

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

February 17, 2020

Mr. Speaker:

Your **TAXATION AND REVENUE COMMITTEE**, to whom has been referred

**SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE
SUBSTITUTE FOR SENATE BILL 184, as amended**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. Strike all senate finance committee amendments.

2. On page 1, line 11, after the semicolon, strike the remainder of the line, strike lines 12 through 17 in their entirety and insert in lieu thereof the following:

"EXPANDING CERTAIN GROSS RECEIPTS TAX DEDUCTIONS FOR MANUFACTURERS TO 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."

3. On pages 1 and 2, strike Section 1 in its entirety and insert in lieu thereof the following new sections:

"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;

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 2

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;

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

I. "manufacturing" means combining or processing

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 3

[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 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

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 4

(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 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

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 5

(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 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.

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 6

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 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:

(a) generating electric power;

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 7

(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 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:

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 8

- (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 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."".

4. Renumber the succeeding sections accordingly.

5. On page 2, lines 22 and 23, strike "Prior to July 1," and

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 9

strike "2030, the" and insert in lieu thereof "The".

6. On page 3, line 13, strike "Prior to July 1," and strike "2030, to" and insert in lieu thereof "To".

7. On page 3, line 20, remove the brackets and line-through and strike line 21 up to the comma.

8. On page 3, line 24, before the semicolon, insert ", for taxable periods beginning prior to January 1, 2021", and strike "and".

9. On page 3, between line 24 and 25, insert the following new paragraph:

"(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".

10. Renumber the succeeding paragraph accordingly.

11. On page 4, strike lines 18 through 22 in their entirety and insert in lieu thereof the following new sections:

"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

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 10

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 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,

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 11

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 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

**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 12

liable for unemployment insurance coverage in the taxable year for which an additional credit is claimed;

(2) had total qualified expenditures of no 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 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

FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020

HTRC/SB 184

Page 13

(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."

Respectfully submitted,

Javier Martinez, Co-Chair

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 6 For 5 Against

Yes: 6

No: Akhil, Cadena, Chandler, Gallegos, DY, Trujillo, J.

Excused: Egolf, Maestas

Absent: None

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**FIFTY-FOURTH LEGISLATURE
SECOND SESSION, 2020**

HTRC/SB 184

Page 14