

HOUSE BILL 208

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; CREATING THE RAIL INFRASTRUCTURE INCOME  
TAX CREDIT AND THE RAIL INFRASTRUCTURE CORPORATE 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] RAIL INFRASTRUCTURE INCOME TAX CREDIT.--

A. For taxable years prior to January 1, 2034, a  
taxpayer that is a railroad that is classified by the federal  
surface transportation board as a class two or class three  
railroad located in the state, or an owner or lessee of a rail  
siding, yard track, industrial spur or industry track located  
adjacent to such a railroad, that incurs qualified  
reconstruction or replacement expenditures or qualified new

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1 rail infrastructure expenditures for the maintenance,  
2 reconstruction, replacement or new construction of railroad  
3 track infrastructure in New Mexico may apply for, and the  
4 department may allow, a tax credit against the taxpayer's tax  
5 liability pursuant to the Income Tax Act for the taxable year  
6 in which the credit is approved by the department pursuant to  
7 this section. The tax credit provided by this section may be  
8 referred to as the "rail infrastructure income tax credit".

9 B. The amount of credit that may be allowed  
10 pursuant to this section shall be equal to fifty percent of a  
11 taxpayer's qualified reconstruction or replacement expenditures  
12 or qualified new rail infrastructure expenditures; provided  
13 that:

14 (1) for qualified reconstruction or  
15 replacement expenditures, the amount of tax credit shall not  
16 exceed an amount equal to the product of five thousand dollars  
17 (\$5,000) multiplied by the number of miles of railroad track  
18 owned or leased in the state by the taxpayer as of the close of  
19 the taxable year; and

20 (2) for qualified new rail infrastructure  
21 expenditures, the amount of tax credit shall not exceed one  
22 million dollars (\$1,000,000) for each new rail-served customer  
23 project of the taxpayer; provided that the total amount of  
24 credits that may be allowed in a calendar year shall not exceed  
25 five million dollars (\$5,000,000).

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1           C. A taxpayer that seeks to claim a tax credit  
2 provided by this section shall apply for a certificate of  
3 eligibility from the department of transportation after  
4 completion of the maintenance, reconstruction, replacement or  
5 new construction of railroad track infrastructure in New Mexico  
6 for which qualified reconstruction or replacement expenditures  
7 or qualified new rail infrastructure expenditures are made to  
8 determine if the taxpayer is eligible to receive the tax credit  
9 provided by this section. The department of transportation may  
10 certify a maximum annual aggregate amount of credits of six  
11 million dollars (\$6,000,000) per calendar year. Completed  
12 applications shall be made on forms and in the manner  
13 prescribed by that department and considered in the order  
14 received.

15           D. If the department of transportation determines  
16 that the taxpayer meets the requirements to claim a tax credit  
17 pursuant to this section, that department may issue a  
18 certificate of eligibility to the taxpayer. The certificate  
19 shall be numbered for identification and declare its date of  
20 issuance and the amount of the tax credit allowed pursuant to  
21 this section. The certificate may be submitted by the taxpayer  
22 with that taxpayer's return or may be sold, exchanged or  
23 otherwise transferred to another taxpayer. The parties to such  
24 a transaction shall notify the department of the sale, exchange  
25 or transfer within ten days of the sale, exchange or transfer.

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1           E. That portion of a tax credit that exceeds a  
2 taxpayer's tax liability in the taxable year in which the tax  
3 credit is claimed shall not be refunded but may be carried  
4 forward for a maximum of five consecutive taxable years.

5           F. To receive a tax credit provided by this  
6 section, a taxpayer shall apply to the department on forms and  
7 in the manner prescribed by the department within twelve months  
8 following the calendar year in which the qualified expenditures  
9 are incurred. The application shall include a certificate of  
10 eligibility issued by the department of transportation pursuant  
11 to this section.

12           G. Married individuals filing separate returns for  
13 a taxable year for which they could have filed a joint return  
14 may each claim only one-half of a tax credit that would have  
15 been claimed on a joint return.

16           H. A taxpayer may be allocated the right to claim a  
17 tax credit provided by this section in proportion to the  
18 taxpayer's ownership interest if the taxpayer owns an interest  
19 in a business entity that is taxed for federal income tax  
20 purposes as a partnership or limited liability company and that  
21 business entity has met all of the requirements to be eligible  
22 for the credit. The total credit claimed by all members of the  
23 partnership or limited liability company shall not exceed the  
24 allowable amount of credit pursuant to this section.

25           I. A taxpayer allowed a tax credit pursuant to this

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1 section shall report the amount of the credit to the taxation  
2 and revenue department in a manner required by that department.

3 J. The taxation and revenue department shall  
4 compile an annual report on the tax credit provided by this  
5 section that shall include the number of taxpayers approved by  
6 the department to receive the credit, the aggregate amount of  
7 credits approved and any other information necessary to  
8 evaluate the credit. The department shall present the report  
9 to the revenue stabilization and tax policy committee and the  
10 legislative finance committee with an analysis of the cost of  
11 the tax credit and whether the credit is performing the purpose  
12 for which the credit was created.

13 K. As used in this section:

14 (1) "qualified new rail infrastructure  
15 expenditures" means gross expenditures for new rail  
16 infrastructure incurred by a taxpayer, including the new  
17 construction of industrial leads, switches, sidings, rail  
18 loading docks and transloading structures involved with  
19 servicing new customer locations or existing customer  
20 expansions adjacent to a railroad located in New Mexico; and

21 (2) "qualified reconstruction or replacement  
22 expenditures" means gross expenditures for maintenance,  
23 reconstruction or replacement of railroad infrastructure,  
24 including track, roadbed, bridges, industrial leads, sidings  
25 and track-related structures in New Mexico owned or leased by a

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1 taxpayer claiming the credit provided by this section.  
2 "Qualified railroad reconstruction or replacement expenditures"  
3 does not include expenditures used to generate a federal tax  
4 credit or expenditures funded by a state or federal grant."

5 SECTION 2. A new section of the Corporate Income and  
6 Franchise Tax Act is enacted to read:

7 "[NEW MATERIAL] RAIL INFRASTRUCTURE CORPORATE INCOME TAX  
8 CREDIT.--

9 A. For taxable years prior to January 1, 2034, a  
10 taxpayer that is a railroad that is classified by the federal  
11 surface transportation board as a class two or class three  
12 railroad located in the state, or an owner or lessee of a rail  
13 siding, yard track, industrial spur or industry track located  
14 adjacent to such a railroad, that incurs qualified  
15 reconstruction or replacement expenditures or qualified new  
16 rail infrastructure expenditures for the maintenance,  
17 reconstruction, replacement or new construction of railroad  
18 track infrastructure in New Mexico may apply for, and the  
19 department may allow, a tax credit against the taxpayer's tax  
20 liability pursuant to the Corporate Income and Franchise Tax  
21 Act for the taxable year in which the credit is approved by the  
22 department pursuant to this section. The tax credit provided  
23 by this section may be referred to as the "rail infrastructure  
24 corporate income tax credit".

25 B. The amount of credit that may be allowed

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1 pursuant to this section shall be equal to fifty percent of a  
2 taxpayer's qualified reconstruction or replacement expenditures  
3 or qualified new rail infrastructure expenditures; provided  
4 that:

5 (1) for qualified reconstruction or  
6 replacement expenditures, the amount of tax credit shall not  
7 exceed an amount equal to the product of five thousand dollars  
8 (\$5,000) multiplied by the number of miles of railroad track  
9 owned or leased in the state by the taxpayer as of the close of  
10 the taxable year; and

11 (2) for qualified new rail infrastructure  
12 expenditures, the amount of tax credit shall not exceed one  
13 million dollars (\$1,000,000) for each new rail-served customer  
14 project of the taxpayer; provided that the total amount of  
15 credits that may be allowed in a calendar year shall not exceed  
16 five million dollars (\$5,000,000).

17 C. A taxpayer that seeks to claim a tax credit  
18 provided by this section shall apply for a certificate of  
19 eligibility from the department of transportation after  
20 completion of the maintenance, reconstruction, replacement or  
21 new construction of railroad track infrastructure in New Mexico  
22 for which qualified reconstruction or replacement expenditures  
23 or qualified new rail infrastructure expenditures are made to  
24 determine if the taxpayer is eligible to receive the tax credit  
25 provided by this section. The department of transportation may

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1 certify a maximum annual aggregate amount of credits of six  
2 million dollars (\$6,000,000) per calendar year. Completed  
3 applications shall be made on forms and in the manner  
4 prescribed by that department and considered in the order  
5 received.

6 D. If the department of transportation determines  
7 that the taxpayer meets the requirements to claim a tax credit  
8 pursuant to this section, that department may issue a  
9 certificate of eligibility to the taxpayer. The certificate  
10 shall be numbered for identification and declare its date of  
11 issuance and the amount of the tax credit allowed pursuant to  
12 this section. The certificate may be submitted by the taxpayer  
13 with that taxpayer's return or may be sold, exchanged or  
14 otherwise transferred to another taxpayer. The parties to such  
15 a transaction shall notify the department of the sale, exchange  
16 or transfer within ten days of the sale, exchange or transfer.

17 E. That portion of a tax credit that exceeds a  
18 taxpayer's tax liability in the taxable year in which the tax  
19 credit is claimed shall not be refunded but may be carried  
20 forward for a maximum of five consecutive taxable years.

21 F. To receive a tax credit provided by this  
22 section, a taxpayer shall apply to the department on forms and  
23 in the manner prescribed by the department within twelve months  
24 following the calendar year in which the qualified expenditures  
25 are incurred. The application shall include a certificate of

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1 eligibility issued by the department of transportation pursuant  
2 to this section.

3 G. A taxpayer allowed a tax credit pursuant to this  
4 section shall report the amount of the credit to the taxation  
5 and revenue department in a manner required by that department.

6 H. The taxation and revenue department shall  
7 compile an annual report on the tax credit provided by this  
8 section that shall include the number of taxpayers approved by  
9 the department to receive the credit, the aggregate amount of  
10 credits approved and any other information necessary to  
11 evaluate the credit. The department shall present the report  
12 to the revenue stabilization and tax policy committee and the  
13 legislative finance committee with an analysis of the cost of  
14 the tax credit and whether the credit is performing the purpose  
15 for which the credit was created.

16 I. As used in this section:

17 (1) "qualified new rail infrastructure  
18 expenditures" means gross expenditures for new rail  
19 infrastructure incurred by a taxpayer, including the new  
20 construction of industrial leads, switches, sidings, rail  
21 loading docks and transloading structures involved with  
22 servicing new customer locations or existing customer  
23 expansions adjacent to a railroad located in New Mexico; and

24 (2) "qualified reconstruction or replacement  
25 expenditures" means gross expenditures for maintenance,

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1 reconstruction or replacement of railroad infrastructure,  
2 including track, roadbed, bridges, industrial leads, sidings  
3 and track-related structures in New Mexico and owned or leased  
4 by a taxpayer claiming the credit provided by this section.  
5 "Qualified railroad reconstruction or replacement expenditures"  
6 does not include expenditures used to generate a federal tax  
7 credit or expenditures funded by a state or federal grant."

8 SECTION 3. APPLICABILITY.--The provisions of this act  
9 apply to taxable years beginning on or after January 1, 2023.