

1 HOUSE BILL 169

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; CREATING THE CAPITAL GAIN REINVESTMENT
12 INCOME TAX CREDIT.

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

15 SECTION 1. A new section of the Income Tax Act is enacted
16 to read:

17 "[NEW MATERIAL] CAPITAL GAIN REINVESTMENT INCOME TAX
18 CREDIT.--

19 A. A taxpayer who is not a dependent of another
20 taxpayer may claim a nontransferable credit against the
21 taxpayer's tax liability imposed by the Income Tax Act:

22 (1) if the taxpayer makes a qualified
23 reinvestment:

24 (a) with income from a net capital gain
25 acquired by the taxpayer in 2015 or thereafter; and

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1 (b) no later than twenty-four months
2 after the net capital gain;

3 (2) in whichever amount is less:

4 (a) the tax imposed by the Income Tax
5 Act for the net capital gain and paid by the taxpayer; or

6 (b) the cost of the qualified
7 reinvestment; and

8 (3) for the taxable year in which the taxpayer
9 makes a qualified reinvestment.

10 B. The credit provided by this section may be
11 referred to as the "capital gain reinvestment income tax
12 credit". The purpose of the capital gain reinvestment income
13 tax credit is to encourage the in-state sale and exchange of
14 capital assets and to encourage investment in New Mexico
15 businesses.

16 C. A taxpayer claiming the capital gain
17 reinvestment income tax credit for an investment is ineligible
18 for the angel investment credit that otherwise may be taken for
19 that investment.

20 D. To receive the capital gain reinvestment income
21 tax credit, a taxpayer shall:

22 (1) apply to the economic development
23 department for a certificate of eligibility for the credit; and

24 (2) provide to the taxation and revenue
25 department a certificate of eligibility issued by the economic

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1 development department and any other information the taxation
2 and revenue department may require.

3 E. The economic development department shall review
4 applications for certification for the capital gain
5 reinvestment income tax credit and shall issue a certificate of
6 eligibility to a taxpayer if the economic development
7 department determines that the taxpayer has met the
8 requirements of Paragraph (1) of Subsection A of this section.

9 F. The taxation and revenue department shall
10 approve a taxpayer's claim for the capital gain reinvestment
11 income tax credit if the taxpayer has complied with the
12 requirements of this section.

13 G. That portion of a capital gain reinvestment
14 income tax credit that exceeds a taxpayer's tax liability in
15 the taxable year in which the credit is claimed shall not be
16 refunded but may be carried forward by the taxpayer for a
17 maximum of five consecutive taxable years.

18 H. Married individuals filing separate returns for
19 a taxable year for which they could have filed a joint return
20 may each claim no more than one-half of the capital gain
21 reinvestment income tax credit that could have been claimed on
22 a joint return.

23 I. A taxpayer who owns an interest in a business
24 entity that is taxed for federal income tax purposes as a
25 partnership or a limited liability company may claim a capital

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1 gain reinvestment income tax credit in proportion to the
2 taxpayer's ownership interest in that business entity if that
3 business entity and one or more other business entities in
4 which the taxpayer owns an interest or that business entity and
5 the taxpayer have met the requirements to be eligible for the
6 credit. The total credit claimed by all members of the
7 business entity shall not exceed the amount allowed by
8 Subsection A of this section.

9 J. Beginning in 2017 and every year thereafter that
10 the capital gain reinvestment income tax credit is in effect,
11 the taxation and revenue department shall compile an annual
12 report that includes the number of taxpayers who took the
13 credit, the aggregate amount of credits taken and any other
14 information necessary to evaluate the effectiveness of the
15 credit. The taxation and revenue department shall present the
16 report to the revenue stabilization and tax policy committee
17 and the legislative finance committee with an analysis of the
18 effectiveness and cost of the credit and whether the credit is
19 performing the purpose for which it was created.

20 K. As used in this section:

21 (1) "equity" means:

22 (a) common or preferred stock of a
23 corporation;

24 (b) a partnership interest in a limited
25 partnership; or

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1 (c) a membership interest in a limited
2 liability company, including debt subject to an option in favor
3 of the creditor to convert the debt into common or preferred
4 stock, a partnership interest or a membership interest;

5 (2) "net capital gain" means "net capital
6 gain" as defined in Section 1222(11) of the Internal Revenue
7 Code;

8 (3) "New Mexico business":

9 (a) means a corporation, general
10 partnership, limited partnership, limited liability company or
11 other similar entity that: 1) maintains its principal place of
12 business in New Mexico; 2) employs a majority of its full-time
13 employees, if any, in New Mexico; 3) has a majority of its
14 tangible assets, if any, in New Mexico; 4) has one hundred or
15 fewer employees calculated on a full-time-equivalent basis in
16 the taxable year in which the qualified reinvestment was made;
17 and 5) has not had gross revenues in excess of five million
18 dollars (\$5,000,000) in any fiscal year ending on or before the
19 date the qualified reinvestment was made; but

20 (b) excludes: 1) a government or
21 nonprofit organization designated as such by the federal
22 government or any state; and 2) an entity all or substantially
23 all of whose assets consist of interests in real property or
24 whose business is primarily the sale, leasing or other
25 disposition of real property; and

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(4) "qualified reinvestment":

(a) means a cash, stock or in-kind investment made for equity in a New Mexico business; and

(b) includes a qualified reinvestment made through an entity treated as a partnership or disregarded entity for federal income tax purposes of which the taxpayer is a member, partner or other owner."