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SENATE BILL 479

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO TAXATION; AMENDING THE TECHNOLOGY JOBS AND RESEARCH  
AND DEVELOPMENT TAX CREDIT ACT TO INCLUDE CERTAIN BIOSCIENCE  
BUSINESSES.

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

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

"7-9F-2. PURPOSE OF ACT.--It is the purpose of the  
Technology Jobs and Research and Development Tax Credit Act to  
provide a favorable tax climate for technology-based businesses  
and for bioscience businesses engaging in research, development  
and experimentation and to promote increased employment and  
higher wages in those fields in New Mexico."

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

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1           "7-9F-3. DEFINITIONS.--As used in the Technology Jobs and  
2 Research and Development 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 or  
10 payable to employees in the state by the taxpayer in the  
11 taxable year for which the taxpayer applies for an additional  
12 credit pursuant to the Technology Jobs and Research and  
13 Development Tax Credit Act;

14           C. "base payroll expense" means the wages paid or  
15 payable by the taxpayer in the taxable year prior to the  
16 taxable year for which the taxpayer applies for an additional  
17 credit pursuant to the Technology Jobs and Research and  
18 Development Tax Credit Act, adjusted for any increase from the  
19 preceding taxable year in the consumer price index for the  
20 United States for all items as published by the United States  
21 department of labor in the taxable year for which the  
22 additional credit is claimed. In a taxable year during which a  
23 taxpayer has been part of a business merger or acquisition or  
24 other change in business organization, the taxpayer's base  
25 payroll expense shall include the payroll expense of all

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1 entities included in the reorganization for all positions that  
2 are included in the business entity resulting from the  
3 reorganization;

4 D. "bioscience" means the scientific areas  
5 represented by life sciences and biotechnology that are  
6 included in the following five industries recognized by the  
7 United States department of labor:

- 8 (1) drugs and pharmaceuticals;
- 9 (2) medical devices and equipment;
- 10 (3) research testing and medical laboratories;
- 11 (4) bioscience-related distribution; and
- 12 (5) agriculture and chemicals related to  
13 bioscience;

14 ~~[D-]~~ E. "department" means the taxation and revenue  
15 department, the secretary of taxation and revenue or any  
16 employee of the department exercising authority lawfully  
17 delegated to that employee by the secretary;

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

24 ~~[F-]~~ G. "local option gross receipts tax" means a  
25 tax authorized to be imposed by a county or municipality upon

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

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

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1 credit pursuant to the Investment Credit Act, property that was  
2 owned by the taxpayer or an affiliate before July 3, 2000 or  
3 research and development expenditures reimbursed by a person  
4 who is not an affiliate of the taxpayer. If a "qualified  
5 expenditure" is an allocation of an expenditure, the cost  
6 accounting methodology used for the allocation of the  
7 expenditure shall be the same cost accounting methodology used  
8 by the taxpayer in its other business activities;

9 ~~[H.]~~ I. "qualified facility" means a facility in  
10 New Mexico at which:

11 (1) qualified research is conducted other than  
12 a facility operated by a taxpayer for the United States or any  
13 agency, department or instrumentality thereof; or

14 (2) bioscience activities are being undertaken  
15 at a facility located within ten miles of a national laboratory  
16 or a research institution; provided that the taxpayer commenced  
17 bioscience activities at the facility on or after July 1, 2017;

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

21 ~~[I.]~~ K. "qualified research" means research:

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

24 (a) that is technological or bioscience  
25 in nature; and

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

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

9 ~~[J.]~~ L. "qualified research and development small  
10 business" means a taxpayer that:

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

15 (2) had total qualified expenditures of no  
16 more than five million dollars (\$5,000,000) in the taxable year  
17 for which an additional credit is claimed; and

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

23 M. "research institutions" means the university of  
24 New Mexico, New Mexico state university and the New Mexico  
25 institute of mining and technology;

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1           ~~[K-]~~ N. "rural area" means any area of the state  
2 other than the state fairgrounds, an incorporated municipality  
3 with a population of thirty thousand or more according to the  
4 most recent federal decennial census and any area within three  
5 miles of the external boundaries of an incorporated  
6 municipality with a population of thirty thousand or more  
7 according to the most recent federal decennial census;

8           ~~[L-]~~ O. "taxpayer" means any of the following  
9 persons, other than a federal, state or other governmental unit  
10 or subdivision or an agency, department, institution or  
11 instrumentality thereof:

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

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

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

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

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

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

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

**SECTION 3. APPLICABILITY.**--The provisions of this act  
apply to taxable years beginning on or after January 1, 2017.

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