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HOUSE BILL 276

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

INTRODUCED BY

Monica Youngblood

AN ACT

RELATING TO TAXATION; MODIFYING THE PROVISIONS OF THE QUALIFIED BUSINESS FACILITY REHABILITATION INCOME TAX CREDIT; EXPANDING THE CREDIT TO INCLUDE NEW BUILDING CONSTRUCTION; CREATING THE QUALIFIED BUSINESS FACILITY CONSTRUCTION AND REHABILITATION CORPORATE INCOME TAX CREDIT; REPEALING AND REENACTING A SECTION OF THE NMSA 1978.

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

**SECTION 1.** Section 7-2-18.4 NMSA 1978 (being Laws 1994, Chapter 115, Section 1) is repealed and a new Section 7-2-18.4 NMSA 1978 is enacted to read:

"7-2-18.4. [NEW MATERIAL] QUALIFIED BUSINESS FACILITY CONSTRUCTION AND REHABILITATION INCOME TAX CREDIT.--

A. For taxable years beginning after December 31, 2015 and ending before January 1, 2025, a taxpayer who is not a  
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1 dependent of another taxpayer, who owns a qualified business  
2 facility, who incurs costs to construct, restore, rehabilitate  
3 or renovate a qualified business facility and who meets the  
4 other requirements of this section may receive a  
5 nontransferable credit against the taxpayer's tax liability  
6 imposed by the Income Tax Act in an amount equal to the  
7 following, but subject to the limits in Subsection C of this  
8 section:

9 (1) twenty-five percent of the construction  
10 costs incurred after December 31, 2015 and before January 1,  
11 2025 to construct a new qualified business facility; or

12 (2) fifty percent of the construction costs  
13 incurred after December 31, 2015 and before January 1, 2025 to  
14 restore, rehabilitate or renovate an existing qualified  
15 business facility.

16 B. The tax credit provided by this section may be  
17 referred to as the "qualified business facility construction  
18 and rehabilitation income tax credit". The purpose of the  
19 qualified business facility construction and rehabilitation  
20 income tax credit is to revitalize economically depressed areas  
21 in New Mexico.

22 C. A qualified business facility construction and  
23 rehabilitation income tax credit shall not exceed the following  
24 amounts:

25 (1) fifty thousand dollars (\$50,000) per newly

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1 constructed qualified business facility; or

2 (2) one hundred thousand dollars (\$100,000)  
3 per qualified business facility in the case of restoration,  
4 rehabilitation or renovation.

5 D. A taxpayer may claim a qualified business  
6 facility construction and rehabilitation income tax credit only  
7 in the taxable year in which the taxpayer receives a  
8 certificate of occupancy following the taxpayer's restoration,  
9 rehabilitation, renovation or new construction project.

10 E. To receive the qualified business facility  
11 construction and rehabilitation income tax credit, a taxpayer  
12 shall apply and report the amount of the credit to the  
13 department on forms and in the manner prescribed by the  
14 department.

15 F. That portion of a qualified business facility  
16 construction and rehabilitation income tax credit that exceeds  
17 a taxpayer's tax liability in the taxable year in which the  
18 credit is claimed shall not be refunded or transferred, but may  
19 be carried forward for up to four consecutive taxable years.

20 G. A taxpayer claiming the qualified business  
21 facility construction and rehabilitation income tax credit may  
22 not claim any other New Mexico tax credit for having incurred  
23 the costs that make the taxpayer eligible for the qualified  
24 business facility construction and rehabilitation income tax  
25 credit.

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1           H. Married individuals filing separate returns for  
2 a taxable year for which they could have filed a joint return  
3 may each claim no more than one-half of the qualified business  
4 facility construction and rehabilitation income tax credit that  
5 could have been claimed on a joint return.

6           I. A taxpayer who owns an interest in a business  
7 entity that is taxed for federal income tax purposes as a  
8 partnership and that is eligible for the qualified business  
9 facility construction and rehabilitation income tax credit may  
10 claim the credit in proportion to the taxpayer's ownership  
11 interest in the business entity. The total credit claimed by  
12 all members of the business entity shall not exceed the amount  
13 allowed by this section.

14           J. The department shall compile an annual report on  
15 the qualified business facility construction and rehabilitation  
16 income tax credit that includes the number of taxpayers  
17 approved by the department to receive the credit, the aggregate  
18 amount of credits claimed and any other information necessary  
19 to evaluate the effectiveness of the credit. Beginning in 2019  
20 and every two years thereafter that the credit is in effect,  
21 the department shall compile and present the report to the  
22 revenue stabilization and tax policy committee and the  
23 legislative finance committee with an analysis of the  
24 effectiveness and cost of the tax credit and whether the tax  
25 credit is performing the purpose for which it was created.

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1 K. As used in this section:

2 (1) "construction costs" means costs incurred  
3 to construct, restore, rehabilitate or renovate a qualified  
4 business facility. "Construction costs" excludes expenses  
5 incurred:

6 (a) for an off-site improvement  
7 dedicated to a public entity;

8 (b) to purchase or install machinery or  
9 equipment that will be used to conduct a trade or business in  
10 the qualified business facility;

11 (c) to purchase or install tangible  
12 personal property that does not become affixed to the qualified  
13 business facility, such as furniture and other equipment; and

14 (d) to make tenant improvements;

15 (2) "economic development zone" means an area  
16 that, in accordance with rules it promulgates, and in  
17 consultation with the taxation and revenue department and other  
18 affected agencies, the economic development department has  
19 designated and continues to recognize as an economic  
20 development zone to alleviate economic development concerns;

21 (3) "off-site improvement" means an access  
22 road, sidewalk, curb, sewer or utility line off the land being  
23 developed;

24 (4) "qualified business facility" means a  
25 commercial building in an area designated as a New Mexico

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1 enterprise zone in accordance with the Enterprise Zone Act or  
2 in an economic development zone that:

3 (a) if newly constructed, is suitable  
4 for occupancy by a trade or business and, within ninety days  
5 after the taxpayer receives a certificate of occupancy  
6 following the construction project, a trade or business  
7 occupies at least fifty percent of the building; or

8 (b) if restored, rehabilitated or  
9 renovated: 1) was vacant during the twenty-four months before  
10 the start of the restoration, rehabilitation or renovation  
11 project; and 2) is suitable for occupancy by a trade or  
12 business and, within ninety days after the taxpayer receives a  
13 certificate of occupancy following the project, a trade or  
14 business occupies at least fifty percent of the building;

15 (5) "restoration, rehabilitation or  
16 renovation":

17 (a) means the construction services  
18 necessary to ensure that a preexisting building: 1) complies  
19 with all applicable zoning codes; 2) complies with all  
20 applicable building codes, including those pertaining to the  
21 modernization of the building's electrical, plumbing and  
22 telecommunications systems; and 3) is safe for occupancy and  
23 meets the operating needs of a trade or business; and

24 (b) includes the expansion of or an  
25 addition to a building if the expansion or addition complies

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1 with all applicable zoning and building codes and does not  
2 increase the usable square footage of the preexisting building  
3 by more than ten percent; and

4 (6) "tenant improvement" means an improvement  
5 to a structure or land by a tenant at the tenant's expense that  
6 becomes a part of the property and cannot be removed upon  
7 departure by the tenant without the owner's consent."

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

10 "[NEW MATERIAL] QUALIFIED BUSINESS FACILITY CONSTRUCTION  
11 AND REHABILITATION CORPORATE INCOME TAX CREDIT.--

12 A. For taxable years beginning after December 31,  
13 2015 and ending before January 1, 2025, a taxpayer that files a  
14 New Mexico corporate income tax return and that owns a  
15 qualified business facility, that incurs costs to construct,  
16 restore, rehabilitate or renovate a qualified business facility  
17 and that meets the other requirements of this section may  
18 receive a nontransferable credit against the taxpayer's tax  
19 liability imposed by the Corporate Income and Franchise Tax Act  
20 in an amount equal to the following, but subject to the limits  
21 in Subsection C of this section:

22 (1) twenty-five percent of the construction  
23 costs incurred after December 31, 2015 and before January 1,  
24 2025 to construct a new qualified business facility; or

25 (2) fifty percent of the construction costs

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1 incurred after December 31, 2015 and before January 1, 2025 to  
2 restore, rehabilitate or renovate an existing qualified  
3 business facility.

4 B. The tax credit provided by this section may be  
5 referred to as the "qualified business facility construction  
6 and rehabilitation corporate income tax credit". The purpose  
7 of the qualified business facility construction and  
8 rehabilitation corporate income tax credit is to revitalize  
9 economically depressed areas in New Mexico.

10 C. A qualified business facility construction and  
11 rehabilitation corporate income tax credit shall not exceed the  
12 following amounts:

13 (1) fifty thousand dollars (\$50,000) per newly  
14 constructed qualified business facility; or

15 (2) one hundred thousand dollars (\$100,000)  
16 per qualified business facility in the case of restoration,  
17 rehabilitation or renovation.

18 D. A taxpayer may claim a qualified business  
19 facility construction and rehabilitation corporate income tax  
20 credit only in the taxable year in which the taxpayer receives  
21 a certificate of occupancy following the taxpayer's  
22 restoration, rehabilitation, renovation or new construction  
23 project.

24 E. To receive the qualified business facility  
25 construction and rehabilitation corporate income tax credit, a

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1 taxpayer shall apply and report the amount of the credit to the  
2 department on forms and in the manner prescribed by the  
3 department.

4 F. That portion of a qualified business facility  
5 construction and rehabilitation corporate income tax credit  
6 that exceeds a taxpayer's tax liability in the taxable year in  
7 which the credit is claimed shall not be refunded or  
8 transferred, but may be carried forward for up to four  
9 consecutive taxable years.

10 G. A taxpayer claiming the qualified business  
11 facility construction and rehabilitation corporate income tax  
12 credit may not claim any other New Mexico tax credit for having  
13 incurred the costs that make the taxpayer eligible for the  
14 qualified business facility construction and rehabilitation  
15 corporate income tax credit.

16 H. The department shall compile an annual report on  
17 the qualified business facility construction and rehabilitation  
18 corporate income tax credit that includes the number of  
19 taxpayers approved by the department to receive the credit, the  
20 aggregate amount of credits claimed and any other information  
21 necessary to evaluate the effectiveness of the credit.

22 Beginning in 2019 and every two years thereafter that the  
23 credit is in effect, the department shall compile and present  
24 the report to the revenue stabilization and tax policy  
25 committee and the legislative finance committee with an

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1 analysis of the effectiveness and cost of the tax credit and  
2 whether the tax credit is performing the purpose for which it  
3 was created.

4 I. As used in this section:

5 (1) "construction costs" means costs incurred  
6 to construct, restore, rehabilitate or renovate a qualified  
7 business facility. "Construction costs" excludes expenses  
8 incurred:

9 (a) for an off-site improvement  
10 dedicated to a public entity;

11 (b) to purchase or install machinery or  
12 equipment that will be used to conduct a trade or business in  
13 the qualified business facility;

14 (c) to purchase or install tangible  
15 personal property that does not become affixed to the qualified  
16 business facility, such as furniture and other equipment; and

17 (d) to make tenant improvements;

18 (2) "economic development zone" means an area  
19 that, in accordance with rules it promulgates, and in  
20 consultation with the taxation and revenue department and other  
21 affected agencies, the economic development department has  
22 designated and continues to recognize as an economic  
23 development zone to alleviate economic development concerns;

24 (3) "off-site improvement" means an access  
25 road, sidewalk, curb, sewer or utility line off the land being

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1 developed;

2 (4) "qualified business facility" means a  
3 commercial building in an area designated as a New Mexico  
4 enterprise zone in accordance with the Enterprise Zone Act or  
5 in an economic development zone that:

6 (a) if newly constructed, is suitable  
7 for occupancy by a trade or business and, within ninety days  
8 after the taxpayer receives a certificate of occupancy  
9 following the construction project, a trade or business  
10 occupies at least fifty percent of the building; or

11 (b) if restored, rehabilitated or  
12 renovated: 1) was vacant during the twenty-four months before  
13 the start of the restoration, rehabilitation or renovation  
14 project; and 2) is suitable for occupancy by a trade or  
15 business and, within ninety days after the taxpayer receives a  
16 certificate of occupancy following the project, a trade or  
17 business occupies at least fifty percent of the building;

18 (5) "restoration, rehabilitation or  
19 renovation":

20 (a) means the construction services  
21 necessary to ensure that a preexisting building: 1) complies  
22 with all applicable zoning codes; 2) complies with all  
23 applicable building codes, including those pertaining to the  
24 modernization of the building's electrical, plumbing and  
25 telecommunications systems; and 3) is safe for occupancy and

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1 meets the operating needs of a trade or business; and

2 (b) includes the expansion of or an  
3 addition to a building if the expansion or addition complies  
4 with all applicable zoning and building codes and does not  
5 increase the usable square footage of the preexisting building  
6 by more than ten percent; and

7 (6) "tenant improvement" means an improvement  
8 to a structure or land by a tenant at the tenant's expense that  
9 becomes a part of the property and cannot be removed upon  
10 departure by the tenant without the owner's consent."