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SENATE BILL 106

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Crystal R. Diamond and Siah Correa Hemphill

AN ACT

RELATING TO TAXATION; CREATING THE SHORT LINE RAILROAD
MODERNIZATION INCOME TAX CREDIT AND THE SHORT LINE RAILROAD
MODERNIZATION CORPORATE INCOME TAX CREDIT.

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

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

"[NEW MATERIAL] SHORT LINE RAILROAD MODERNIZATION INCOME
TAX CREDIT.--

A. A taxpayer who is not a dependent of another
taxpayer and is an owner of an eligible railroad that incurs
qualified reconstruction or replacement expenditures or
qualified new infrastructure expenditures for the maintenance,
reconstruction, replacement or new construction of short line
railroad track in New Mexico may apply for, and the department

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1 may allow, a tax credit against the taxpayer's tax liability
2 pursuant to the Income Tax Act for the taxable year in which
3 the credit is approved by the department pursuant to this
4 section. The tax credit provided by this section may be
5 referred to as the "short line railroad modernization income
6 tax credit".

7 B. The amount of credit that may be allowed
8 pursuant to this section shall be equal to fifty percent of an
9 eligible railroad's qualified reconstruction or replacement
10 expenditures or qualified new infrastructure expenditures;
11 provided that:

12 (1) for qualified reconstruction or
13 replacement expenditures, the amount of tax credit shall not
14 exceed an amount equal to the product of five thousand dollars
15 (\$5,000) multiplied by the number of miles of railroad track
16 owned or leased in the state by the eligible railroad as of the
17 close of the taxable year; and

18 (2) for qualified new infrastructure
19 expenditures, the amount of tax credit shall not exceed five
20 hundred thousand dollars (\$500,000) for each new rail-served
21 customer project of the eligible railroad.

22 C. A taxpayer who seeks to claim a tax credit
23 provided by this section shall apply for a certificate of
24 eligibility from the department of transportation after
25 completion of the maintenance, reconstruction, replacement or

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1 new construction of short line railroad track in New Mexico for
2 which qualified reconstruction or replacement expenditures or
3 qualified new infrastructure expenditures are made to determine
4 if the taxpayer is eligible to receive the tax credit provided
5 by this section. Completed applications shall be made on forms
6 and in the manner prescribed by that department and considered
7 in the order received.

8 D. If the department of transportation determines
9 that the taxpayer meets the requirements to claim a tax credit
10 pursuant to this section, that department may issue a
11 certificate of eligibility to the taxpayer. The certificate
12 shall be numbered for identification and declare its date of
13 issuance and the amount of the tax credit allowed pursuant to
14 this section. The certificate may be submitted by the taxpayer
15 with that taxpayer's return or may be sold, exchanged or
16 otherwise transferred to another taxpayer. The parties to such
17 a transaction shall notify the department of the sale, exchange
18 or transfer within ten days of the sale, exchange or transfer.

19 E. That portion of a tax credit that exceeds a
20 taxpayer's tax liability in the taxable year in which the tax
21 credit is claimed shall not be refunded but may be carried
22 forward for a maximum of five consecutive taxable years.

23 F. To receive a tax credit provided by this
24 section, a taxpayer shall apply to the department on forms and
25 in the manner prescribed by the department. The application

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1 shall include a certificate of eligibility issued by the
2 department of transportation pursuant to this section.

3 G. Married individuals filing separate returns for
4 a taxable year for which they could have filed a joint return
5 may each claim only one-half of a tax credit that would have
6 been claimed on a joint return.

7 H. A taxpayer may be allocated the right to claim a
8 tax credit provided by this section in proportion to the
9 taxpayer's ownership interest if the taxpayer owns an interest
10 in a business entity that is taxed for federal income tax
11 purposes as a partnership or limited liability company and that
12 business entity has met all of the requirements to be eligible
13 for the credit. The total credit claimed by all members of the
14 partnership or limited liability company shall not exceed the
15 allowable amount of credit pursuant to this section.

16 I. A taxpayer allowed a tax credit pursuant to this
17 section shall report the amount of the credit to the taxation
18 and revenue department in a manner required by that department.

19 J. The taxation and revenue department shall
20 compile an annual report on the tax credit provided by this
21 section that shall include the number of taxpayers approved by
22 the department to receive the credit, the aggregate amount of
23 credits approved and any other information necessary to
24 evaluate the credit. The department shall present the report
25 to the revenue stabilization and tax policy committee and the

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1 legislative finance committee with an analysis of the cost of
2 the tax credit and whether the credit is performing the purpose
3 for which the credit was created.

4 K. As used in this section:

5 (1) "eligible railroad" means a railroad that
6 is classified by the federal surface transportation board as a
7 class two or class three railroad;

8 (2) "qualified new infrastructure
9 expenditures" means new construction of industrial leads,
10 switches, sidings and extensions of existing sidings by an
11 eligible railroad located in New Mexico; and

12 (3) "qualified reconstruction or replacement
13 expenditures" means gross expenditures for maintenance,
14 reconstruction or replacement of railroad infrastructure,
15 including track, roadbed, bridges, industrial leads, sidings
16 and track-related structures owned or leased by an eligible
17 railroad in New Mexico. "Qualified railroad reconstruction or
18 replacement expenditures" does not include expenditures used to
19 generate a federal tax credit or expenditures funded by a state
20 or federal grant."

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

23 "[NEW MATERIAL] SHORT LINE RAILROAD MODERNIZATION
24 CORPORATE INCOME TAX CREDIT.--

25 A. A taxpayer that is an owner of an eligible

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1 railroad that incurs qualified reconstruction or replacement
2 expenditures or qualified new infrastructure expenditures for
3 the maintenance, reconstruction, replacement or new
4 construction of short line railroad track in New Mexico may
5 apply for, and the department may allow, a tax credit against
6 the taxpayer's tax liability pursuant to the Corporate Income
7 and Franchise Tax Act for the taxable year in which the credit
8 is approved by the department pursuant to this section. The
9 tax credit provided by this section may be referred to as the
10 "short line railroad modernization corporate income tax
11 credit".

12 B. The amount of credit that may be allowed
13 pursuant to this section shall be equal to fifty percent of an
14 eligible railroad's qualified reconstruction or replacement
15 expenditures or qualified new infrastructure expenditures;
16 provided that:

17 (1) for qualified reconstruction or
18 replacement expenditures, the amount of tax credit shall not
19 exceed an amount equal to the product of five thousand dollars
20 (\$5,000) multiplied by the number of miles of railroad track
21 owned or leased in the state by the eligible railroad as of the
22 close of the taxable year; and

23 (2) for qualified new infrastructure
24 expenditures, the amount of tax credit shall not exceed five
25 hundred thousand dollars (\$500,000) for each new rail-served

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1 customer project of the eligible railroad.

2 C. A taxpayer that seeks to claim a tax credit
3 provided by this section shall apply for a certificate of
4 eligibility from the department of transportation after
5 completion of the maintenance, reconstruction, replacement or
6 new construction of short line railroad track in New Mexico for
7 which qualified reconstruction or replacement expenditures or
8 qualified new infrastructure expenditures are made to determine
9 if the taxpayer is eligible to receive the tax credit provided
10 by this section. Completed applications shall be made on forms
11 and in the manner prescribed by that department and considered
12 in the order received.

13 D. If the department of transportation determines
14 that the taxpayer meets the requirements to claim a tax credit
15 pursuant to this section, that department may issue a
16 certificate of eligibility to the taxpayer. The certificate
17 shall be numbered for identification and declare its date of
18 issuance and the amount of the tax credit allowed pursuant to
19 this section. The certificate may be submitted by the taxpayer
20 with that taxpayer's return or may be sold, exchanged or
21 otherwise transferred to another taxpayer. The parties to such
22 a transaction shall notify the department of the sale, exchange
23 or transfer within ten days of the sale, exchange or transfer.

24 E. That portion of a tax credit that exceeds a
25 taxpayer's tax liability in the taxable year in which the tax

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1 credit is claimed shall not be refunded but may be carried
2 forward for a maximum of five consecutive taxable years.

3 F. To receive a tax credit provided by this
4 section, a taxpayer shall apply to the department on forms and
5 in the manner prescribed by the department. The application
6 shall include a certificate of eligibility issued by the
7 department of transportation pursuant to this section.

8 G. A taxpayer allowed a tax credit pursuant to this
9 section shall report the amount of the credit to the taxation
10 and revenue department in a manner required by that department.

11 H. The taxation and revenue department shall
12 compile an annual report on the tax credit provided by this
13 section that shall include the number of taxpayers approved by
14 the department to receive the credit, the aggregate amount of
15 credits approved and any other information necessary to
16 evaluate the credit. The department shall present the report
17 to the revenue stabilization and tax policy committee and the
18 legislative finance committee with an analysis of the cost of
19 the tax credit and whether the credit is performing the purpose
20 for which the credit was created.

21 I. As used in this section:

22 (1) "eligible railroad" means a railroad that
23 is classified by the federal surface transportation board as a
24 class two or class three railroad;

25 (2) "qualified new infrastructure

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1 expenditures" means new construction of industrial leads,
2 switches, sidings and extensions of existing sidings by an
3 eligible railroad located in New Mexico; and

4 (3) "qualified reconstruction or replacement
5 expenditures" means gross expenditures for maintenance,
6 reconstruction or replacement of railroad infrastructure,
7 including track, roadbed, bridges, industrial leads, sidings
8 and track-related structures owned or leased by an eligible
9 railroad in New Mexico. "Qualified railroad reconstruction or
10 replacement expenditures" does not include expenditures used to
11 generate a federal tax credit or expenditures funded by a state
12 or federal grant."

13 SECTION 3. APPLICABILITY.--The provisions of this act
14 apply to taxable years beginning on or after January 1, 2022.