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SENATE BILL 167

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

INTRODUCED BY

Sue Wilson Beffort

AN ACT

RELATING TO TAXATION; PROVIDING AN INCOME TAX CREDIT FOR  
CLAWBACK REPAYMENTS OF AMOUNTS PREVIOUSLY REPORTED AS INCOME  
FROM A PONZI SCHEME.

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

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

"[NEW MATERIAL] CLAWBACK REPAYMENT INCOME TAX CREDIT.--

A. A taxpayer who is not a dependent of another  
individual, who in a taxable year has made a clawback repayment  
of amounts previously reported as income from a Ponzi scheme  
and who has taken a credit pursuant to Section 1341 of the  
Internal Revenue Code for the taxable year in which the  
taxpayer made the clawback repayment, may claim a credit  
against the taxpayer's tax liability imposed pursuant to the

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1 Income Tax Act. The credit provided by this section may be  
2 referred to as the "clawback repayment income tax credit".

3 B. The amount of a clawback repayment income tax  
4 credit shall be calculated as follows:

5 (1) determine the amount of tax due for the  
6 taxable year in which the clawback repayment is made, without  
7 deducting the amount repaid; then

8 (2) determine the amount of tax due for the  
9 taxable year in which the amounts from a Ponzi scheme were  
10 reported as income, without including in income the amount  
11 repaid in the year of repayment; and then

12 (3) determine the amount of credit by  
13 subtracting the amount of tax in Paragraph (2) of this  
14 subsection from the amount of tax in Paragraph (1) of this  
15 subsection.

16 C. A taxpayer shall claim the clawback repayment  
17 income tax credit on an original or amended tax return for the  
18 taxable year in which the clawback repayment was made. That  
19 portion of a clawback repayment income tax credit that exceeds  
20 a taxpayer's tax liability in the taxable year in which the  
21 credit is claimed shall be refunded to the taxpayer.

22 D. Married individuals filing separate returns for  
23 a taxable year for which they could have filed a joint return  
24 may each claim only one-half of the credit that would have been  
25 claimed on a joint return.

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E. As used in this section:

(1) "clawback repayment" means that amount of money a taxpayer:

(a) withdrew from the taxpayer's purported returns from the taxpayer's investment in a Ponzi scheme; and

(b) is required to pay back to a bankruptcy trustee for redistribution to a larger pool of the Ponzi scheme's victims; and

(2) "Ponzi scheme" means an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors."

**SECTION 2. APPLICABILITY.**--The provisions of this act apply to taxable years beginning on or after January 1, 2016.