

1 SENATE BILL 221

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; CREATING THE RAIL INFRASTRUCTURE INCOME
12 TAX CREDIT AND THE RAIL INFRASTRUCTURE CORPORATE INCOME TAX
13 CREDIT.

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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] RAIL INFRASTRUCTURE INCOME TAX CREDIT.--

19 A. For taxable years prior to January 1, 2034, a
20 taxpayer that is a railroad that is classified by the federal
21 surface transportation board as a class two or class three
22 railroad located in the state, or an owner or lessee of a rail
23 siding, yard track, industrial spur or industry track located
24 adjacent to such a railroad, that incurs qualified
25 reconstruction or replacement expenditures or qualified new

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

9 B. The amount of credit that may be allowed
10 pursuant to this section shall be equal to fifty percent of a
11 taxpayer's qualified reconstruction or replacement expenditures
12 or qualified new rail infrastructure expenditures; provided
13 that:

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

20 (2) for qualified new rail infrastructure
21 expenditures, the amount of tax credit shall not exceed one
22 million dollars (\$1,000,000) for each new rail-served customer
23 project of the taxpayer; provided that the total amount of
24 credits that may be allowed in a calendar year shall not exceed
25 five million dollars (\$5,000,000).

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1 C. A taxpayer that seeks to claim a tax credit
2 provided by this section shall apply for a certificate of
3 eligibility from the department of transportation after
4 completion of the maintenance, reconstruction, replacement or
5 new construction of railroad track infrastructure in New Mexico
6 for which qualified reconstruction or replacement expenditures
7 or qualified new rail infrastructure expenditures are made to
8 determine if the taxpayer is eligible to receive the tax credit
9 provided by this section. The department of transportation may
10 certify a maximum annual aggregate amount of credits of six
11 million dollars (\$6,000,000) per calendar year. Completed
12 applications shall be made on forms and in the manner
13 prescribed by that department and considered in the order
14 received.

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

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

5 F. To receive a tax credit provided by this
6 section, a taxpayer shall apply to the department on forms and
7 in the manner prescribed by the department within twelve months
8 following the calendar year in which the qualified expenditures
9 are incurred. The application shall include a certificate of
10 eligibility issued by the department of transportation pursuant
11 to this section.

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

16 H. A taxpayer may be allocated the right to claim a
17 tax credit provided by this section in proportion to the
18 taxpayer's ownership interest if the taxpayer owns an interest
19 in a business entity that is taxed for federal income tax
20 purposes as a partnership or limited liability company and that
21 business entity has met all of the requirements to be eligible
22 for the credit. The total credit claimed by all members of the
23 partnership or limited liability company shall not exceed the
24 allowable amount of credit pursuant to this section.

25 I. A taxpayer allowed a tax credit pursuant to this

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1 section shall report the amount of the credit to the taxation
2 and revenue department in a manner required by that department.

3 J. The taxation and revenue department shall
4 compile an annual report on the tax credit provided by this
5 section that shall include the number of taxpayers approved by
6 the department to receive the credit, the aggregate amount of
7 credits approved and any other information necessary to
8 evaluate the credit. The department shall present the report
9 to the revenue stabilization and tax policy committee and the
10 legislative finance committee with an analysis of the cost of
11 the tax credit and whether the credit is performing the purpose
12 for which the credit was created.

13 K. As used in this section:

14 (1) "qualified new rail infrastructure
15 expenditures" means gross expenditures for new rail
16 infrastructure incurred by a taxpayer, including the new
17 construction of industrial leads, switches, sidings, rail
18 loading docks and transloading structures involved with
19 servicing new customer locations or existing customer
20 expansions adjacent to a railroad located in New Mexico; and

21 (2) "qualified reconstruction or replacement
22 expenditures" means gross expenditures for maintenance,
23 reconstruction or replacement of railroad infrastructure,
24 including track, roadbed, bridges, industrial leads, sidings
25 and track-related structures in New Mexico that are owned or

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1 leased by a taxpayer claiming the credit provided by this
2 section. "Qualified railroad reconstruction or replacement
3 expenditures" does not include expenditures used to generate a
4 federal tax credit or expenditures funded by a state or federal
5 grant."

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

8 "[NEW MATERIAL] RAIL INFRASTRUCTURE CORPORATE INCOME TAX
9 CREDIT.--

10 A. For taxable years prior to January 1, 2034, a
11 taxpayer that is a railroad that is classified by the federal
12 surface transportation board as a class two or class three
13 railroad located in the state, or an owner or lessee of a rail
14 siding, yard track, industrial spur or industry track located
15 adjacent to such a railroad, that incurs qualified
16 reconstruction or replacement expenditures or qualified new
17 rail infrastructure expenditures for the maintenance,
18 reconstruction, replacement or new construction of railroad
19 track infrastructure in New Mexico may apply for, and the
20 department may allow, a tax credit against the taxpayer's tax
21 liability pursuant to the Corporate Income and Franchise Tax
22 Act for the taxable year in which the credit is approved by the
23 department pursuant to this section. The tax credit provided
24 by this section may be referred to as the "rail infrastructure
25 corporate income tax credit".

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1 B. The amount of credit that may be allowed
2 pursuant to this section shall be equal to fifty percent of a
3 taxpayer's qualified reconstruction or replacement expenditures
4 or qualified new rail infrastructure expenditures; provided
5 that:

6 (1) for qualified reconstruction or
7 replacement expenditures, the amount of tax credit shall not
8 exceed an amount equal to the product of five thousand dollars
9 (\$5,000) multiplied by the number of miles of railroad track
10 owned or leased in the state by the taxpayer as of the close of
11 the taxable year; and

12 (2) for qualified new rail infrastructure
13 expenditures, the amount of tax credit shall not exceed one
14 million dollars (\$1,000,000) for each new rail-served customer
15 project of the taxpayer; provided that the total amount of
16 credits that may be allowed in a calendar year shall not exceed
17 five million dollars (\$5,000,000).

18 C. A taxpayer that seeks to claim a tax credit
19 provided by this section shall apply for a certificate of
20 eligibility from the department of transportation after
21 completion of the maintenance, reconstruction, replacement or
22 new construction of railroad track infrastructure in New Mexico
23 for which qualified reconstruction or replacement expenditures
24 or qualified new rail infrastructure expenditures are made to
25 determine if the taxpayer is eligible to receive the tax credit

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1 provided by this section. The department of transportation may
2 certify a maximum annual aggregate amount of credits of six
3 million dollars (\$6,000,000) per calendar year. Completed
4 applications shall be made on forms and in the manner
5 prescribed by that department and considered in the order
6 received.

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

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

22 F. To receive a tax credit provided by this
23 section, a taxpayer shall apply to the department on forms and
24 in the manner prescribed by the department within twelve months
25 following the calendar year in which the qualified expenditures

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1 are incurred. The application shall include a certificate of
2 eligibility issued by the department of transportation pursuant
3 to this section.

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

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

17 I. As used in this section:

18 (1) "qualified new rail infrastructure
19 expenditures" means gross expenditures for new rail
20 infrastructure incurred by a taxpayer, including the new
21 construction of industrial leads, switches, sidings, rail
22 loading docks and transloading structures involved with
23 servicing new customer locations or existing customer
24 expansions adjacent to a railroad located in New Mexico; and

25 (2) "qualified reconstruction or replacement

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1 expenditures" means gross expenditures for maintenance,
2 reconstruction or replacement of railroad infrastructure,
3 including track, roadbed, bridges, industrial leads, sidings
4 and track-related structures in New Mexico that are owned or
5 leased by a taxpayer claiming the credit provided by this
6 section. "Qualified railroad reconstruction or replacement
7 expenditures" does not include expenditures used to generate a
8 federal tax credit or expenditures funded by a state or federal
9 grant."

10 SECTION 3. APPLICABILITY.--The provisions of this act
11 apply to taxable years beginning on or after January 1, 2023.