

1 SENATE BILL 474

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Pete Campos

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; CREATING TAX CREDITS FOR INVESTMENTS IN
12 FRONTIER COMMUNITIES.

13
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] FRONTIER COMMUNITY INVESTMENT INCOME TAX
18 CREDIT.--

19 A. A taxpayer who files a New Mexico income tax
20 return, is not a dependent of another taxpayer and makes a
21 qualified investment may claim a credit against the taxpayer's
22 tax liability imposed by the Income Tax Act in an amount up to
23 twenty-five percent of up to one hundred thousand dollars
24 (\$100,000) of the qualified investment. The credit provided by
25 this section may be referred to as the "frontier community

.212417.1

underscored material = new
[bracketed material] = delete

underscoring material = new
~~[bracketed material]~~ = delete

1 investment income tax credit".

2 B. The purposes of the frontier community
3 investment income tax credit are to:

4 (1) encourage residents of frontier
5 communities to invest in their communities; and

6 (2) create new jobs and provide needed
7 services for frontier communities.

8 C. A taxpayer may claim the frontier community
9 investment income tax credit for more than one qualified
10 investment, in more than one qualified business and in more
11 than one taxable year, but the credit amount shall not exceed
12 twenty-five thousand dollars (\$25,000) per qualified investment
13 made by the taxpayer, and the aggregate amount of frontier
14 community investment income tax credits the taxpayer claims
15 shall not exceed one hundred thousand dollars (\$100,000).

16 D. A taxpayer may claim the frontier community
17 investment income tax credit:

18 (1) no later than one year following the date
19 of the taxpayer's certificate of eligibility issued in
20 accordance with Subsection E of this section; or

21 (2) in a subsequent taxable year, if the
22 taxpayer could have received the credit had the limit imposed
23 by Subsection F of this section not been reached.

24 E. A taxpayer who wishes to claim a frontier
25 community investment income tax credit shall apply to the

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 economic development department for certification within two
2 years following the end of the calendar year in which the
3 taxpayer made a qualified investment. The economic development
4 department shall consider completed applications in the order
5 received. If the economic development department determines
6 that the taxpayer made a qualified investment within the
7 allowable time period, it shall, subject to the limitation
8 provided in Subsection F of this section, issue the taxpayer a
9 dated certificate of eligibility that includes a calculation of
10 the amount of the credit for which the taxpayer is eligible.

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

24 G. To claim the frontier community investment
25 income tax credit, a taxpayer shall provide to the taxation and

.212417.1

underscored material = new
~~[bracketed material] = delete~~

1 revenue department a certificate of eligibility issued by the
2 economic development department in accordance with Subsection E
3 of this section and any other information the taxation and
4 revenue department may require to determine the amount of the
5 credit due the taxpayer. If the requirements of this section
6 have been complied with, the taxation and revenue department
7 shall approve the claim for the credit.

8 H. A taxpayer who is a co-owner of a business that
9 is treated as a pass-through entity for federal income tax
10 purposes, including a partner in a partnership, a member in a
11 limited liability company or a shareholder in an S corporation,
12 as defined in Section 1361 of the Internal Revenue Code, and
13 that makes a qualified investment may claim a frontier
14 community investment income tax credit in proportion to the
15 taxpayer's interest in the business entity if the business
16 entity meets all of the requirements of eligibility for the
17 credit. The total amount of credit claimed by all members of
18 the business entity for a qualified investment shall not exceed
19 the amount set forth in Subsection C of this section.

20 I. Married individuals filing separate returns for
21 a taxable year in which they could have filed a joint return
22 may each claim no more than one-half of the frontier community
23 investment income tax credit that could have been allowed on a
24 joint return.

25 J. The frontier community investment income tax

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 credit may only be deducted from the taxpayer's income tax
2 liability. Any portion of the credit that remains unused at
3 the end of the taxpayer's taxable year may be carried forward
4 for up to three consecutive years.

5 K. The economic development department and the
6 taxation and revenue department shall compile an annual report
7 on the frontier community investment income tax credit that
8 includes the number of taxpayers approved to receive the
9 credit, the aggregate amount of credits approved, the number of
10 eligible employees hired by taxpayers receiving the credit and
11 any other information necessary to evaluate the effectiveness
12 of the credit. Those departments shall present the report to
13 the revenue stabilization and tax policy committee and the
14 legislative finance committee with an analysis of the
15 effectiveness and cost of the credit and whether the credit is
16 performing the purposes for which it was created.

17 L. If a taxpayer or a successor in business of the
18 taxpayer ceases operations of a qualified business for which
19 the taxpayer claimed a frontier community investment income tax
20 credit for one hundred eighty consecutive days or more within a
21 two-year period after the taxpayer claimed the credit, the
22 taxation and revenue department shall grant no further frontier
23 community investment income tax credits to the taxpayer with
24 respect to the business that ceased operations. Any amount of
25 the credit not claimed against the taxpayer's income tax shall

.212417.1

1 be extinguished, and within thirty days after the one hundred
2 eightieth day of the cessation of operations, the taxpayer
3 shall pay the amount of any income tax against which an
4 approved frontier community investment income tax credit was
5 taken. For purposes of this section, a taxpayer shall not be
6 deemed to have ceased operations during reasonable periods for
7 maintenance or retooling or for the repair or replacement of
8 facilities damaged or destroyed or during a labor dispute.

9 M. As used in this section:

10 (1) "business" means a corporation, general
11 partnership, limited partnership, limited liability company or
12 other similar entity, but excludes a government entity and an
13 organization designated as a nonprofit organization by the
14 federal government or any state;

15 (2) "eligible employee" means a resident of
16 New Mexico who is employed in a frontier community, but does
17 not include an individual who:

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

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 (b) if the employer is an estate or
2 trust, is a grantor, beneficiary or fiduciary of the estate or
3 trust or is an individual who bears any of the relationships
4 described in Paragraphs (1) through (8) of 26 U.S.C. Section
5 152(a) to a grantor, beneficiary or fiduciary of the estate or
6 trust;

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

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

24 (3) "equity" means common or preferred stock
25 of a corporation, a partnership interest in a limited

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

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

5 (4) "frontier community" means a municipality
6 or county with a population less than seven thousand five
7 hundred according to the most recent federal decennial census
8 and had less than two hundred fifty million dollars
9 (\$250,000,000) in taxable gross receipts in the previous fiscal
10 year, as determined by the taxation and revenue department;

11 (5) "new full-time-equivalent job" means the
12 job of a single employee or the jobs of more than one part-time
13 employee created by a business on or after July 1, 2019 but
14 before January 1, 2029 for which work has been performed in the
15 aggregate for at least thirty-two hours per week for forty-
16 eight consecutive weeks, but does not include a job:

17 (a) for which the functional equivalent
18 is eliminated by the business within one year before that job's
19 creation; or

20 (b) created due to a business merger or
21 acquisition or other change in business organization or a
22 taxpayer entering into a contract or becoming a subcontractor
23 to a contract with a governmental entity that replaces one or
24 more entities performing functionally equivalent services for
25 the governmental entity unless the job was not being performed

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 by an employee of the replaced entity; and performed by: 1)
2 the person who performed the job or its functional equivalent
3 before the business merger or acquisition or other change in
4 business organization; or 2) a person replacing the person who
5 performed the job or its functional equivalent before a
6 business merger or acquisition or other change in business
7 organization;

8 (6) "qualified business" means a business
9 that:

10 (a) maintains its principal place of
11 business in New Mexico; and

12 (b) as a result of a qualified
13 investment in it, creates at least three new full-time-
14 equivalent jobs;

15 (7) "qualified investment" means a cash
16 investment made after the effective date of this 2019 act but
17 before January 1, 2028 for equity in a qualified business, but
18 does not include an investment by a taxpayer claiming the
19 frontier community investment corporate income tax credit if
20 the taxpayer, a member of the taxpayer's immediate family or an
21 entity affiliated with the taxpayer receives compensation from
22 the qualified business in exchange for services provided to the
23 qualified business within one year of investment in the
24 qualified business."

25 SECTION 2. A new section of the Corporate Income and

.212417.1

underscored material = new
[bracketed material] = delete

1 Franchise Tax Act is enacted to read:

2 "[NEW MATERIAL] FRONTIER COMMUNITY INVESTMENT CORPORATE
3 INCOME TAX CREDIT.--

4 A. A taxpayer that is a qualified business and that
5 makes a qualified investment may claim a credit against the
6 taxpayer's tax liability imposed by the Corporate Income and
7 Franchise Tax Act in an amount up to twenty-five percent of up
8 to one hundred thousand dollars (\$100,000) of the qualified
9 investment. The credit provided by this section may be
10 referred to as the "frontier community investment corporate
11 income tax credit".

12 B. The purposes of the frontier community
13 investment corporate income tax credit are to:

14 (1) encourage residents of frontier
15 communities to invest in their communities; and

16 (2) create new jobs and provide needed
17 services for frontier communities.

18 C. A taxpayer may claim the frontier community
19 investment corporate income tax credit for more than one
20 qualified investment, in more than one qualified business and
21 in more than one taxable year, but the credit amount shall not
22 exceed twenty-five thousand dollars (\$25,000) per qualified
23 investment made by the taxpayer, and the aggregate amount of
24 frontier community investment corporate income tax credits the
25 taxpayer claims shall not exceed one hundred thousand dollars

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 (\$100,000).

2 D. A taxpayer may claim the frontier community
3 investment corporate income tax credit:

4 (1) no later than one year following the date
5 of the taxpayer's certificate of eligibility issued in
6 accordance with Subsection E of this section; or

7 (2) in a subsequent taxable year, if the
8 taxpayer could have received the credit had the limit imposed
9 by Subsection F of this section not been reached.

10 E. A taxpayer that wishes to claim a frontier
11 community investment corporate income tax credit shall apply to
12 the economic development department for certification within
13 two years following the end of the calendar year in which the
14 taxpayer made a qualified investment. The economic development
15 department shall consider completed applications in the order
16 received. If the economic development department determines
17 that the taxpayer is a qualified business that made a qualified
18 investment within the allowable time period, it shall, subject
19 to the limitation provided in Subsection F of this section,
20 issue a dated certificate of eligibility to the taxpayer that
21 includes a calculation of the amount of the credit for which
22 the taxpayer is eligible.

23 F. The economic development department may issue a
24 certificate of eligibility in accordance with Subsection E of
25 this section if the total amount of frontier community

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 investment corporate income tax credits represented by
2 certificates of eligibility issued in the calendar year does
3 not exceed seven hundred fifty thousand dollars (\$750,000). If
4 the applications for certificates of eligibility for the
5 credits represent an aggregate amount exceeding seven hundred
6 fifty thousand dollars (\$750,000) for the calendar year,
7 certificates shall be issued in the order completed
8 applications were received. The applications that would have
9 been certified, but for the limit imposed by this subsection,
10 shall be certified, subject to the same limit, in subsequent
11 calendar years.

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

21 H. The frontier community investment corporate
22 income tax credit may only be deducted from the taxpayer's
23 corporate income tax liability. Any portion of the credit that
24 remains unused at the end of the taxpayer's taxable year may be
25 carried forward for up to three consecutive years.

.212417.1

underscoring material = new
~~[bracketed material]~~ = delete

1 I. The economic development department and the
2 taxation and revenue department shall compile an annual report
3 on the frontier community investment corporate income tax
4 credit that includes the number of taxpayers approved to
5 receive the credit, the aggregate amount of credits approved,
6 the number of eligible employees hired by taxpayers receiving
7 the credit and any other information necessary to evaluate the
8 effectiveness of the credit. Those departments shall present
9 the report to the revenue stabilization and tax policy
10 committee and the legislative finance committee with an
11 analysis of the effectiveness and cost of the credit and
12 whether the credit is performing the purposes for which it was
13 created.

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

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 shall pay the amount of any corporate income tax against which
2 an approved frontier community investment income tax credit was
3 taken. For purposes of this section, a taxpayer shall not be
4 deemed to have ceased operations during reasonable periods for
5 maintenance or retooling or for the repair or replacement of
6 facilities damaged or destroyed or during a labor dispute.

7 K. As used in this section:

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

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

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

24 (b) if the employer is an estate or
25 trust, is a grantor, beneficiary or fiduciary of the estate or

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 trust or is an individual who bears any of the relationships
2 described in Paragraphs (1) through (8) of 26 U.S.C. Section
3 152(a) to a grantor, beneficiary or fiduciary of the estate or
4 trust;

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

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

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

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 creditor to convert the debt into common or preferred stock, a
2 partnership interest or a membership interest;

3 (4) "frontier community" means a municipality
4 or county with a population less than seven thousand five
5 hundred according to the most recent federal decennial census
6 and had less than two hundred fifty million dollars
7 (\$250,000,000) in taxable gross receipts in the previous fiscal
8 year, as determined by the taxation and revenue department;

9 (5) "new full-time-equivalent job" means the
10 job of a single employee or the jobs of more than one part-time
11 employee created by a business on or after July 1, 2019 but
12 before January 1, 2029 for which work has been performed in the
13 aggregate for at least thirty-two hours per week for forty-
14 eight consecutive weeks, but does not include a job:

15 (a) for which the functional equivalent
16 is eliminated by the business within one year before that job's
17 creation; or

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

.212417.1

underscoring material = new
~~[bracketed material] = delete~~

1 before the business merger or acquisition or other change in
2 business organization; or 2) a person replacing the person who
3 performed the job or its functional equivalent before a
4 business merger or acquisition or other change in business
5 organization;

6 (6) "qualified business" means a business
7 that:

8 (a) maintains its principal place of
9 business in New Mexico; and

10 (b) as a result of a qualified
11 investment in it, creates at least three new full-time-
12 equivalent jobs;

13 (7) "qualified investment" means a cash
14 investment made after the effective date of this 2019 act but
15 before January 1, 2028 for equity in a qualified business, but
16 does not include an investment by a taxpayer claiming the
17 frontier community investment income tax credit if the
18 taxpayer, a member of the taxpayer's immediate family or an
19 entity affiliated with the taxpayer receives compensation from
20 the qualified business in exchange for services provided to the
21 qualified business within one year of investment in the
22 qualified business."

23 **SECTION 3. APPLICABILITY.**--The provisions of this act
24 apply to taxable years beginning on or after January 1, 2019.