costs of a
2 renovation project to a hotel or restaurant owned by the
3 taxpayer and located in New Mexico;

4 (2) for the taxable year in which the taxpayer
5 incurred those costs; and

6 (3) in an amount not to exceed twenty percent
7 of those costs that:

8 (a) for a hotel, were incurred during a
9 period of no more than thirty-six months after the renovation
10 project's beginning date as identified in the taxpayer's
11 certificate of eligibility issued in accordance with Subsection
12 E of this section; and

13 (b) for a restaurant, were incurred
14 during a period of no more than twelve months after the
15 renovation project's beginning date as identified in the
16 taxpayer's certificate of eligibility issued in accordance with
17 Subsection E of this section.

18 B. The tax credit provided by this section may be
19 referred to as the "hotel and restaurant renovation income tax
20 credit". The purpose of the hotel and restaurant renovation
21 income tax credit is to drive economic growth, create jobs and
22 spur neighborhood revitalization.

23 C. To receive the hotel and restaurant renovation
24 income tax credit, a taxpayer shall:

25 (1) before beginning a renovation project,

1 apply to the economic development department on a form and in
2 the manner prescribed by that department for a determination of
3 project eligibility and include in the application the
4 following information:

5 (a) a detailed description of the
6 proposed project, including the projected beginning and end
7 dates;

8 (b) the project plan, including phases,
9 if any; and

10 (c) the project's estimated qualifying
11 costs; and

12 (2) after completing an eligible renovation
13 project:

14 (a) apply to the economic development
15 department on forms and in the manner prescribed by that
16 department for a certificate of eligibility for the credit and
17 include in the application: 1) a statement by a third-party
18 certified public accountant retained by the taxpayer that
19 outlines the project's qualifying costs; and 2) the project's
20 actual beginning and end dates;

21 (b) receive a certificate of eligibility
22 from the economic development department; and

23 (c) apply for the credit to the taxation
24 and revenue department on forms and in the manner prescribed by
25 that department and include in the application the certificate

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1 of eligibility for the credit.

2 D. Within sixty days after receiving a taxpayer's
3 complete application for project eligibility for a hotel and
4 restaurant renovation income tax credit, the economic
5 development department shall:

6 (1) determine whether the taxpayer's
7 renovation project as planned would qualify for the credit; and

8 (2) advise the taxpayer of that determination.

9 E. Within thirty days after receiving a taxpayer's
10 complete application for a hotel or restaurant renovation
11 project certification, the economic development department
12 shall provide the taxpayer with a certificate of eligibility
13 for the hotel and restaurant renovation income tax credit if
14 the department finds that the taxpayer is eligible for the
15 credit. The certificate shall include:

16 (1) the date of issuance;

17 (2) information identifying the taxpayer; and

18 (3) the amount of credit for which the
19 taxpayer is eligible.

20 F. That portion of a hotel and restaurant
21 renovation income tax credit that exceeds the taxpayer's tax
22 liability in the taxable year in which the credit is claimed
23 shall be refunded to the taxpayer.

24 G. Married individuals filing separate returns for
25 a taxable year for which they could have filed a joint return

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1 may each claim no more than one-half of the hotel and
2 restaurant renovation income tax credit that could have been
3 claimed on a joint return.

4 H. A taxpayer who owns an interest in a business
5 entity that is taxed for federal income tax purposes as a
6 partnership or a limited liability company and that has met all
7 of the requirements to be eligible for the hotel and restaurant
8 renovation income tax credit may claim the credit in proportion
9 to the taxpayer's ownership interest in the business entity.
10 The total credit claimed by all members of the partnership or
11 limited liability company shall not exceed the amount allowed
12 by this section.

13 I. Before July 1, 2016, the economic development
14 department shall adopt rules establishing procedures to provide
15 certificates of eligibility for hotel and restaurant renovation
16 income tax credits.

17 J. Beginning in 2017, the taxation and revenue
18 department shall compile an annual report on the hotel and
19 restaurant renovation income tax credit that includes the
20 number of taxpayers approved by the department to receive the
21 credit, the aggregate amount of credits approved and any other
22 information necessary to evaluate the effectiveness of the
23 credit. The department shall present the report to the revenue
24 stabilization and tax policy committee and the legislative
25 finance committee with an analysis of the effectiveness and

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1 cost of the credit and whether the credit is performing the
2 purpose for which it was created.

3 K. As used in this section:

4 (1) "hotel" means an establishment or complex:

5 (a) where, in consideration of payment,
6 lodging is regularly furnished to the general public; and

7 (b) that maintains for guest use at
8 least twenty-five sleeping rooms or suites;

9 (2) "qualifying costs" means the costs of
10 construction, new tangible personal property and design and
11 architectural planning that:

12 (a) the economic development department
13 approves; and

14 (b) have been verified by a third-party
15 certified public accountant retained by the taxpayer;

16 (3) "renovation" includes restoration,
17 redecoration, modernization, refurbishment, rehabilitation and
18 remodeling but excludes new construction;

19 (4) "renovation project" means:

20 (a) for a hotel, the renovation of the
21 hotel's guest rooms, suites, common areas or exterior
22 properties, including its signs, facade and landscaping, at a
23 cost of at least two million dollars (\$2,000,000) and at a
24 per-room or per-suite cost of at least ten thousand dollars
25 (\$10,000); and

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1 (b) for a restaurant, the renovation of
2 the restaurant's dining area, restrooms, kitchen or common
3 areas at a cost of at least seventy-five thousand dollars
4 (\$75,000); and

5 (5) "restaurant" means an establishment that:

6 (a) is held out to the general public as
7 a place where, in consideration of payment, meals are prepared
8 and served; and

9 (b) has a common area, a kitchen and the
10 employees necessary for preparing and serving meals."

11 SECTION 2. A new section of the Corporate Income and
12 Franchise Tax Act is enacted to read:

13 "[NEW MATERIAL] HOTEL AND RESTAURANT RENOVATION CORPORATE
14 INCOME TAX CREDIT.--

15 A. For taxable years beginning after December 31,
16 2015 and before January 1, 2026, a taxpayer that files a New
17 Mexico corporate income tax return may receive a
18 nontransferable credit against the taxpayer's tax liability
19 imposed by the Corporate Income and Franchise Tax Act:

20 (1) if, after December 31, 2015 and before
21 January 1, 2026, the taxpayer incurs qualifying costs of a
22 renovation project to a hotel or restaurant owned by the
23 taxpayer and located in New Mexico;

24 (2) for the taxable year in which the taxpayer
25 incurred those costs; and

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1 (3) in an amount not to exceed twenty percent
2 of those costs that:

3 (a) for a hotel, were incurred during a
4 period of no more than thirty-six months after the renovation
5 project's beginning date as identified in the taxpayer's
6 certificate of eligibility issued in accordance with Subsection
7 E of this section; and

8 (b) for a restaurant, were incurred
9 during a period of no more than twelve months after the
10 renovation project's beginning date as identified in the
11 taxpayer's certificate of eligibility issued in accordance with
12 Subsection E of this section.

13 B. The tax credit provided by this section may be
14 referred to as the "hotel and restaurant renovation corporate
15 income tax credit". The purpose of the hotel and restaurant
16 renovation corporate income tax credit is to drive economic
17 growth, create jobs and spur neighborhood revitalization.

18 C. To receive the hotel and restaurant renovation
19 corporate income tax credit, a taxpayer shall:

20 (1) before beginning a renovation project,
21 apply to the economic development department on a form and in
22 the manner prescribed by that department for a determination of
23 project eligibility and include in the application the
24 following information:

25 (a) a detailed description of the

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1 proposed project, including the projected beginning and end
2 dates;

3 (b) the project plan, including phases,
4 if any; and

5 (c) the project's estimated qualifying
6 costs; and

7 (2) after completing an eligible renovation
8 project:

9 (a) apply to the economic development
10 department on forms and in the manner prescribed by that
11 department for a certificate of eligibility for the credit and
12 include in the application: 1) a statement by a third-party
13 certified public accountant retained by the taxpayer that
14 outlines the project's qualifying costs; and 2) the project's
15 actual beginning and end dates;

16 (b) receive a certificate of eligibility
17 from the economic development department; and

18 (c) apply for the credit to the taxation
19 and revenue department on forms and in the manner prescribed by
20 that department and include in the application the certificate
21 of eligibility for the credit.

22 D. Within sixty days after receiving a taxpayer's
23 complete application for project eligibility for a hotel and
24 restaurant renovation corporate income tax credit, the economic
25 development department shall:

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1 (1) determine whether the taxpayer's
2 renovation project as planned would qualify for the credit; and

3 (2) advise the taxpayer of that determination.

4 E. Within thirty days after receiving a taxpayer's
5 complete application for a hotel or restaurant renovation
6 project certification, the economic development department
7 shall provide the taxpayer with a certificate of eligibility
8 for the hotel and restaurant renovation corporate income tax
9 credit if the department finds that the taxpayer is eligible
10 for the credit. The certificate shall include:

11 (1) the date of issuance;

12 (2) information identifying the taxpayer; and

13 (3) the amount of credit for which the
14 taxpayer is eligible.

15 F. That portion of a hotel and restaurant
16 renovation income tax credit that exceeds the taxpayer's tax
17 liability in the taxable year in which the credit is claimed
18 shall be refunded to the taxpayer.

19 G. Before July 1, 2016, the economic development
20 department shall adopt rules establishing procedures to provide
21 certificates of eligibility for hotel and restaurant renovation
22 income tax credits.

23 H. Beginning in 2017, the taxation and revenue
24 department shall compile an annual report on the hotel and
25 restaurant renovation corporate income tax credit that includes

1 the number of taxpayers approved by the department to receive
2 the credit, the aggregate amount of credits approved and any
3 other information necessary to evaluate the effectiveness of
4 the credit. The department shall present the report to the
5 revenue stabilization and tax policy committee and the
6 legislative finance committee with an analysis of the
7 effectiveness and cost of the credit and whether the credit is
8 performing the purpose for which it was created.

9 I. As used in this section:

10 (1) "hotel" means an establishment or complex:

11 (a) where, in consideration of payment,
12 lodging is regularly furnished to the general public; and

13 (b) that maintains for guest use at
14 least twenty-five sleeping rooms or suites;

15 (2) "qualifying costs" means the costs of
16 construction, new tangible personal property and design and
17 architectural planning that:

18 (a) the economic development department
19 approves; and

20 (b) have been verified by a third-party
21 certified public accountant retained by the taxpayer;

22 (3) "renovation" includes restoration,
23 redecoration, modernization, refurbishment, rehabilitation and
24 remodeling but excludes new construction;

25 (4) "renovation project" means:

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1 (a) for a hotel, the renovation of the
2 hotel's guest rooms, suites, common areas or exterior
3 properties, including its signs, facade and landscaping, at a
4 cost of at least two million dollars (\$2,000,000) and at a
5 per-room or per-suite cost of at least ten thousand dollars
6 (\$10,000); and

7 (b) for a restaurant, the renovation of
8 the restaurant's dining area, restrooms, kitchen or common
9 areas at a cost of at least seventy-five thousand dollars
10 (\$75,000); and

11 (5) "restaurant" means an establishment that:

12 (a) is held out to the general public as
13 a place where, in consideration of payment, meals are prepared
14 and served; and

15 (b) has a common area, a kitchen and the
16 employees necessary for preparing and serving meals."