

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

February 8, 2021

HOUSE FLOOR AMENDMENT number _____ to HOUSE TAXATION AND REVENUE
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 98

Amendment sponsored by Representative Jason C. Harper

1. On page 1, line 12, after the first comma, insert "THE INCOME TAX ACT, THE CORPORATE INCOME AND FRANCHISE TAX ACT,".
2. On page 13, between lines 13 and 14, insert the following new sections:

"SECTION 6. Section 7-2-18.18 NMSA 1978 (being Laws 2007, Chapter 204, Section 2) is amended to read:

"7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which a tax credit pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

B. A taxpayer who files an individual New Mexico income tax return and who is not a dependent of another taxpayer is eligible for the renewable energy production tax credit if the taxpayer:

(1) holds title to a qualified energy generator that first produced electricity on or before January 1, 2018; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond and if the qualified energy generator

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 2

first produced electricity on or before January 1, 2018.

C. The amount of the tax credit shall equal one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year using a wind- or biomass-derived qualified energy resource; provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator [~~in a taxable year~~] using a wind- or biomass-derived qualified energy resource shall not exceed one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in a taxable year.

D. The amount of the tax credit for electricity produced by a qualified energy generator in the taxable year using a solar-light-derived or solar-heat-derived qualified energy resource shall be at the amounts specified in Paragraphs (1) through [~~(10)~~] (11) of this subsection; provided that the total amount of tax credits claimed [~~for a taxable year~~] by all taxpayers in a taxable year for a single qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy resource shall be limited to the first two hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year:

(1) one and one-half cents (\$.015) per kilowatt-hour in the first taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(2) two cents (\$.02) per kilowatt-hour in the second taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(3) two and one-half cents (\$.025) per kilowatt-hour

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 3

in the third taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(4) three cents (\$.03) per kilowatt-hour in the fourth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(5) three and one-half cents (\$.035) per kilowatt-hour in the fifth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(6) four cents (\$.04) per kilowatt-hour in the sixth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(7) three and one-half cents (\$.035) per kilowatt-hour in the seventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(8) three cents (\$.03) per kilowatt-hour in the eighth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(9) two and one-half cents (\$.025) per kilowatt-hour in the ninth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource; [and]

(10) two cents (\$.02) per kilowatt-hour in the tenth taxable year in which the qualified energy generator produces

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 4

electricity using a solar-light-derived or solar-heat-derived qualified energy resource; and

(11) one and one-half cents (\$.015) per kilowatt-hour in the eleventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource.

E. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be eligible for the renewable energy production tax credit for [~~ten~~] one hundred twenty consecutive [years] months, beginning on the date the qualified energy generator begins producing electricity.

F. As used in this section:

(1) "biomass" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial-value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 5

residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste;

(2) "qualified energy generator" means [a] an electric generating facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and ~~[that sells that]~~ the electricity produced is sold to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

- (a) solar light;
- (b) solar heat;
- (c) wind; or
- (d) biomass.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 6

such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to Section 7-2A-19 NMSA 1978 will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

H. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

.219714.1

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 7

(1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;

(2) the business entity:

(a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;

(b) owns an interest in a business entity that is also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of this paragraph;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department for the taxable year to be claimed; and

(5) the energy, minerals and natural resources department certifies the allocation for the taxable year to be claimed in writing to the taxpayer.

I. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax

.219714.1

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 8

credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

J. [~~A husband and wife~~] Married individuals who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

K. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection G or H of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and revenue department may require to determine the amount of the tax credit due the taxpayer.

L. If the requirements of this section have been complied with, the department shall approve payment of the renewable energy production tax credit. The credit may be deducted from a taxpayer's New Mexico income tax liability for the taxable year for which the credit is claimed. If the amount of tax credit exceeds the taxpayer's income tax liability for the taxable year:

(1) the excess may be carried forward for a period of five taxable years; or

(2) if the tax credit was issued with respect to a qualified energy generator that first produced electricity using a qualified energy resource on or after October 1, 2007, the excess shall be refunded to the taxpayer.

M. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 9

allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired."

SECTION 7. Section 7-2A-19 NMSA 1978 (being Laws 2002, Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which the renewable energy production tax credit provided in the Income Tax Act has been claimed.

B. A person is eligible for the renewable energy production tax credit if the person:

(1) holds title to a qualified energy generator that first produced electricity on or before January 1, 2018; or

(2) leases property upon which a qualified energy generator operates from a county or municipality under authority of an industrial revenue bond and if the qualified energy generator first produced electricity on or before January 1, 2018.

C. The amount of the tax credit shall equal one cent (\$.01) per kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year using a wind- or biomass-derived qualified energy resource; provided that the total amount of tax credits claimed by all taxpayers for a single qualified energy generator [~~in a taxable year~~] using a wind- or biomass-derived qualified energy resource shall not exceed one cent (\$.01) per

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 10

kilowatt-hour of the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator in a taxable year.

D. The amount of the tax credit for electricity produced by a qualified energy generator in the taxable year using a solar-light-derived or solar-heat-derived qualified energy resource shall be at the amounts specified in Paragraphs (1) through [~~(10)~~] (11) of this subsection; provided that the total amount of tax credits claimed [~~for a taxable year~~] by all taxpayers in a taxable year for a single qualified energy generator using a solar-light-derived or solar-heat-derived qualified energy resource shall be limited to the first two hundred thousand megawatt-hours of electricity produced by the qualified energy generator in the taxable year:

(1) one and one-half cents (\$.015) per kilowatt-hour in the first taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(2) two cents (\$.02) per kilowatt-hour in the second taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(3) two and one-half cents (\$.025) per kilowatt-hour in the third taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(4) three cents (\$.03) per kilowatt-hour in the fourth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(5) three and one-half cents (\$.035) per kilowatt-

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 11

hour in the fifth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(6) four cents (\$.04) per kilowatt-hour in the sixth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(7) three and one-half cents (\$.035) per kilowatt-hour in the seventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(8) three cents (\$.03) per kilowatt-hour in the eighth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource;

(9) two and one-half cents (\$.025) per kilowatt-hour in the ninth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource; ~~and~~

(10) two cents (\$.02) per kilowatt-hour in the tenth taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource; and

(11) one and one-half cents (\$.015) per kilowatt-hour in the eleventh taxable year in which the qualified energy generator produces electricity using a solar-light-derived or solar-heat-derived qualified energy resource.

E. A taxpayer eligible for a renewable energy production tax credit pursuant to Subsection B of this section shall be

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 12

eligible for the renewable energy production tax credit for [~~ten~~ one hundred twenty consecutive [~~years~~ months], beginning on the date the qualified energy generator begins producing electricity.

F. As used in this section:

(1) "biomass" means organic material that is available on a renewable or recurring basis, including:

(a) forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial-value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

(b) agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey and lactose;

(c) animal waste, including manure and slaughterhouse and other processing waste;

(d) solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

(e) crops and trees planted for the purpose of being used to produce energy;

(f) landfill gas, wastewater treatment gas and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 13

(g) segregated municipal solid waste, excluding tires and medical and hazardous waste;

(2) "qualified energy generator" means [a] an electric generating facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and [~~that sells that~~] the electricity produced is sold to an unrelated person; and

(3) "qualified energy resource" means a resource that generates electrical energy by means of a fluidized bed technology or similar low-emissions technology or a zero-emissions generation technology that has substantial long-term production potential and that uses only the following energy sources:

- (a) solar light;
- (b) solar heat;
- (c) wind; or
- (d) biomass.

G. A person that holds title to a facility generating electricity from a qualified energy resource or a person that leases such a facility from a county or municipality pursuant to an industrial revenue bond may request certification of eligibility for the renewable energy production tax credit from the energy, minerals and natural resources department, which shall determine if the facility is a qualified energy generator. The energy, minerals and natural resources department may certify the eligibility of an energy generator only if the total amount of electricity that may be produced annually by all qualified energy generators that are certified pursuant to this section and pursuant to the Income Tax Act will not exceed a total of two million megawatt-hours plus an additional five hundred thousand megawatt-hours produced by

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 14

qualified energy generators using a solar-light-derived or solar-heat-derived qualified energy resource. Applications shall be considered in the order received. The energy, minerals and natural resources department may estimate the annual power-generating potential of a generating facility for the purposes of this section. The energy, minerals and natural resources department shall issue a certificate to the applicant stating whether the facility is an eligible qualified energy generator and the estimated annual production potential of the generating facility, which shall be the limit of that facility's energy production eligible for the tax credit for the taxable year. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection and shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the renewable energy production tax credit, including the identity of qualified energy generators, the energy production means used, the amount of energy produced by those qualified energy generators and whether any applications could not be approved due to program limits.

H. A taxpayer may be allocated all or a portion of the right to claim a renewable energy production tax credit without regard to proportional ownership interest if:

- (1) the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership;
- (2) the business entity:
 - (a) would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section;
 - (b) owns an interest in a business entity that is

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 15

also taxed for federal income tax purposes as a partnership and that would qualify for the renewable energy production tax credit pursuant to Paragraph (1) or (2) of Subsection B of this section; or

(c) owns, through one or more intermediate business entities that are each taxed for federal income tax purposes as a partnership, an interest in the business entity described in Subparagraph (b) of this paragraph;

(3) the taxpayer and all other taxpayers allocated a right to claim the renewable energy production tax credit pursuant to this subsection own collectively at least a five percent interest in a qualified energy generator;

(4) the business entity provides notice of the allocation and the taxpayer's interest to the energy, minerals and natural resources department on forms prescribed by that department for the taxable year to be claimed; and

(5) the energy, minerals and natural resources department certifies the allocation for the taxable year to be claimed in writing to the taxpayer.

I. Upon receipt of notice of an allocation of the right to claim all or a portion of the renewable energy production tax credit, the energy, minerals and natural resources department shall promptly certify the allocation in writing to the recipient of the allocation.

J. A taxpayer may claim the renewable energy production tax credit by submitting to the taxation and revenue department the certificate issued by the energy, minerals and natural resources department, pursuant to Subsection G or H of this section, documentation showing the taxpayer's interest in the facility, documentation of the amount of electricity produced by the facility in the taxable year and any other information the taxation and

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 16

revenue department may require to determine the amount of the tax credit due the taxpayer.

K. If the requirements of this section have been complied with, the department shall approve payment of the renewable energy production tax credit. The credit may be deducted from a taxpayer's New Mexico corporate income tax liability for the taxable year for which the credit is claimed. If the amount of tax credit exceeds the taxpayer's corporate income tax liability for the taxable year:

(1) the excess may be carried forward for a period of five taxable years; or

(2) if the tax credit was issued with respect to a qualified energy generator that first produced electricity using a qualified energy resource on or after October 1, 2007, the excess shall be refunded to the taxpayer.

L. Once a taxpayer has been granted a renewable energy production tax credit for a given facility, that taxpayer shall be allowed to retain the facility's original date of application for tax credits for that facility until either the facility goes out of production for more than six consecutive months in a year or until the facility's ten-year eligibility has expired."

SECTION 8. Section 7-2A-30 NMSA 1978 (being Laws 2019, Chapter 270, Section 20) is amended to read:

"7-2A-30. DEDUCTION TO OFFSET MATERIAL FINANCIAL EFFECTS OF CHANGES IN DEFERRED TAX AMOUNTS DUE TO CERTAIN CHANGES MADE TO SECTIONS 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 AND 7-4-18 NMSA 1978.--

A. For each of ten consecutive taxable years beginning on or after January 1, 2026, a filing group subject to the corporate income tax whose members are part of a publicly traded company may claim a deduction, as provided by Subsection B of this section, from

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 17

taxable income before net operating losses are deducted.

B. The deduction for each taxable year shall not exceed one-tenth of the amount [øf] necessary to offset the aggregate increase in net deferred tax liabilities, the aggregate decrease in net deferred tax assets or an aggregate change from a net deferred tax asset to a net deferred tax liability, as measured under generally accepted accounting principles, that resulted from the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act; provided that:

(1) the amount of the aggregate change in deferred tax assets and deferred tax liabilities is properly included in the calculation of the deferred tax asset or deferred tax liability reported as part of the consolidated financial statements, as required by the federal Securities Exchange Act of 1934, for the first reporting period affected by the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act but for the deduction provided by this section; and

(2) if the deduction provided by this section is greater than the taxpayer's net income, any excess amount shall be carried forward and applied as a deduction to the taxpayer's net income in future income years until fully utilized.

C. A filing group shall not claim a deduction pursuant to this section unless the filing group files a preliminary notice with the secretary prior to January 1, 2023 and provides necessary information to show the calculation of the deduction expected to be claimed, as the secretary may require."".

3. On page 31, between lines 5 and 6, insert the following new section:

"SECTION 12. Section 7-9-7 NMSA 1978 (being Laws 1966, Chapter 47, Section 7, as amended) is amended to read:

.219714.1

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 18

"7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
"COMPENSATING TAX".--

A. For the privilege of [~~using~~] making taxable use of tangible personal property in New Mexico, there is imposed on the person using the property an excise tax equal to five and one-eighth percent of the value of tangible property that was:

(1) manufactured by the person using the property in the state; or

(2) ~~acquired [inside or outside of this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico]~~ in a transaction for which the seller's receipts were not subject to the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible personal property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion of the property to taxable use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of [~~using~~] making taxable use of a license or franchise in New Mexico, there is imposed on the person using the license or franchise an excise tax equal to the rate provided in Subsection A of this section against the value of the license or franchise in its use in this state. The department by rule, ruling or instruction shall fairly apportion, where appropriate, the value of a license or franchise to its value in use in New Mexico. [~~For use of a license or franchise to be taxable under this subsection, the value of the license or franchise shall be acquired inside or outside this state as the result of a~~

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 19

~~transaction with a person located outside this state that would have been subject to the gross receipts tax had the license or franchise been acquired from a person with nexus with this state]~~ The tax shall apply only to the value of a license or franchise used in New Mexico where the license or franchise was acquired in a transaction the receipts from which were not subject to the gross receipts tax.

D. For the privilege of ~~[using]~~ making taxable use of services in New Mexico, there is imposed on the person using the services an excise tax equal to the rate provided in Subsection A of this section against the value of the services at the time ~~the services were performed or~~ the product of the service was acquired. For use of services to be ~~[taxable under]~~ a taxable use pursuant to this subsection, the services shall have been [performed by a person outside this state and the product of the service was acquired inside or outside this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the service or product of the service been acquired from a person with nexus with this state] acquired in a transaction the receipts from which were not subject to the gross receipts tax.

E. For purposes of this section, receipts are not subject to the gross receipts tax if the person responsible for the gross receipts tax on those receipts lacked nexus in New Mexico or the receipts were exempt or allowed to be deducted pursuant to the Gross Receipts and Compensating Tax Act.

~~[E.]~~ F. The tax imposed by this section shall be referred to as the "compensating tax".

G. As used in this section, "taxable use" means use by a person who acquires tangible personal property, a license, a franchise or a service, and the use of which would not have qualified for an exemption or deduction pursuant to the Gross Receipts and Compensating Tax Act."

State of New Mexico
House of Representatives

FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 20

4. On page 52, between lines 12 and 13, insert the following new section:

"SECTION 25. Section 7-9-79 NMSA 1978 (being Laws 1966, Chapter 47, Section 16, as amended) is amended to read:

"7-9-79. CREDIT--COMPENSATING TAX.--

A. If, on property or services bought outside this state, a gross receipts, sales, compensating or similar tax has been levied by another state or political subdivision thereof on the transaction by which the person using the property or services in New Mexico acquired the property or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property or services in New Mexico and such tax has been paid, the amount of such tax paid may be credited against any compensating tax due this state on the same property. The credit allowed pursuant to this subsection shall not exceed the compensating tax due on the property or services used in New Mexico.

B. When the receipts from the sale of real property constructed by a person in the ordinary course of [~~his~~] the person's construction business are subject to the gross receipts tax, the amount of compensating tax previously paid by the person on materials [~~which~~] that became an ingredient or component part of the construction project and on construction services performed upon the construction project may be credited against the gross receipts tax due on the sale.""

5. On page 93, line 18, strike "6" and insert in lieu thereof "9".

6. On page 94, line 6, strike "1 through 5 and 7 through 33" and insert in lieu thereof "1 through 8 and 10 through 38".

State of New Mexico
House of Representatives

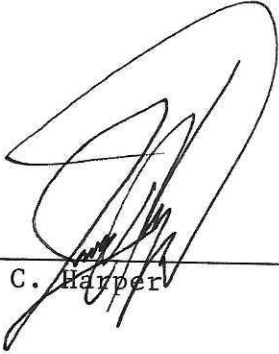
FIFTY-FIFTH LEGISLATURE
FIRST SESSION

HF1/HTRC/HB 98

Page 21

7. On page 94, line 8, strike "6" and insert in lieu thereof "9".

8. Renumber sections in accordance with these amendments.



Jason C. Harper

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____