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HOUSE BILL 358

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

John A. Heaton

AN ACT

**RELATING TO TAXATION; ENACTING THE NANOTECHNOLOGY INDUSTRY
INCENTIVE ACT.**

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

**Section 1. SHORT TITLE.--This act may be cited as the
"Nanotechnology Industry Incentive Act".**

**Section 2. PURPOSE OF ACT.--It is the purpose of the
Nanotechnology Industry Incentive Act to provide a favorable
tax climate to start nanotechnology businesses in New Mexico,
thereby promoting increased employment, higher wages and a
broader tax base in New Mexico.**

**Section 3. DEFINITIONS.--As used in the Nanotechnology
Industry Incentive Act:**

**A. "business" means a corporation, general
partnership, limited partnership, limited liability company,**

underscored material = new
[bracketed material] = delete

1 sole proprietorship or other similar entity;

2 B. "department" means the taxation and revenue
3 department, the secretary of taxation and revenue or any
4 employee of the department exercising authority lawfully
5 delegated to that employee by the secretary;

6 C. "nanotechnology" means products, materials and
7 services based on feature sizes of one hundred microns or
8 less; "nanotechnology" products consist of integrated systems
9 or their constituent elements, that have the capability to
10 sense their environments, calculate appropriate responses,
11 take electronic or mechanical actions, communicate with other
12 nanotechnology products and power themselves;

13 D. "qualified business" means a business that has
14 made qualified expenditures for the relevant period of at
15 least twenty percent of its total revenues for that period;

16 E. "qualified expenditure" means an expenditure by
17 a taxpayer in connection with qualified research using or
18 developing nanotechnology, but does not include any
19 expenditure on property that is owned by a municipality or
20 county in connection with an industrial revenue bond project
21 or property for which the taxpayer has received any credit
22 pursuant to the Capital Equipment Tax Credit Act, the
23 Investment Credit Act or the Technology Jobs Tax Credit Act;

24 F. "qualified research" means research:

25 (1) that is undertaken to develop or expand

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[bracketed material] = delete

1 nanotechnology for the purpose of discovering information:

2 (a) that is technological in nature;

3 and

4 (b) the application of which is
5 intended to be useful in the development of a new or improved
6 business component of the taxpayer; or

7 (2) in which substantially all activities
8 constitute elements of a process of experimentation related to
9 product development, new or improved function, performance,
10 reliability or quality, but not related to style, taste,
11 cosmetic or seasonal design factors; and

12 G. "taxpayer" means a person liable for payment of
13 any tax, a person responsible for withholding and payment or
14 collection and payment of any tax or a person to whom an
15 assessment has been made if the assessment remains unabated or
16 the amount thereof has not been paid.

17 Section 4. ADMINISTRATION OF THE ACT.--The department
18 shall administer the Nanotechnology Industry Incentive Act
19 pursuant to the Tax Administration Act.

20 Section 5. CREDIT--AMOUNT--CLAIMANT.--The credit
21 provided by the Nanotechnology Industry Incentive Act is an
22 amount equal to any gross receipts taxes, compensating taxes
23 or withholding taxes due to the state paid or payable by a
24 taxpayer with respect to a qualified business.

25 Section 6. ELIGIBILITY REQUIREMENTS.--A taxpayer may

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[bracketed material] = delete

1 claim a credit pursuant to the Nanotechnology Industry
2 Incentive Act for a period ending fifty-nine consecutive
3 calendar months after the first calendar month for which a
4 claim for the credit is made, but may not claim the credit for
5 a calendar month:

6 A. before July 2002;

7 B. that is more than fifty-nine consecutive
8 calendar months after the first month for which a claim for
9 the credit is made by the taxpayer or by a person to whom the
10 taxpayer is a successor, pursuant to Section 7-1-61 NMSA 1978;

11 C. after which the qualified business employs more
12 than two hundred employees on a full-time-equivalent basis; or

13 D. in a fiscal year of the qualified business
14 after the first fiscal year in which that business has total
15 revenues in excess of twenty-five million dollars
16 (\$25,000,000); or

17 E. in which the business was not a qualified
18 business.

19 Section 7. CLAIMING THE CREDIT FOR CERTAIN TAXES. --

20 A. A taxpayer shall apply for approval of a credit
21 pursuant to the Nanotechnology Industry Incentive Act within
22 one year after the end of the calendar month for which the
23 credit is claimed.

24 B. A taxpayer who has applied for and been granted
25 approval for a credit pursuant to the Nanotechnology Industry

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underscored material = new
[bracketed material] = delete

1 Incentive Act may claim the amount of the credit against the
2 taxpayer's gross receipts tax, compensating tax or withholding
3 tax due to the state; provided that no taxpayer may claim an
4 amount of credit for a reporting period that exceeds the sum
5 of the taxpayer's gross receipts tax, compensating tax and
6 withholding tax for that period.

7 C. A credit pursuant to the Nanotechnology
8 Industry Incentive Act not claimed against the taxpayer's
9 gross receipts tax, compensating tax or withholding tax due
10 for a reporting period may be claimed in subsequent reporting
11 periods.

12 Section 8. CREDIT CLAIM FORMS. --The department shall
13 provide credit claim forms for the Nanotechnology Industry
14 Incentive Act credit. A credit claim form shall accompany any
15 return in which the taxpayer applies for an approved credit,
16 and the claim shall specify the amount of credit intended to
17 apply to each return.

18 Section 9. EFFECTIVE DATE. --The effective date of the
19 provisions of this act is July 1, 2002.