SENATE BILL 142

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO TAXATION; CREATING THE SUSTAINABLE ENERGY TECHNOLOGY INVESTMENT 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] SUSTAINABLE ENERGY TECHNOLOGY INVESTMENT TAX CREDIT.--

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another taxpayer and who makes a qualified investment may claim a tax credit in an amount not to exceed twenty-five percent of not more than one hundred thousand dollars ($100,000) of the qualified investment. The tax credit provided in this section shall be known as the "sustainable energy technology investment tax

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credit".

B. The purpose of the sustainable energy technology investment tax credit is to encourage investment in sustainable energy technology research, development, commercialization and production.

C. A taxpayer may claim the sustainable energy technology investment tax credit for not more than two qualified investments in a taxable year; provided that each investment is in a different qualified business. A taxpayer may not claim the sustainable energy technology investment tax credit for qualified investments made in the same qualified business or successor of that business for more than three taxable years. The sustainable energy technology investment tax credit shall not exceed twenty-five thousand dollars ($25,000) for each qualified investment by the taxpayer.

D. A taxpayer may claim the sustainable energy technology investment tax credit no later than one year following the end of the calendar year in which the qualified investment was made. The sustainable energy technology investment tax credit may only be deducted from the taxpayer's income tax liability. That portion of a sustainable energy technology investment tax credit that is approved by the department and that exceeds a taxpayer's income tax liability shall not be refunded to the taxpayer. The sustainable energy technology investment tax credit shall not be transferred to another taxpayer. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive years.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim one-half of the tax credit that would have been allowed on a joint return.

F. A taxpayer who otherwise qualifies and claims a sustainable energy technology investment tax credit that may be claimed by a partnership, business association or limited liability company of which the taxpayer is a member may claim a credit only in proportion to the taxpayer's interest in the partnership or limited liability company. The total credit claimed in the aggregate by all members of the partnership, business association or limited liability company in a taxable year shall not exceed twenty-five thousand dollars ($25,000) for each qualified investment by the partnership, business association or limited liability company.

G. A taxpayer shall apply for certification of eligibility for the sustainable energy technology investment tax credit from the economic development department. The economic development department may issue rules governing the procedures to certify qualified investments for the purposes of claiming a sustainable energy technology investment tax credit.

Applications shall be considered in the order received. If the economic development department determines that the investment is a qualified investment, it shall issue a certificate of eligibility to the taxpayer. The certificate shall be dated and shall include a calculation of the amount of the sustainable energy technology investment tax credit for which the taxpayer is eligible and the name of the qualified business and amount of qualified investment by the taxpayer. All certificates of eligibility issued pursuant to this subsection shall be sequentially numbered, and an account of all certificates issued or destroyed shall be maintained by the economic development department. The taxation and revenue department shall audit the records of the sustainable energy technology investment tax credit maintained by the economic development department on a periodic basis to ensure effective administration of the sustainable energy technology investment tax credit and compliance with the Tax Administration Act and this section.

H. To claim the sustainable energy technology investment tax credit, the taxpayer shall provide to the taxation and revenue department a certificate of eligibility issued by the economic development department pursuant to this section and any other information that the taxation and revenue department or the economic development department may require to determine eligibility for and the amount of the tax credit.

I. The taxation and revenue department may allow a maximum annual aggregate of two million dollars ($2,000,000) in sustainable energy technology investment tax credits allowed pursuant to this section and the Corporate Income and Franchise Tax Act. Applications for the sustainable energy technology investment tax credit shall be considered in the order received by the taxation and revenue department.

J. The taxation and revenue department in conjunction with the economic development department shall compile an annual report that includes the number of taxpayers to whom certificates of eligibility were issued in the previous year, the names of those taxpayers and the amount of tax credit for which each taxpayer was certified eligible; the number and names of the businesses that are qualified businesses for purposes of a qualified investment by a taxpayer; and the number of taxpayers approved to receive a tax credit. Notwithstanding any other section of law to the contrary, the taxation and revenue department and the economic development department may disclose the number of applications for the sustainable energy technology investment tax credit, the amount of each tax credit approved, the number of qualified businesses that received qualified investments and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of the sustainable energy technology investment tax credit.

K. As used in this section:

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

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

(3) "qualified business" means a business that:

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

(b) engages in qualified research for sustainable energy technology or manufactures existing sustainable energy technology in New Mexico;

(c) has not issued securities registered pursuant to Section 6 of the federal Securities Act of 1933, as amended; has not issued securities traded on a national securities exchange; is not subject to reporting requirements of the federal Securities Exchange Act of 1934, as amended; and is not registered pursuant to the federal Investment Company

Act of 1940, as amended, at the time of the investment;

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

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

(4) "qualified investment" means a cash investment in a qualified business for equity, but does not include an investment by a taxpayer if the taxpayer, a member of the taxpayer's immediate family or an entity affiliated with the taxpayer receives compensation from the qualified business in exchange for services provided to the qualified business within one year of investment in the qualified business;

(5) "qualified research" means research:

(a) that is undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved business component; and

(b) in which substantially all activities constitute elements of a process of experimentation related to new or improved function, performance, reliability, efficiency or quality, but not related to style, taste, cosmetic or seasonal design factors; and

(6) "sustainable energy technology" means

electrical energy generation technology that:

(a) produces minimal or zero carbon emissions;

(b) uses primarily solar light, solar heat, wind or geothermal energy as energy sources; and

(c) has a long-term production and commercialization potential."

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

"[<u>NEW MATERIAL</u>] SUSTAINABLE ENERGY TECHNOLOGY INVESTMENT TAX CREDIT.--

A. A taxpayer that is a New Mexico corporation, that files a corporate income tax return and that makes a qualified investment may claim a tax credit in an amount not to exceed twenty-five percent of not more than one hundred thousand dollars ($100,000) of the qualified investment. The tax credit provided in this section shall be known as the "sustainable energy technology investment tax credit".

B. The purpose of the sustainable energy technology investment tax credit is to encourage investment in sustainable energy technology research, development, commercialization and production.

C. A taxpayer may claim the sustainable energy technology investment tax credit for not more than two qualified investments in a taxable year; provided that each qualified investment is in a different qualified business. A taxpayer may not claim the sustainable energy technology investment tax credit for qualified investments made in the same qualified business or successor of that business for more than three taxable years. The sustainable energy technology investment tax credit shall not exceed twenty-five thousand dollars ($25,000) for each qualified investment by the taxpayer.

D. A taxpayer may claim the sustainable energy technology investment tax credit no later than one year following the end of the calendar year in which the qualified investment was made. The sustainable energy technology investment tax credit may only be deducted from the taxpayer's corporate income tax liability. That portion of a sustainable energy technology investment tax credit that is approved by the department and that exceeds a taxpayer's corporate income tax liability shall not be refunded to the taxpayer. The sustainable energy technology investment tax credit shall not be transferred to another taxpayer. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive years.

E. A taxpayer shall apply for certification of eligibility for the sustainable energy technology investment tax credit from the economic development department. The economic development department may issue rules governing the procedures to certify qualified investments for the purposes of claiming a sustainable energy technology investment tax credit. Applications shall be considered in the order received. If the economic development department determines that the investment is a qualified investment, it shall issue a certificate of eligibility to the taxpayer. The certificate shall be dated and shall include a calculation of the amount of the sustainable energy technology investment tax credit for which the taxpayer is eligible and the name of the qualified business and amount of qualified investment by the taxpayer. All certificates of eligibility issued pursuant to this subsection shall be sequentially numbered, and an account of all certificates issued or destroyed shall be maintained by the economic development department. The taxation and revenue department shall audit the records of the sustainable energy technology investment tax credit maintained by the economic development department on a periodic basis to ensure effective administration of the sustainable energy technology investment tax credit and compliance with the Tax Administration Act and this section.

F. To claim the sustainable energy technology investment tax credit, the taxpayer shall provide to the taxation and revenue department a certificate of eligibility issued by the economic development department pursuant to this section and any other information that the taxation and revenue department or the economic development department may require to determine eligibility for and the amount of the tax credit.

G. The taxation and revenue department may allow a maximum annual aggregate of two million dollars ($2,000,000) in sustainable energy technology investment tax credits allowed pursuant to this section and the Income Tax Act. Applications for the sustainable energy technology investment tax credit shall be considered in the order received by the taxation and revenue department.

H. The taxation and revenue department in conjunction with the economic development department shall compile an annual report that includes the number of taxpayers to whom certificates of eligibility were issued in the previous year, the names of those taxpayers and the amount of tax credit for which each taxpayer was certified eligible; the number and names of the businesses that are qualified businesses for purposes of an investment by a taxpayer; and the number of taxpayers approved to receive a credit. Notwithstanding any other section of law to the contrary, the taxation and revenue department and the economic development department may disclose the number of applications for the sustainable energy technology investment tax credit, the amount of each tax credit approved, the number of qualified businesses that received qualified investments and any other information required by the

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legislature or the taxation and revenue department to aid in evaluating the effectiveness of the sustainable energy technology investment tax credit.

I. As used in this section:

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

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

(3) "qualified business" means a business that:

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

(b) engages in qualified research for sustainable energy technology or manufactures existing sustainable energy technology in New Mexico;

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

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

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

(4) "qualified investment" means a cash investment in a qualified business for equity, but does not include an investment by a taxpayer if the taxpayer, a member of the taxpayer's immediate family or an entity affiliated with the taxpayer receives compensation from the qualified business in exchange for services provided to the qualified business within one year of investment in the qualified business;

(5) "qualified research" means research:

(a) that is undertaken for the purpose of discovering information that is technological in nature and the application of which is intended to be useful in the development of a new or improved business component; and

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related to new or improved function, performance, reliability, efficiency or quality, but not related to style, taste, cosmetic or seasonal design factors; and

(6) "sustainable energy technology" means electrical energy generation technology that:

(a) produces minimal or zero carbon emissions;

(b) uses primarily solar light, solar heat, wind or geothermal energy as energy sources; and

(c) has a long-term production and commercialization potential."

SECTION 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2012.

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