

1 SENATE BILL 542

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Pete Campos

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10 AN ACT

11 RELATING TO TAXATION; CREATING THE RURAL INVESTMENT INCOME TAX
12 CREDIT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 7-1-8.8 NMSA 1978 (being Laws 2009,
16 Chapter 243, Section 10) is amended to read:

17 "7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE
18 AGENCIES AND LEGISLATIVE COMMITTEES.--An employee of the
19 department may reveal to:

20 A. a committee of the legislature for a valid
21 legislative purpose, return information concerning any tax or
22 fee imposed pursuant to the Cigarette Tax Act;

23 B. the revenue stabilization and tax policy
24 committee and the legislative finance committee, return
25 information necessary, not including a taxpayer's name, address

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1 or government-issued identification number, to facilitate the
2 compilation of a report to that committee on the effectiveness
3 of a tax credit or deduction that is required pursuant to law;

4 C. the economic development department, return
5 information necessary, not including a taxpayer's name, address
6 or government-issued identification number, to facilitate the
7 compilation of the report required by Sections 2 and 3 of this
8 2013 act;

9 ~~[B-]~~ D. the attorney general, return information
10 acquired pursuant to the Cigarette Tax Act for purposes of
11 Section 6-4-13 NMSA 1978 and the master settlement agreement
12 defined in Section 6-4-12 NMSA 1978;

13 ~~[G-]~~ E. the commissioner of public lands, return
14 information for use in auditing that pertains to rentals,
15 royalties, fees and other payments due the state under land
16 sale, land lease or other land use contracts;

17 ~~[D-]~~ F. the secretary of human services or the
18 secretary's delegate, under a written agreement with the
19 department, the last known address with date of all names
20 certified to the department as being absent parents of children
21 receiving public financial assistance, but only for the purpose
22 of enforcing the support liability of the absent parents by the
23 child support enforcement division or any successor
24 organizational unit;

25 ~~[E-]~~ G. the department of information technology,

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1 by electronic media, a database updated quarterly that contains
2 the names, addresses, county of address and taxpayer
3 identification numbers of New Mexico personal income tax
4 filers, but only for the purpose of producing the random jury
5 list for the selection of petit or grand jurors for the state
6 courts pursuant to Section 38-5-3 NMSA 1978;

7 ~~[F.]~~ H. the state courts, the random jury lists
8 produced by the department of information technology under
9 Subsection ~~[E]~~ G of this section;

10 ~~[G.]~~ I. the director of the New Mexico department
11 of agriculture or the director's authorized representative,
12 upon request of the director or representative, the names and
13 addresses of all gasoline or special fuel distributors,
14 wholesalers and retailers;

15 ~~[H.]~~ J. the public regulation commission, return
16 information with respect to the Corporate Income and Franchise
17 Tax Act required to enable the commission to carry out its
18 duties;

19 ~~[I.]~~ K. the state racing commission, return
20 information with respect to the state, municipal and county
21 gross receipts taxes paid by racetracks;

22 ~~[J.]~~ L. the gaming control board, tax returns of
23 license applicants and their affiliates as provided in
24 Subsection E of Section 60-2E-14 NMSA 1978;

25 ~~[K.]~~ M. the director of the workers' compensation

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1 administration or to the director's representatives authorized
2 for this purpose, return information to facilitate the
3 identification of taxpayers that are delinquent or noncompliant
4 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
5 1978; and

6 ~~[E-]~~ N. the secretary of workforce solutions or the
7 secretary's delegate, return information for use in enforcement
8 of unemployment insurance collections pursuant to the terms of
9 a written reciprocal agreement entered into by the department
10 with the secretary of workforce solutions for exchange of
11 information."

12 **SECTION 2.** A new section of the Income Tax Act is enacted
13 to read:

14 "[NEW MATERIAL] RURAL INVESTMENT INCOME TAX CREDIT.--

15 A. A taxpayer who files a New Mexico income tax
16 return, is not a dependent of another taxpayer and is a
17 qualified business that makes a qualified investment may claim
18 a credit in an amount not to exceed twenty-five percent of not
19 more than one hundred thousand dollars (\$100,000) of the
20 qualified investment. The tax credit provided in this section
21 shall be known as the "rural investment income tax credit".

22 B. The purposes of the rural investment income tax
23 credit are to:

24 (1) encourage residents of rural areas to
25 invest in their communities; and

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1 (2) create new jobs and provide needed
2 services for communities in rural areas of the state.

3 C. A taxpayer may claim the rural investment income
4 tax credit for not more than two qualified investments in a
5 taxable year; provided that each investment is in a different
6 qualified business and the taxpayer hires at least three
7 eligible employees for each qualified business. A taxpayer may
8 claim the rural investment income tax credit for qualified
9 investments made in the same qualified business or successor of
10 that business for not more than three taxable years. The rural
11 investment income tax credit shall not exceed twenty-five
12 thousand dollars (\$25,000) for each qualified investment by the
13 taxpayer.

14 D. A taxpayer may claim the rural investment income
15 tax credit no later than one year following the end of the
16 calendar year in which the qualified investment was made;
17 provided that a claim for the credit shall not be made or
18 allowed with respect to any investment made after December 31,
19 2022.

20 E. A taxpayer shall apply for certification of
21 eligibility for the rural investment income tax credit from the
22 economic development department. Applications shall be
23 considered in the order received. If the economic development
24 department determines that the taxpayer is a qualified business
25 that has made a qualified investment, it shall issue a

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1 certificate of eligibility to the taxpayer, subject to the
2 limitation in Subsection F of this section. The certificate
3 shall be dated and shall include a calculation of the amount of
4 the rural investment income tax credit for which the taxpayer
5 is eligible. The economic development department may issue
6 rules governing the procedure for administering the provisions
7 of this subsection.

8 F. The economic development department may issue a
9 certificate of eligibility pursuant to Subsection E of this
10 section only if the total amount of rural investment income tax
11 credits represented by certificates of eligibility issued by
12 the economic development department in any calendar year will
13 not exceed seven hundred fifty thousand dollars (\$750,000). If
14 the applications for certificates of eligibility for rural
15 investment income tax credits represent an aggregate amount
16 exceeding seven hundred fifty thousand dollars (\$750,000) for
17 any calendar year, certificates shall be issued in the order
18 that the applications were received. The excess applications
19 that would have been certified, but for the limit imposed by
20 this subsection, shall be certified, subject to the same limit,
21 in subsequent calendar years.

22 G. To claim the rural investment income tax credit,
23 the taxpayer must provide to the taxation and revenue
24 department a certificate of eligibility issued by the economic
25 development department pursuant to Subsection E of this section

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1 and any other information the taxation and revenue department
2 may require to determine the amount of the tax credit due the
3 taxpayer. If the requirements of this section have been
4 complied with, the taxation and revenue department shall
5 approve the claim for the credit.

6 H. A taxpayer who otherwise qualifies for and
7 claims a credit pursuant to this section for a qualified
8 investment made by a partnership or other business association
9 of which the taxpayer is a member may claim a credit only in
10 proportion to the taxpayer's interest in the partnership or
11 business association. The total credit claimed in the
12 aggregate by all members of the partnership or business
13 association in a taxable year with respect to a qualified
14 investment shall not exceed twenty-five thousand dollars
15 (\$25,000).

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

20 J. The rural investment income tax credit may only
21 be deducted from the taxpayer's income tax liability. Any
22 portion of the tax credit provided by this section that remains
23 unused at the end of the taxpayer's taxable year may be carried
24 forward for three consecutive years.

25 K. The economic development department shall

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1 compile an annual report on the rural investment income tax
2 credit that shall include the number of taxpayers approved by
3 the department to receive the tax credit, the aggregate amount
4 of tax credits approved, the number of eligible employees hired
5 by taxpayers receiving the tax credit and any other information
6 necessary to evaluate the effectiveness of the credit.

7 Beginning in 2018 and every five years thereafter, the economic
8 development department shall compile and present the annual
9 reports to the revenue stabilization and tax policy committee
10 and the legislative finance committee with an analysis of the
11 effectiveness and cost of the tax credit and whether the tax
12 credit is performing the purposes for which it was created.

13 L. If the taxpayer or a successor in business of
14 the taxpayer ceases operations in a rural area for at least one
15 hundred eighty consecutive days within a two-year period after
16 the taxpayer has claimed a rural investment income tax credit,
17 the department shall grant no further rural investment income
18 tax credits to the taxpayer with respect to the qualified
19 business that has ceased operations. In addition, any amount
20 of the tax credit not claimed against the taxpayer's income tax
21 shall be extinguished, and within thirty days after the one
22 hundred eightieth day of the cessation of operations, the
23 taxpayer shall pay the amount of any income tax against which
24 an approved tax credit was taken. For purposes of this
25 section, a taxpayer shall not be deemed to have ceased

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1 operations during reasonable periods for maintenance or
2 retooling or for the repair or replacement of facilities
3 damaged or destroyed or during the continuance of labor
4 disputes.

5 M. As used in this section:

6 (1) "business" means a corporation, general
7 partnership, limited partnership, limited liability company or
8 other similar entity, but excludes an entity that is a
9 government or a nonprofit organization designated as such by
10 the federal government or any state;

11 (2) "eligible employee" means a resident of
12 New Mexico who is employed in a rural area, but does not
13 include an individual who:

14 (a) bears any of the relationships
15 described in Paragraphs (1) through (8) of 26 U.S.C. Section
16 152(a) to the employer or, if the employer is a corporation, to
17 an individual who owns, directly or indirectly, more than fifty
18 percent in value of the outstanding stock of the corporation
19 or, if the employer is an entity other than a corporation, to
20 an individual who owns, directly or indirectly, more than fifty
21 percent of the capital and profits interest in the entity;

22 (b) if the employer is an estate or
23 trust, is a grantor, beneficiary or fiduciary of the estate or
24 trust or is an individual who bears any of the relationships
25 described in Paragraphs (1) through (8) of 26 U.S.C. Section

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1 152(a) to a grantor, beneficiary or fiduciary of the estate or
2 trust;

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

13 (d) is working or has worked as an
14 employee or as an independent contractor for an entity that
15 directly owns stock in a corporation of the eligible employer
16 or other interest of the eligible employer that represents
17 fifty percent or more of the total voting power of that entity
18 or has a value equal to fifty percent or more of the capital
19 and profits interest in the entity;

20 (3) "equity" means common or preferred stock
21 of a corporation, a partnership interest in a limited
22 partnership or a membership interest in a limited liability
23 company, including debt subject to an option in favor of the
24 creditor to convert the debt into common or preferred stock, a
25 partnership interest or a membership interest;

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1 (4) "new full-time job" means a job created by
2 a business on or after July 1, 2013 but before December 31,
3 2014 for which work has been performed for at least thirty-two
4 hours per week for forty-eight weeks, but does not include a
5 job:

6 (a) for which the functional equivalent
7 is eliminated by the business within one year prior to that
8 job's creation; or

9 (b) created due to a business merger or
10 acquisition or other change in business organization or a
11 taxpayer entering into a contract or becoming a subcontractor
12 to a contract with a governmental entity that replaces one or
13 more entities performing functionally equivalent services for
14 the governmental entity unless the job was not being performed
15 by an employee of the replaced entity; and performed by: 1)
16 the person who performed the job or its functional equivalent
17 prior to the business merger or acquisition or other change in
18 business organization; or 2) a person replacing the person who
19 performed the job or its functional equivalent prior to a
20 business merger or acquisition or other change in business
21 organization;

22 (5) "qualified business" means a business
23 that:

24 (a) maintains its principal place of
25 business in New Mexico;

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1 (b) has created at least three new full-
2 time jobs; and

3 (c) has not had gross revenues in excess
4 of five million dollars (\$5,000,000) in any fiscal year ending
5 on or before the date of the investment;

6 (6) "qualified investment" means a cash
7 investment in a qualified business for equity, but does not
8 include an investment by a taxpayer if the taxpayer, a member
9 of the taxpayer's immediate family or an entity affiliated with
10 the taxpayer receives compensation from the qualified business
11 in exchange for services provided to the qualified business
12 within one year of investment in the qualified business; and

13 (7) "rural area" means any part of the state
14 other than:

15 (a) an H class county;

16 (b) the state fairgrounds;

17 (c) an incorporated municipality within
18 a metropolitan statistical area if the municipality's
19 population is thirty thousand or more according to the most
20 recent federal decennial census; and

21 (d) any area within ten miles of the
22 exterior boundaries of a municipality described in Subparagraph
23 (c) of this paragraph."

24 SECTION 3. A new section of the Corporate Income and
25 Franchise Tax Act is enacted to read:

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1 "[NEW MATERIAL] RURAL INVESTMENT CORPORATE INCOME TAX

2 CREDIT.--

3 A. A taxpayer that is a qualified business and
4 makes a qualified investment may claim a credit in an amount
5 not to exceed twenty-five percent of not more than one hundred
6 thousand dollars (\$100,000) of the qualified investment. The
7 tax credit provided in this section shall be known as the
8 "rural investment corporate income tax credit".

9 B. The purposes of the rural investment corporate
10 income tax credit are to:

11 (1) encourage residents of rural areas to
12 invest in their communities; and

13 (2) create new jobs and provide needed
14 services for communities in rural areas of the state.

15 C. A taxpayer may claim the rural investment
16 corporate income tax credit for not more than two qualified
17 investments in a taxable year; provided that each investment is
18 in a different qualified business and the taxpayer hires at
19 least three eligible employees for each qualified business. A
20 taxpayer may claim the rural investment corporate income tax
21 credit for qualified investments made in the same qualified
22 business or successor of that business for not more than three
23 taxable years. The rural investment corporate income tax
24 credit shall not exceed twenty-five thousand dollars (\$25,000)
25 for each qualified investment by the taxpayer.

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1 D. A taxpayer may claim the rural investment
2 corporate income tax credit no later than one year following
3 the end of the calendar year in which the qualified investment
4 was made; provided that a claim for the credit shall not be
5 made or allowed with respect to any investment made after
6 December 31, 2022.

7 E. A taxpayer shall apply for certification of
8 eligibility for the rural investment corporate income tax
9 credit from the economic development department. Applications
10 shall be considered in the order received. If the economic
11 development department determines that the taxpayer is a
12 qualified business that has made a qualified investment, it
13 shall issue a certificate of eligibility to the taxpayer,
14 subject to the limitation in Subsection F of this section. The
15 certificate shall be dated and shall include a calculation of
16 the amount of the rural investment corporate income tax credit
17 for which the taxpayer is eligible. The economic development
18 department may issue rules governing the procedure for
19 administering the provisions of this subsection.

20 F. The economic development department may issue a
21 certificate of eligibility pursuant to Subsection E of this
22 section only if the total amount of rural investment corporate
23 income tax credits represented by certificates of eligibility
24 issued by the economic development department in any calendar
25 year will not exceed seven hundred fifty thousand dollars

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1 (\$750,000). If the applications for certificates of
2 eligibility for rural investment corporate income tax credits
3 represent an aggregate amount exceeding seven hundred fifty
4 thousand dollars (\$750,000) for any calendar year, certificates
5 shall be issued in the order that the applications were
6 received. The excess applications that would have been
7 certified, but for the limit imposed by this subsection, shall
8 be certified, subject to the same limit, in subsequent calendar
9 years.

10 G. To claim the rural investment corporate income
11 tax credit, the taxpayer must provide to the taxation and
12 revenue department a certificate of eligibility issued by the
13 economic development department pursuant to Subsection E of
14 this section and any other information the taxation and revenue
15 department may require to determine the amount of the tax
16 credit due the taxpayer. If the requirements of this section
17 have been complied with, the taxation and revenue department
18 shall approve the claim for the credit.

19 H. The rural investment corporate income tax credit
20 may only be deducted from the taxpayer's corporate income tax
21 liability. Any portion of the tax credit provided by this
22 section that remains unused at the end of the taxpayer's
23 taxable year may be carried forward for three consecutive
24 years.

25 I. The economic development department shall

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1 compile an annual report on the rural investment corporate
2 income tax credit that shall include the number of taxpayers
3 approved by the department to receive the tax credit, the
4 aggregate amount of tax credits approved, the number of
5 eligible employees hired by taxpayers receiving the tax credit
6 and any other information necessary to evaluate the
7 effectiveness of the credit. Beginning in 2018 and every five
8 years thereafter, the economic development department shall
9 compile and present the annual reports to the revenue
10 stabilization and tax policy committee and the legislative
11 finance committee with an analysis of the effectiveness and
12 cost of the tax credit and whether the tax credit is performing
13 the purposes for which it was created.

14 J. If the taxpayer or a successor in business of
15 the taxpayer ceases operations in a rural area for at least one
16 hundred eighty consecutive days within a two-year period after
17 the taxpayer has claimed a rural investment income tax credit,
18 the department shall grant no further rural investment
19 corporate income tax credits to the taxpayer with respect to
20 the qualified business that has ceased operations. In
21 addition, any amount of the tax credit not claimed against the
22 taxpayer's corporate income tax shall be extinguished, and
23 within thirty days after the one hundred eightieth day of the
24 cessation of operations, the taxpayer shall pay the amount of
25 any corporate income tax against which an approved tax credit

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1 was taken. For purposes of this section, a taxpayer shall not
2 be deemed to have ceased operations during reasonable periods
3 for maintenance or retooling or for the repair or replacement
4 of facilities damaged or destroyed or during the continuance of
5 labor disputes.

6 K. As used in this section:

7 (1) "business" means a corporation, general
8 partnership, limited partnership, limited liability company or
9 other similar entity, but excludes an entity that is a
10 government or a nonprofit organization designated as such by
11 the federal government or any state;

12 (2) "eligible employee" means a resident of
13 New Mexico who is employed in a rural area, but does not
14 include an individual who:

15 (a) bears any of the relationships
16 described in Paragraphs (1) through (8) of 26 U.S.C. Section
17 152(a) to the employer or, if the employer is a corporation, to
18 an individual who owns, directly or indirectly, more than fifty
19 percent in value of the outstanding stock of the corporation
20 or, if the employer is an entity other than a corporation, to
21 an individual who owns, directly or indirectly, more than fifty
22 percent of the capital and profits interest in the entity;

23 (b) if the employer is an estate or
24 trust, is a grantor, beneficiary or fiduciary of the estate or
25 trust or is an individual who bears any of the relationships

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1 described in Paragraphs (1) through (8) of 26 U.S.C. Section
2 152(a) to a grantor, beneficiary or fiduciary of the estate or
3 trust;

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

14 (d) is working or has worked as an
15 employee or as an independent contractor for an entity that
16 directly owns stock in a corporation of the eligible employer
17 or other interest of the eligible employer that represents
18 fifty percent or more of the total voting power of that entity
19 or has a value equal to fifty percent or more of the capital
20 and profits interest in the entity;

21 (3) "equity" means common or preferred stock
22 of a corporation, a partnership interest in a limited
23 partnership or a membership interest in a limited liability
24 company, including debt subject to an option in favor of the
25 creditor to convert the debt into common or preferred stock, a

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1 partnership interest or a membership interest;

2 (4) "new full-time job" means a job created by
3 a business on or after July 1, 2013 but before December 31,
4 2014 for which work has been performed for at least thirty-two
5 hours per week for forty-eight weeks, but does not include a
6 job:

7 (a) for which the functional equivalent
8 is eliminated by the business within one year prior to that
9 job's creation; or

10 (b) created due to a business merger or
11 acquisition or other change in business organization or a
12 taxpayer entering into a contract or becoming a subcontractor
13 to a contract with a governmental entity that replaces one or
14 more entities performing functionally equivalent services for
15 the governmental entity unless the job was not being performed
16 by an employee of the replaced entity; and performed by: 1)
17 the person who performed the job or its functional equivalent
18 prior to the business merger or acquisition or other change in
19 business organization; or 2) a person replacing the person who
20 performed the job or its functional equivalent prior to a
21 business merger or acquisition or other change in business
22 organization;

23 (5) "qualified business" means a business
24 that:

25 (a) maintains its principal place of

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1 business in New Mexico;

2 (b) has created at least three new full-
3 time jobs; and

4 (c) has not had gross revenues in excess
5 of five million dollars (\$5,000,000) in any fiscal year ending
6 on or before the date of the investment;

7 (6) "qualified investment" means a cash
8 investment in a qualified business for equity, but does not
9 include an investment by a taxpayer if the taxpayer, a member
10 of the taxpayer's immediate family or an entity affiliated with
11 the taxpayer receives compensation from the qualified business
12 in exchange for services provided to the qualified business
13 within one year of investment in the qualified business; and

14 (7) "rural area" means any part of the state
15 other than:

16 (a) an H class county;

17 (b) the state fairgrounds;

18 (c) 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 (d) any area within ten miles of the
23 exterior boundaries of a municipality described in Subparagraph
24 (c) of this paragraph."

25 SECTION 4. APPLICABILITY.--The provisions of this act

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apply to taxable years beginning on or after January 1, 2013.

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