

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 104

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

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE NMSA 1978 TO  
PROVIDE FOR THE STATE ENGINEER TO ADOPT GUIDELINES FOR  
IMPLEMENTATION OF THE AGRICULTURAL WATER CONSERVATION TAX  
CREDIT AND FOR THE DISPOSITION OF CONSERVED WATER.

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

SECTION 1. Section 7-2-18.20 NMSA 1978 (being Laws 2007,  
Chapter 204, Section 5) is amended to read:

"7-2-18.20. TAX CREDIT--AGRICULTURAL WATER CONSERVATION  
EXPENSES.--

A. A taxpayer may claim a credit against the  
taxpayer's income tax liability for expenses incurred by the  
taxpayer for eligible improvements in irrigation systems or  
water management methods. The credit may be claimed for the  
taxable year in which the expenses are incurred if the

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1 taxpayer:

2 (1) in that year, owned or leased a water  
3 right appurtenant to the land on which an eligible improvement  
4 was made;

5 (2) files an individual New Mexico income tax  
6 return for that year;

7 (3) in that year, is not a dependent of  
8 another individual; and

9 (4) does not take a tax credit for the same  
10 expense on any corporate tax return filed by the taxpayer.

11 B. The credit provided in this section shall be in  
12 the following amounts, not to exceed a maximum annual credit of  
13 ten thousand dollars (\$10,000):

14 (1) for expenses incurred from January 1, 2008  
15 until December 31, 2008, an amount equal to thirty-five percent  
16 of the incurred expenses; and

17 (2) for expenses incurred on or after January  
18 1, 2009, an amount equal to fifty percent of the incurred  
19 expenses.

20 C. As used in this section, "eligible improvement  
21 in irrigation systems or water management methods" means an  
22 improvement that is:

23 (1) made on or after January 1, 2008;

24 (2) consistent and complies with a water  
25 conservation plan approved by the local soil and water

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1 conservation district in which the improvement is located;

2 [~~and~~]

3 (3) primarily designed to substantially  
4 conserve water on land in New Mexico that is owned or leased by  
5 the taxpayer and used by the taxpayer or the taxpayer's lessee  
6 to:

7 (a) produce agricultural products;

8 (b) harvest or grow trees; or

9 (c) sustain livestock; and

10 (4) consistent with the provisions of Section  
11 72-5-18 NMSA 1978.

12 D. Taxpayers who are considered for federal income  
13 tax purposes as co-owners of the land on which an eligible  
14 improvement in irrigation systems or water management methods  
15 is made may claim the pro rata share of the credit allowed  
16 pursuant to this section based on the co-owner's ownership  
17 interest. The total of the credits allowed all the taxpayers  
18 considered co-owners may not exceed the amount that would have  
19 been allowed a sole owner of the land.

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

24 F. If the allowable tax credit in a taxable year  
25 exceeds the income taxes otherwise due from a taxpayer pursuant

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1 to the Income Tax Act, or if there are no income taxes due from  
2 the taxpayer, the taxpayer may carry forward the amount of the  
3 credit not used in that year to offset the taxpayer's liability  
4 for income taxes pursuant to the Income Tax Act for not more  
5 than five consecutive taxable years.

6 G. The New Mexico department of agriculture, with  
7 the advice of the soil and water conservation commission, and  
8 with information provided by the state engineer, shall  
9 promulgate rules to implement this section, and those rules  
10 shall include detailed guidelines to assist the department in  
11 determining whether improvements in irrigation systems or water  
12 management methods qualify for the credit available under this  
13 section.

14 H. A taxpayer claiming the credit shall provide  
15 documentary evidence of the amount of water conserved during  
16 the period for which the credit is claimed if requested by the  
17 department.

18 I. Water conserved due to improvements in  
19 irrigation systems or water management methods and for which a  
20 credit is claimed shall not be subject to abandonment or  
21 forfeiture, nor shall the conserved water be put to consumptive  
22 beneficial use.

23 J. As used in this section, "taxpayer" may include  
24 a partnership, limited liability corporation or other form of  
25 pass-through entity, which may pass the credit provided in this

1 section through to its owners in proportion to their share of  
2 ownership."

3 SECTION 2. Section 7-2A-22 NMSA 1978 (being Laws 2007,  
4 Chapter 204, Section 6) is amended to read:

5 "7-2A-22. TAX CREDIT--AGRICULTURAL WATER CONSERVATION  
6 EXPENSES.--

7 A. A taxpayer may claim a credit against the  
8 taxpayer's corporate income tax liability for expenses incurred  
9 by the taxpayer for eligible improvements in irrigation systems  
10 or water management methods. The credit may be claimed for the  
11 taxable year in which the expenses are incurred if the  
12 taxpayer:

13 (1) in that year, owned or leased a water  
14 right appurtenant to the land on which an eligible improvement  
15 was made; and

16 (2) files a New Mexico corporate income tax  
17 return for that year.

18 B. The credit provided in this section shall be in  
19 the following amounts, not to exceed a maximum annual credit of  
20 ten thousand dollars (\$10,000):

21 (1) for expenses incurred from January 1, 2008  
22 until December 31, 2008, an amount equal to thirty-five percent  
23 of the incurred expenses; and

24 (2) for expenses incurred on or after January  
25 1, 2009, an amount equal to fifty percent of the incurred

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1 expenses.

2 C. As used in this section, "eligible improvement  
3 in irrigation systems or water management methods" means an  
4 improvement that is:

5 (1) made on or after January 1, 2008;

6 (2) consistent and complies with a water  
7 conservation plan approved by the local soil and water  
8 conservation district in which the improvement is located;

9 [~~and~~]

10 (3) primarily designed to substantially  
11 conserve water on land in New Mexico that is owned or leased by  
12 the taxpayer and used by the taxpayer or the taxpayer's lessee  
13 to:

14 (a) produce agricultural products;

15 (b) harvest or grow trees; or

16 (c) sustain livestock; and

17 (4) consistent with the provisions of Section  
18 72-5-18 NMSA 1978.

19 D. Taxpayers that are considered for federal income  
20 tax purposes as co-owners of the land, or co-owners of a pass-  
21 through entity that owns the land, on which an eligible  
22 improvement in irrigation systems or water management methods  
23 is made may claim the pro rata share of the credit allowed  
24 pursuant to this section based on the co-owner's ownership  
25 interest. The total of the credits allowed all the taxpayers

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1 considered co-owners may not exceed the amount that would have  
2 been allowed a sole owner of the land.

3 E. If the allowable tax credit in a taxable year  
4 exceeds the corporate income taxes otherwise due from a  
5 taxpayer pursuant to the Corporate Income and Franchise Tax  
6 Act, or if there are no taxes due pursuant to the Corporate  
7 Income and Franchise Tax Act, the taxpayer may carry forward  
8 the amount of the credit not used in that year to offset the  
9 taxpayer's liability for corporate income taxes pursuant to the  
10 Corporate Income and Franchise Tax Act for not more than five  
11 consecutive tax years.

12 F. The New Mexico department of agriculture, with  
13 the advice of the soil and water conservation commission and  
14 with information provided by the state engineer, shall  
15 promulgate rules to implement this section, including detailed  
16 guidelines to assist the department in determining whether  
17 improvements in irrigation systems or water management methods  
18 qualify for the credit available under this section.

19 G. A taxpayer claiming the credit shall provide  
20 documentary evidence of the amount of water conserved during  
21 the period for which the credit is claimed if requested by the  
22 department.

23 H. Water conserved due to improvements in  
24 irrigation systems or water management methods and for which a  
25 credit is claimed shall not be subject to abandonment or

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1 forfeiture, nor shall the conserved water be put to consumptive  
2 beneficial use.

3 I. As used in this section, "taxpayer" may include  
4 a partnership, limited liability corporation or other form of  
5 pass-through entity, which may pass the credit provided in this  
6 section through to its owners in proportion to their share of  
7 ownership."

8 SECTION 3. Section 72-5-18 NMSA 1978 (being Laws 1907,  
9 Chapter 49, Section 43, as amended) is amended to read:

10 "72-5-18. WATER ALLOWANCE.--

11 A. In the issuance of permits to appropriate water  
12 for irrigation or in the adjudication of the rights to the use  
13 of water for that purpose, the amount allowed shall be based  
14 upon beneficial use and in accordance with good agricultural  
15 practices and the amount allowed shall not exceed such amount.  
16 The state engineer shall permit the amount allowed to be  
17 diverted at a rate that is consistent with good agricultural  
18 practices and that will result in the most effective use of  
19 available water in order to prevent waste.

20 B. Improved irrigation methods or changes in  
21 agriculture practices resulting in conservation of water shall  
22 not diminish beneficial use or otherwise affect an owner's  
23 water rights or quantity of appurtenant acreage.

24 C. Any water rights owner who demonstrates that  
25 improved irrigation or changes in agricultural practices have

1 resulted in the conservation of water shall be able to make an  
2 application to the state engineer for a change in the point of  
3 diversion or place or purpose of use of the quantity of  
4 conserved water, provided that:

5 (1) conservation of water shall not result in  
6 impairment or diminishment of other water rights; and

7 (2) priority and quality of right shall be  
8 assessed under the same standards as apply to transfers.

9 D. The state engineer shall adopt rules for  
10 implementation of this section no later than March 1, 2013  
11 and shall solicit stakeholder input no later than September  
12 1, 2012."

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