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SENATE BILL 196

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO TAXATION; CREATING THE SMALL BUSINESS INVESTMENT
INCOME TAX CREDIT.

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]~~ SMALL BUSINESS INVESTMENT INCOME TAX
CREDIT.--

A. A taxpayer who files a New Mexico income tax
return, is not a dependent of another taxpayer, is an
accredited investor and makes a qualified investment may claim
a credit in an amount not to exceed twenty-five percent of not
more than two hundred fifty thousand dollars (\$250,000) of the
qualified investment against the taxpayer's tax liability
imposed pursuant to the Income Tax Act. The credit provided in

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1 this section shall be known as the "small business investment
2 income tax credit".

3 B. The purpose of the small business investment
4 income tax credit is to stimulate investment in small and
5 emerging businesses in New Mexico.

6 C. A taxpayer may claim the small business
7 investment income tax credit for not more than five qualified
8 investments in a taxable year; provided that each investment is
9 in a different qualified business. A taxpayer may claim the
10 small business investment income tax credit for qualified
11 investments made in the same qualified business or successor of
12 that business for not more than three taxable years.

13 D. A taxpayer may claim the small business
14 investment income tax credit no later than one year following
15 the end of the calendar year in which the qualified investment
16 was made; provided that a claim for the credit may not be made
17 or allowed with respect to any investment made after December
18 31, 2023.

19 E. A taxpayer shall not claim a small business
20 investment income tax credit with respect to a reporting period
21 if the taxpayer claims, with respect to that same reporting
22 period, a credit pursuant to Section 7-2-18.17 NMSA 1978, the
23 Investment Credit Act or the Technology Jobs and Research and
24 Development Tax Credit Act.

25 F. A taxpayer shall apply for certification of

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1 eligibility for the small business investment income tax credit
2 from the economic development department. Completed
3 applications shall be considered in the order received. If the
4 economic development department determines that the taxpayer is
5 an accredited investor and the investment is a qualified
6 investment, it shall issue a certificate of eligibility to the
7 taxpayer, subject to the limitation in Subsection G of this
8 section. The certificate shall be dated and shall include a
9 calculation of the amount of the small business investment
10 income tax credit for which the taxpayer is eligible. The
11 economic development department may issue rules governing the
12 procedure for administering the provisions of this subsection.

13 G. The economic development department may issue a
14 certificate of eligibility pursuant to Subsection F of this
15 section only if the total amount of small business investment
16 income tax credits represented by certificates of eligibility
17 issued by the economic development department in any calendar
18 year will not exceed two million dollars (\$2,000,000). If the
19 applications for certificates of eligibility for small business
20 investment income tax credits represent an aggregate amount
21 exceeding two million dollars (\$2,000,000) for any calendar
22 year, certificates shall be issued in the order that the
23 completed applications were received. The excess applications
24 that would have been certified, but for the limit imposed by
25 this subsection, shall be certified, subject to the same limit,

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1 in subsequent calendar years.

2 H. To claim the small business investment income
3 tax credit, the taxpayer must provide to the taxation and
4 revenue department a certificate of eligibility issued by the
5 economic development department pursuant to Subsection F of
6 this section and any other information the taxation and revenue
7 department may require to determine the amount of the credit
8 due the taxpayer. If the requirements of this section have
9 been complied with, the taxation and revenue department shall
10 approve the claim for the credit.

11 I. That portion of a small business investment
12 income tax credit that exceeds a taxpayer's tax liability in
13 the taxable year in which the credit is claimed may be carried
14 forward for a maximum of five consecutive taxable years.

15 J. Married individuals filing separate returns for
16 a taxable year for which they could have filed a joint return
17 may each claim only one-half of the small business investment
18 income tax credit that would have been claimed on a joint
19 return.

20 K. A taxpayer may be allocated the right to claim a
21 small business investment income tax credit in proportion to
22 the taxpayer's ownership interest if the taxpayer owns an
23 interest in a business entity that is taxed for federal income
24 tax purposes as a partnership and that business entity has met
25 all of the requirements to be eligible for the credit. The

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1 total credit claimed by all members of the partnership or
2 limited liability company shall not exceed the allowable credit
3 pursuant to Subsection A of this section.

4 L. The economic development department shall report
5 annually to the revenue stabilization and tax policy committee
6 and the legislative finance committee on the utilization and
7 effectiveness of the small business investment income tax
8 credit. The report shall include, at a minimum, the number of
9 accredited investors to whom certificates of eligibility were
10 issued by the economic development department in the previous
11 year, the names of those investors, the amount of small
12 business investment income tax credit for which each investor
13 was certified eligible and the number and names of the
14 businesses that the economic development department has
15 determined are qualified businesses for purposes of an
16 investment by an accredited investor. The report shall also
17 include an evaluation of the success of the small business
18 investment income tax credit as an incubator of new businesses
19 in New Mexico and of the continued viability and operation in
20 New Mexico of businesses in which investments eligible for the
21 small business investment income tax credit have been made.

22 M. As used in this section:

23 (1) "accredited investor" means a person who
24 is an accredited investor within the meaning of Rule 501 issued
25 by the federal securities and exchange commission pursuant to

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1 the federal Securities Act of 1933, as amended;

2 (2) "business" means a corporation, general
3 partnership, limited partnership, limited liability company or
4 other similar entity, but excludes an entity that is a
5 government or a nonprofit organization designated as such by
6 the federal government or any state;

7 (3) "equity" means common or preferred stock
8 of a corporation, a partnership interest in a limited
9 partnership or a membership interest in a limited liability
10 company, including debt subject to an option in favor of the
11 creditor to convert the debt into common or preferred stock, a
12 partnership interest or a membership interest;

13 (4) "qualified business" means a business
14 that:

15 (a) maintains its principal place of
16 business and employs a majority of its full-time employees, if
17 any, in New Mexico and maintains a majority of its tangible
18 assets, if any, in New Mexico;

19 (b) is not primarily engaged in or is
20 not primarily organized as any of the following types of
21 businesses: credit or finance services, including banks,
22 savings and loan associations, credit unions, small loan
23 companies or title loan companies; financial brokering or
24 investment; professional services, including accounting, legal
25 services, engineering and any other service the practice of

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1 which requires a license; insurance; real estate; construction
2 or construction contracting; consulting or brokering; mining;
3 wholesale or retail trade; providing utility service, including
4 water, sewerage, electricity, natural gas, propane or butane;
5 publishing, including publishing newspapers or other
6 periodicals; broadcasting; or providing internet operating
7 services;

8 (c) has not issued securities registered
9 pursuant to Section 6 of the federal Securities Act of 1933, as
10 amended; has not issued securities traded on a national
11 securities exchange; is not subject to reporting requirements
12 of the federal Securities Exchange Act of 1934, as amended; and
13 is not registered pursuant to the federal Investment Company
14 Act of 1940, as amended, at the time of the investment;

15 (d) has one hundred or fewer employees
16 calculated on a full-time-equivalent basis at the time of the
17 investment; and

18 (e) has not had gross revenues in excess
19 of five million dollars (\$5,000,000) in any fiscal year ending
20 on or before the date of the investment; and

21 (5) "qualified investment" means a cash
22 investment in a qualified business for equity, but does not
23 include an investment by a taxpayer if the taxpayer, a member
24 of the taxpayer's immediate family or an entity affiliated with
25 the taxpayer receives compensation from the qualified business

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1 in exchange for services provided to the qualified business
2 within one year of investment in the qualified business."

3 SECTION 2. APPLICABILITY.--The provisions of this act
4 apply to taxable years beginning on or after January 1, 2017.