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SENATE BILL 246

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Carroll A. Leavell

AN ACT

RELATING TO TAXATION; PROMOTING RURAL AGRICULTURAL PROCESSING
OPERATIONS; ESTABLISHING THE AGRICULTURE PROCESSING CLUSTER
PILOT PROJECT; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978.

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

Section 1. A new section of the Economic Development
Department Act is enacted to read:

"NEW MATERIAL AGRICULTURE PROCESSING CLUSTER PILOT
PROJECT--SECRETARY'S DUTIES--CRITERIA--DEFINITIONS.--

A. The secretary shall establish the "agriculture
processing cluster pilot project" in consultation with the
New Mexico department of agriculture to encourage the
increased use of agricultural commodities produced in the
state through the establishment of new and expansion of
existing agricultural processing operations.

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1 B. The secretary may select up to six applicants
2 each year to participate in an agriculture processing cluster
3 pilot project based on the following criteria:

4 (1) the feasibility of the existing or
5 proposed agricultural processing operation to remain a viable
6 enterprise and the degree to which the agricultural
7 processing operation will increase the use of agricultural
8 commodities produced in the state;

9 (2) the level of need of the region where
10 the existing agricultural processing operation or the
11 proposed agricultural processing operation is to be located;

12 (3) the degree to which the agricultural
13 processing operation will provide new jobs in the state;

14 (4) the degree to which the agricultural
15 processing operation produces a product that may be used in
16 another agricultural processing operation in the area of
17 operation; and

18 (5) whether the agricultural processing
19 operation is participating in a regional or local government
20 economic development plan or project pursuant to the Local
21 Economic Development Act, is located in an enterprise zone as
22 defined by the Enterprise Zone Act or is located in a rural
23 area.

24 C. The secretary shall inform applicants of any
25 tax credits and tax deductions for which participants in the
agriculture processing cluster pilot project qualify.

D. As used in this section:

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1 (1) "agricultural processing operation"
2 means a plant, business or establishment at which personnel
3 are employed for the purpose of processing agricultural
4 products, including storage, handling, packaging and similar
5 activities associated with processing; and

6 (2) "rural area" means any part of the state
7 other than:

8 (a) an H class county;

9 (b) an incorporated municipality within
10 a metropolitan statistical area if the municipality's
11 population is thirty thousand or more according to the most
12 recent federal decennial census; and

13 (c) any area within ten miles of the
14 exterior boundaries of a municipality described in
15 Subparagraph (b) of this paragraph."

16 Section 2. A new section of the Corporate Income and
17 Franchise Tax Act is enacted to read:

18 "[NEW MATERIAL] CORPORATE INCOME AND FRANCHISE TAX--
19 CREDIT--PRODUCTIVE CAPITAL OF CERTAIN AGRICULTURAL PROCESSING
20 OPERATIONS--DEFINITIONS.--

21 A. An agricultural processing operation that is a
22 qualified entity that files a New Mexico corporate income tax
23 return may claim a tax credit against corporate income tax in
24 an amount, not to exceed thirty thousand dollars (\$30,000),
25 equal to the following percentages of the cost of productive
capital used exclusively for agricultural processing.

For taxable years beginning	Percentage
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1 on or after January 1 of the
2 year the taxpayer becomes a
3 qualified entity:

4	year 1	25 percent
5	year 2	20 percent
6	year 3	15 percent
7	year 4	10 percent
8	year 5	5 percent
9	year 6	0 percent.

10 B. To qualify for the credit pursuant to
11 Subsection A of this section, the productive capital must be
12 placed in service in New Mexico during the taxable year for
13 which the credit is claimed.

14 C. The credit may be deducted from the taxpayer's
15 corporate income tax liability; provided that, if the credit
16 exceeds that liability for the taxable year in which the
17 productive capital was placed in service, the taxpayer may
18 carry forward the credit for up to a total of five taxable
19 years, in which case the percentage indicated for the year in
20 which the credit is initially available applies, or until the
21 credit is exhausted, whichever occurs first. A taxpayer may
22 claim the credit for each taxable year in which productive
23 capital is placed in service; provided that the maximum
24 aggregate credit allowable for any taxable year shall not
25 exceed thirty thousand dollars (\$30,000).

D. A taxpayer may not claim the credit provided by
the provisions of this section if the taxpayer has claimed a

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1 credit for the same productive capital pursuant to the
2 Investment Credit Act.

3 E. As used in this section:

4 (1) "agricultural processing operation"
5 means a plant, business or establishment at which personnel
6 are employed for the purpose of processing agricultural
7 products, including storage, handling, packaging and similar
8 activities associated with processing;

9 (2) "productive capital" means tangible
10 personal property that is depreciable, has a useful life of
11 at least three years and is used exclusively as an integral
12 part of the agricultural processing process; and

13 (3) "qualified entity" means an entity
14 certified by the secretary of economic development as a part
15 of the agriculture processing cluster pilot project and that
16 is participating in a regional or local government economic
17 development plan or project pursuant to the Local Economic
18 Development Act, is located in an enterprise zone as defined
19 by the Enterprise Zone Act or is located in a rural area.
20 For purposes of this paragraph, "rural area" means any part
21 of the state other than:

22 (a) an H class county;
23 (b) an incorporated municipality within
24 a metropolitan statistical area if the municipality's
25 population is thirty thousand or more according to the most
recent federal decennial census; and

(c) any area within ten miles of the

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1 exterior boundaries of a municipality described in
2 Subparagraph (b) of this paragraph."

3 Section 3. A new section of the Gross Receipts and
4 Compensating Tax Act is enacted to read:

5 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--SALE OF
6 CERTAIN SERVICES, MATERIALS AND EQUIPMENT FOR AGRICULTURAL
7 PROCESSING OPERATIONS--DEFINITIONS.--

8 A. An agricultural processing operation that is a
9 qualified entity may deduct from gross receipts:

10 (1) receipts from the sale of construction
11 services to expand existing or construct new facilities for
12 an agricultural processing operation located in New Mexico if
13 the construction service is sold to a person who delivers a
14 nontaxable transaction certificate to the person performing
15 the construction service;

16 (2) receipts from the sale of construction
17 materials purchased for use to expand existing or construct
18 new facilities for an agricultural processing operation
19 located in New Mexico if the materials are sold to a person
20 who delivers a nontaxable transaction certificate to the
21 person selling the materials;

22 (3) receipts from the sale of agricultural
23 processing equipment purchased for use in a new or expanded
24 agricultural processing operation located in New Mexico if
25 the equipment is sold to a person who delivers a nontaxable
transaction certificate to the person selling the equipment;
and

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1 (4) receipts from the sale of installation
2 services necessary to install agricultural processing
3 equipment in a new or expanded agricultural processing
4 operation located in New Mexico if the installation service
5 is sold to a person who delivers a nontaxable transaction
6 certificate to the person performing the installation
7 service.

8 B. As used in this section:

9 (1) "agricultural processing equipment"
10 means equipment necessary to conduct a new or expanded
11 agricultural processing operation;

12 (2) "agricultural processing operation"
13 means a plant, business or establishment at which personnel
14 are employed for the purpose of processing agricultural
15 products, including storage, handling, packaging and similar
16 activities associated with processing;

17 (3) "agricultural product" means a raw or
18 unprocessed product of a plant or animal;

19 (4) "construction service" means a service
20 necessary to construct or expand an agricultural processing
21 operation;

22 (5) "installation service" means a service
23 required to install and make operational agricultural
24 processing equipment necessary to conduct an agricultural
25 processing operation; and

(6) "qualified entity" means an entity
certified by the secretary of economic development as a part

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1 of the agriculture processing cluster pilot project and that
2 is participating in a regional or local government economic
3 development plan or project pursuant to the Local Economic
4 Development Act, is located in an enterprise zone as defined
5 by the Enterprise Zone Act or is located in a rural area.

6 For purposes of this paragraph, "rural area" means any part
7 of the state other than:

- 8 (a) an H class county;
- 9 (b) the state fairgrounds;
- 10 (c) an incorporated municipality within
11 a metropolitan statistical area if the municipality's
12 population is thirty thousand or more according to the most
13 recent federal decennial census; and
- 14 (d) any area within ten miles of the
15 exterior boundaries of a municipality described in
16 Subparagraph (c) of this paragraph.

17 C. Election by a taxpayer to deliver the
18 nontaxable transaction certificate necessary to support a
19 deduction for receipts from the sale of agricultural
20 processing equipment, pursuant to the provisions of this
21 section, shall preclude availability of the investment credit
22 that would be available with regard to the same equipment
23 pursuant to the provisions of the Investment Credit Act."

24 Section 4. A new section of the Income Tax Act is
25 enacted to read:

"[NEW MATERIAL] INCOME TAX CREDIT--PRODUCTIVE CAPITAL OF
CERTAIN AGRICULTURAL PROCESSING OPERATIONS--DEFINITIONS.--

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A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is the owner of an agricultural processing operation that is a qualified entity may claim a credit in an amount, not to exceed thirty thousand dollars (\$30,000), equal to the following percentages of the cost of productive capital used exclusively for agricultural processing.

For taxable years beginning
on or after January 1 of the
year the taxpayer becomes a
qualified entity:

	Percentage
year 1	25 percent
year 2	20 percent
year 3	15 percent
year 4	10 percent
year 5	5 percent
year 6	0 percent.

B. To qualify for the credit pursuant to Subsection A of this section, the productive capital must be placed in service in New Mexico during the taxable year for which the credit is claimed.

C. The credit may be deducted from the taxpayer's individual income tax liability; provided that, if the credit exceeds that liability for the taxable year in which the productive capital was placed in service, the taxpayer may carry forward the credit for up to a total of five taxable years, in which case the percentage indicated for the year in

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1 which the credit is initially available applies, or until the
2 credit is exhausted, whichever occurs first. A taxpayer may
3 claim the credit for each taxable year in which productive
4 capital is placed in service; provided that the maximum
5 aggregate credit allowable for any taxable year shall not
6 exceed thirty thousand dollars (\$30,000).

7 D. A taxpayer may not claim the credit provided by
8 the provisions of this section if the taxpayer has claimed a
9 credit for the same productive capital pursuant to the
10 Investment Credit Act.

11 E. A husband and wife who file separate returns
12 for a taxable year in which they could have filed a joint
13 return may each claim only one-half of the credit that would
14 have been allowed on a joint return.

15 F. A taxpayer who otherwise qualifies for and
16 claims a credit pursuant to this section for a partnership,
17 limited partnership, limited liability company, S corporation
18 or other business association of which the taxpayer is a
19 member may claim a credit only in proportion to his interest
20 in the partnership, limited partnership, limited liability
21 company, S corporation or association. The total credit
22 claimed by all members of the business shall not exceed the
23 maximum tax credit allowable pursuant to Subsection A of this
24 section.

25 G. As used in this section:
(1) "agricultural processing operation"
means a plant, business or establishment at which personnel

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1 are employed for the purpose of processing agricultural
2 products, including storage, handling, packaging and similar
3 activities associated with processing;

4 (2) "productive capital" means tangible
5 personal property that is depreciable, has a useful life of
6 at least three years and is used exclusively as an integral
7 part of the agricultural processing process; and

8 (3) "qualified entity" means an entity
9 certified by the secretary of economic development as a part
10 of the agriculture processing cluster pilot project and that
11 is participating in a regional or local government economic
12 development plan or project pursuant to the Local Economic
13 Development Act, is located in an enterprise zone as defined
14 by the Enterprise Zone Act or is located in a rural area.
15 For purposes of this paragraph, "rural area" means any part
16 of the state other than:

- 17 (a) an H class county;
- 18 (b) an incorporated municipality within
19 a metropolitan statistical area if the municipality's
20 population is thirty thousand or more according to the most
21 recent federal decennial census; and
- 22 (c) any area within ten miles of the
23 exterior boundaries of a municipality described in
24 Subparagraph (b) of this paragraph."
25

Section 5. Section 7-2E-1 NMSA 1978 (being Laws 1999,
Chapter 183, Section 1) is amended to read:

"7-2E-1. TAX CREDIT--RURAL JOB TAX CREDIT.--

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1 A. The tax credit created by this section may be
2 referred to as the "rural job tax credit". Until June 30,
3 2006, every eligible employer may apply for, and the taxation
4 and revenue department may allow, a tax credit for each
5 qualifying job the employer creates in the period beginning
6 July 1, 2000 and ending June 30, 2005. The maximum tax
7 credit amount with respect to each qualifying job is equal
8 to:

9 (1) twenty-five percent of the first sixteen
10 thousand dollars (\$16,000) in wages paid for the qualifying
11 job if the job is performed or based at a location in a tier
12 one area; or

13 (2) twelve and one-half percent of the first
14 sixteen thousand dollars (\$16,000) in wages paid if the
15 qualifying job is performed or based at a location in a tier
16 two area.

17 B. As used in this section:

18 (1) "eligible employee" means any individual
19 other than an individual who:

20 (a) bears any of the relationships
21 described in Paragraphs (1) through (8) of 26 U.S.C. Section
22 152(a) to the employer or, if the employer is a corporation,
23 to an individual who owns, directly or indirectly, more than
24 fifty percent in value of the outstanding stock of the
25 corporation or, if the employer is an entity other than a
corporation, to any individual who owns, directly or
indirectly, more than fifty percent of the capital and

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1 profits interests in the entity;

2 (b) if the employer is an estate or
3 trust, is a grantor, beneficiary or fiduciary of the estate
4 or trust or is an individual who bears any of the
5 relationships described in Paragraphs (1) through (8) of 26
6 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary
7 of the estate or trust; or

8 (c) is a dependent, as that term is
9 described in 26 U.S.C. Section 152(a)(9), of the employer or,
10 if the taxpayer is a corporation, of an individual who owns,
11 directly or indirectly, more than fifty percent in value of
12 the outstanding stock of the corporation or, if the employer
13 is an entity other than a corporation, of any individual who
14 owns, directly or indirectly, more than fifty percent of the
15 capital and profits interests in the entity or, if the
16 employer is an estate or trust, of a grantor, beneficiary or
17 fiduciary of the estate or trust;

18 (2) "eligible employer" means an employer
19 who has been approved for in-plant training assistance
20 pursuant to Section 21-19-7 NMSA 1978 or is part of the
21 agriculture processing cluster pilot project;

22 (3) "metropolitan statistical area" means a
23 metropolitan statistical area in New Mexico as determined by
24 the United States bureau of the census;

25 (4) "modified combined tax liability" means
the total liability for the reporting period for the gross
receipts tax imposed by Section 7-9-4 NMSA 1978 together with

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1 any tax collected at the same time and in the same manner as
2 that gross receipts tax, such as the compensating tax, the
3 withholding tax, the interstate telecommunications gross
4 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
5 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
6 minus the amount of any credit other than the rural job tax
7 credit applied against any or all of these taxes or
8 surcharges; but "modified combined tax liability" excludes
9 all amounts collected with respect to local option gross
10 receipts taxes;

11 (5) "qualifying job" means a job established
12 by the employer that:

13 (a) qualifies for in-plant training
14 assistance or the agriculture processing cluster pilot
15 project; and

16 (b) is occupied by an eligible employee
17 for at least forty-eight weeks of a qualifying period;

18 (6) "qualifying period" means the period of
19 twelve months beginning on the day an eligible employee
20 begins working in a qualifying job or the period of twelve
21 months beginning on the anniversary of the day an eligible
22 employee began working in a qualifying job;

23 (7) "rural area" means any part of the state
24 other than:

25 (a) an H class county;

(b) the state fairgrounds;

(c) an incorporated municipality within

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1 a metropolitan statistical area if the municipality's
2 population is thirty thousand or more according to the most
3 recent federal decennial census; and

4 (d) any area within ten miles of the
5 exterior boundaries of a municipality described in
6 Subparagraph (c) of this paragraph;

7 (8) "tier one area" means:

8 (a) any municipality within the rural
9 area if the municipality's population according to the most
10 recent federal decennial census is fifteen thousand or less;
11 or

12 (b) any part of the rural area that is
13 not within the exterior boundaries of a municipality;

14 (9) "tier two area" means any municipality
15 within the rural area if the municipality's population
16 according to the most recent federal decennial census is more
17 than fifteen thousand; and

18 (10) "wages" means wages as defined by
19 Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c).

20 C. The amount of the rural job tax credit shall be
21 six and one-fourth percent of the first sixteen thousand
22 dollars (\$16,000) in wages paid for the qualifying job in a
23 qualifying period. The rural job tax credit may be claimed
24 for each qualifying job for a maximum of:

25 (1) four qualifying periods for each
qualifying job performed or based at a location in a tier one
area; and

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(2) two qualifying periods for each qualifying job performed or based at a location in a tier two area.

D. With respect to each qualifying job for which an eligible employer seeks the rural job tax credit, the employer shall request the economic development department to certify the amount of wages paid to each eligible employee during each qualifying period, the number of weeks during the qualifying period the position was occupied and whether the qualifying job was in a tier one or tier two area. The economic development department may require the employer to submit such information as is necessary for the economic development department to make the certification requested. When the economic development department obtains sufficient information, either from its own records or from the employer, the economic development department shall make the certification requested.

E. The economic development department shall determine which employers are eligible employers and shall report the listing of eligible businesses to the taxation and revenue department in a manner and at times the departments shall agree upon.

F. To receive a rural job tax credit with respect to any qualifying period, an eligible employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a copy of the certification from the economic

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1 development department made pursuant to Subsection D of this
2 section. If all the requirements of this section have been
3 complied with, the taxation and revenue department may issue
4 to the applicant a document granting a tax credit for the
5 respective qualifying period. The tax credit document shall
6 be numbered for identification and declare its date of
7 issuance and the amount of rural job tax credit allowed for
8 the respective jobs created. Such tax credit documents may
9 be sold, exchanged or otherwise transferred and can be
10 carried forward for a period of three years from the date of
11 issuance. The parties to such a transaction shall notify the
12 department of the sale, exchange or transfer within ten days
13 of the sale, exchange or transfer.

14 G. The holder of the tax credit document may apply
15 all or a portion of the rural job tax credit granted by the
16 document against the holder's modified combined tax
17 liability, personal income tax liability or corporate income
18 tax liability. Any balance of rural job tax credit granted
19 by the document may be carried forward for up to three years
20 from the date of issuance of the tax credit document. No
21 amount of rural job tax credit may be applied against a gross
22 receipts tax imposed by a municipality or county.

23 H. Notwithstanding the provisions of Section 7-1-8
24 NMSA 1978, the taxation and revenue department may disclose
25 to any person the balance of rural job tax credit remaining
on any tax credit document and the balance of credit
remaining on that document for any period.

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I. The secretary of economic development, the secretary of taxation and revenue and the secretary of labor or their designees shall annually evaluate the effectiveness of the rural job tax credit in stimulating economic development in the rural areas of New Mexico and make a joint report of their findings to each session of the legislature so long as the rural job tax credit is in effect."

- 18 -