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SENATE BILL 601

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF THE INCOME TAX ACT AND A SECTION OF THE CORPORATE INCOME AND FRANCHISE TAX ACT TO PROVIDE FOR WATER CONSERVED PURSUANT TO THE AGRICULTURAL WATER CONSERVATION TAX CREDIT TO BE PUT TO BENEFICIAL USE.

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

Section 1. Section 7-2-18.20 NMSA 1978 (being Laws 2007, Chapter 204, Section 5) is amended to read:

"7-2-18.20. TAX CREDIT--AGRICULTURAL WATER CONSERVATION EXPENSES.--

A. A taxpayer may claim a credit against the taxpayer's income tax liability for expenses incurred by the taxpayer for eligible improvements in irrigation systems or water management methods. The credit may be claimed for the taxable year in which the expenses are incurred if the

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1 taxpayer:

2 (1) in that year, owned or leased a water  
3 right appurtenant to the land on which an eligible improvement  
4 was made;

5 (2) files an individual New Mexico income tax  
6 return for that year;

7 (3) in that year, is not a dependent of  
8 another individual; and

9 (4) does not take a tax credit for the same  
10 expense on any corporate tax return filed by the taxpayer.

11 B. The credit provided in this section shall be in  
12 the following amounts, not to exceed a maximum annual credit of  
13 ten thousand dollars (\$10,000):

14 (1) for expenses incurred from January 1, 2008  
15 until December 31, 2008, an amount equal to thirty-five percent  
16 of the incurred expenses; and

17 (2) for expenses incurred on or after January  
18 1, 2009, an amount equal to fifty percent of the incurred  
19 expenses.

20 C. As used in this section, "eligible improvement  
21 in irrigation systems or water management methods" means an  
22 improvement that is:

23 (1) made on or after January 1, 2008;

24 (2) consistent and complies with a water  
25 conservation plan approved by the local soil and water

1 conservation district in which the improvement is located; and

2 (3) primarily designed to substantially  
3 conserve water on land in New Mexico that is owned or leased by  
4 the taxpayer and used by the taxpayer or the taxpayer's lessee  
5 to:

6 (a) produce agricultural products;

7 (b) harvest or grow trees; or

8 (c) sustain livestock.

9 D. Taxpayers who are considered for federal income  
10 tax purposes as co-owners of the land on which an eligible  
11 improvement in irrigation systems or water management methods  
12 is made may claim the pro rata share of the credit allowed  
13 pursuant to this section based on the co-owner's ownership  
14 interest. The total of the credits allowed all the taxpayers  
15 considered co-owners may not exceed the amount that would have  
16 been allowed a sole owner of the land.

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

21 F. If the allowable tax credit in a taxable year  
22 exceeds the income taxes otherwise due from a taxpayer pursuant  
23 to the Income Tax Act, or if there are no income taxes due from  
24 the taxpayer, the taxpayer may carry forward the amount of the  
25 credit not used in that year to offset the taxpayer's liability

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1 for income taxes pursuant to the Income Tax Act for not more  
2 than five consecutive taxable years.

3 G. The New Mexico department of agriculture, with  
4 the advice of the soil and water conservation commission, and  
5 with information provided by the state engineer, shall  
6 promulgate rules to implement this section, and those rules  
7 shall include detailed guidelines to assist the department in  
8 determining whether improvements in irrigation systems or water  
9 management methods qualify for the credit available under this  
10 section.

11 H. A taxpayer claiming the credit shall provide  
12 documentary evidence of the amount of water conserved during  
13 the period for which the credit is claimed if requested by the  
14 department.

15 I. Water conserved due to improvements in  
16 irrigation systems or water management methods and for which a  
17 credit is claimed shall not be subject to abandonment or  
18 forfeiture [~~nor shall the conserved water be put to consumptive~~  
19 ~~beneficial use~~].

20 J. As used in this section, "taxpayer" may include  
21 a partnership, limited liability corporation or other form of  
22 pass-through entity, which may pass the credit provided in this  
23 section through to its owners in proportion to their share of  
24 ownership."

25 Section 2. Section 7-2A-22 NMSA 1978 (being Laws 2007,

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1 Chapter 204, Section 6) is amended to read:

2 "7-2A-22. TAX CREDIT--AGRICULTURAL WATER CONSERVATION  
3 EXPENSES.--

4 A. A taxpayer may claim a credit against the  
5 taxpayer's corporate income tax liability for expenses incurred  
6 by the taxpayer for eligible improvements in irrigation systems  
7 or water management methods. The credit may be claimed for the  
8 taxable year in which the expenses are incurred if the  
9 taxpayer:

10 (1) in that year, owned or leased a water  
11 right appurtenant to the land on which an eligible improvement  
12 was made; and

13 (2) files a New Mexico corporate income tax  
14 return for that year.

15 B. The credit provided in this section shall be in  
16 the following amounts, not to exceed a maximum annual credit of  
17 ten thousand dollars (\$10,000):

18 (1) for expenses incurred from January 1, 2008  
19 until December 31, 2008, an amount equal to thirty-five percent  
20 of the incurred expenses; and

21 (2) for expenses incurred on or after January  
22 1, 2009, an amount equal to fifty percent of the incurred  
23 expenses.

24 C. As used in this section, "eligible improvement  
25 in irrigation systems or water management methods" means an

1 improvement that is:

2 (1) made on or after January 1, 2008;

3 (2) consistent and complies with a water  
4 conservation plan approved by the local soil and water  
5 conservation district in which the improvement is located; and

6 (3) primarily designed to substantially  
7 conserve water on land in New Mexico that is owned or leased by  
8 the taxpayer and used by the taxpayer or the taxpayer's lessee  
9 to:

10 (a) produce agricultural products;

11 (b) harvest or grow trees; or

12 (c) sustain livestock.

13 D. Taxpayers that are considered for federal income  
14 tax purposes as co-owners of the land, or co-owners of a pass-  
15 through entity that owns the land, on which an eligible  
16 improvement in irrigation systems or water management methods  
17 is made may claim the pro rata share of the credit allowed  
18 pursuant to this section based on the co-owner's ownership  
19 interest. The total of the credits allowed all the taxpayers  
20 considered co-owners may not exceed the amount that would have  
21 been allowed a sole owner of the land.

22 E. If the allowable tax credit in a taxable year  
23 exceeds the corporate income taxes otherwise due from a  
24 taxpayer pursuant to the Corporate Income and Franchise Tax  
25 Act, or if there are no taxes due pursuant to the Corporate

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1 Income and Franchise Tax Act, the taxpayer may carry forward  
2 the amount of the credit not used in that year to offset the  
3 taxpayer's liability for corporate income taxes pursuant to the  
4 Corporate Income and Franchise Tax Act for not more than five  
5 consecutive tax years.

6 F. The New Mexico department of agriculture, with  
7 the advice of the soil and water conservation commission and  
8 with information provided by the state engineer, shall  
9 promulgate rules to implement this section, including detailed  
10 guidelines to assist the department in determining whether  
11 improvements in irrigation systems or water management methods  
12 qualify for the credit available under this section.

13 G. A taxpayer claiming the credit shall provide  
14 documentary evidence of the amount of water conserved during  
15 the period for which the credit is claimed if requested by the  
16 department.

17 H. Water conserved due to improvements in  
18 irrigation systems or water management methods and for which a  
19 credit is claimed shall not be subject to abandonment or  
20 forfeiture [~~nor shall the conserved water be put to consumptive~~  
21 ~~beneficial use~~].

22 I. As used in this section, "taxpayer" may include  
23 a partnership, limited liability corporation or other form of  
24 pass-through entity, which may pass the credit provided in this  
25 section through to its owners in proportion to their share of

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