SENATE BILL 198

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Pete Campos

AN ACT

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

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] FRONTIER COMMUNITY INVESTMENT INCOME TAX CREDIT.--

A. For taxable years beginning on or after January 1, 2018, a taxpayer who files a New Mexico income tax return, is not a dependent of another taxpayer and makes a qualified investment may claim a credit against the taxpayer's tax liability imposed by the Income Tax Act in an amount up to twenty-five percent of up to one hundred thousand dollars ($100,000) of the qualified investment. The credit provided by

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

this section may be referred to as the "frontier community investment income tax credit".

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

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

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

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

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

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

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

E. A taxpayer who wishes to claim the frontier community investment income tax credit shall apply to the economic development department for certification within two years following the end of the calendar year in which the taxpayer made a qualified investment. The economic development department shall consider applications in the order received. If the economic development department determines that the taxpayer made a qualified investment within the allowable time period, it shall, subject to the credit limit in Subsection F of this section, issue the taxpayer a dated certificate of eligibility that includes a calculation of the amount of the credit for which the taxpayer is eligible.

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

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

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

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

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

K. The economic development department shall compile an annual report on the frontier community investment income tax credit that includes the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved, the number of eligible employees hired by taxpayers receiving the credit and any other information necessary to evaluate the effectiveness of the credit. Beginning in 2023 and every five years thereafter, the economic development department shall present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the credit and whether the credit is performing the purposes for which it was created.

L. If a taxpayer or a successor in business of the taxpayer ceases operations of a qualified business for which the taxpayer claimed a frontier community investment income tax credit for one hundred eighty consecutive days or more within a two-year period after the taxpayer claimed the credit, the department shall grant no further frontier community investment income tax credits to the taxpayer with respect to the business that ceased operations. Any amount of the credit not claimed against the taxpayer's income tax shall be extinguished, and within thirty days after the one hundred eightieth day of the cessation of operations, the taxpayer shall pay the amount of any income tax against which an approved frontier community investment income tax credit was taken. For purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling or for the repair or replacement of facilities damaged or destroyed or during a labor dispute.

M. As used in this section:

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

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

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

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

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

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

(3) "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;

(4) "frontier community" means an area designated by the economic development department as a frontier community on the basis of its economic and rural characteristics;

(5) "new full-time-equivalent job" means the job of a single employee or the jobs of more than one part-time employee created by a business on or after July 1, 2018 but before January 1, 2028 for which work has been performed in the aggregate for at least thirty-two hours per week for forty-eight consecutive weeks, but does not include a job:

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

(b) created due to a business merger or acquisition or other change in business organization or a taxpayer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job was not being performed by an employee of the replaced entity; and performed by: 1) the person who performed the job or its functional equivalent before the business merger or acquisition or other change in business organization; or 2) a person replacing the person who performed the job or its functional equivalent before a business merger or acquisition or other change in business organization;

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

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

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

(c) has had no more than five million dollars ($5,000,000) in gross revenues in any fiscal year ending on or before the date of a qualified investment in it; and

(7) "qualified investment" means a cash investment made after the effective date of this 2018 act but before January 1, 2027 for equity in a qualified business, but does not include an investment by a taxpayer claiming the frontier community investment corporate income tax credit 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."

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

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

A. For taxable years beginning on or after January 1, 2018, a taxpayer that is a qualified business and that makes a qualified investment may claim a credit against the taxpayer's tax liability imposed by the Corporate Income and Franchise Tax Act in an amount up to twenty-five percent of up to one hundred thousand dollars ($100,000) of the qualified investment. The credit provided by this section may be referred to as the "frontier community investment corporate income tax credit".

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

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

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

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

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

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

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

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

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

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

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

I. The economic development department shall compile an annual report on the frontier community investment corporate income tax credit that includes the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved, the number of eligible employees hired by taxpayers receiving the credit and any other information necessary to evaluate the effectiveness of the credit. Beginning in 2023 and every five years thereafter, the economic development department shall present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the credit and whether the credit is performing the purposes for which it was created.

J. If a taxpayer or a successor in business of the taxpayer ceases operations of a qualified business for which the taxpayer claimed a frontier community investment corporate income tax credit for one hundred eighty consecutive days or more within a two-year period after the taxpayer claimed the credit, the department shall grant no further frontier community investment corporate income tax credits to the taxpayer with respect to the business that ceased operations.

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

K. As used in this section:

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

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

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

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

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

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

(3) "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;

(4) "frontier community" means an area designated by the economic development department as a frontier community on the basis of its economic and rural characteristics;

(5) "new full-time-equivalent job" means the job of a single employee or the jobs of more than one part-time employee created by a business on or after July 1, 2018 but before January 1, 2028 for which work has been performed in the aggregate for at least thirty-two hours per week for forty-eight consecutive weeks, but does not include a job:

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

(b) created due to a business merger or acquisition or other change in business organization or a taxpayer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job was not being performed by an employee of the replaced entity; and performed by: 1) the person who performed the job or its functional equivalent before the business merger or acquisition or other change in business organization; or 2) a person replacing the person who performed the job or its functional equivalent before a business merger or acquisition or other change in business organization;

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

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

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

(c) has had no more than five million dollars ($5,000,000) in gross revenues in any fiscal year ending on or before the date of a qualified investment in it; and

(7) "qualified investment" means a cash investment made after the effective date of this 2018 act but before January 1, 2027 for equity in a qualified business, but does not include an investment by a taxpayer claiming the frontier community investment income tax credit 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."

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