

1 SENATE BILL 394

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 John C. Ryan

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10 AN ACT

11 RELATING TO TAXATION; AMENDING A SECTION OF THE INCOME TAX ACT
12 AND A SECTION OF THE CORPORATE INCOME AND FRANCHISE TAX ACT TO
13 PROVIDE FOR WATER CONSERVED PURSUANT TO THE AGRICULTURAL WATER
14 CONSERVATION TAX CREDIT TO BE PUT TO BENEFICIAL USE.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "7-2-18.20. TAX CREDIT--AGRICULTURAL WATER CONSERVATION
20 EXPENSES.--

21 A. A taxpayer may claim a credit against the
22 taxpayer's income tax liability for expenses incurred by the
23 taxpayer for eligible improvements in irrigation systems or
24 water management methods. The credit may be claimed for the
25 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; and

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

6 (a) produce agricultural products;

7 (b) harvest or grow trees; or

8 (c) sustain livestock.

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

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

21 F. If the allowable tax credit in a taxable year
22 exceeds the income taxes otherwise due from a taxpayer pursuant
23 to the Income Tax Act, or if there are no income taxes due from
24 the taxpayer, the taxpayer may carry forward the amount of the
25 credit not used in that year to offset the taxpayer's liability

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1 for income taxes pursuant to the Income Tax Act for not more
2 than five consecutive taxable years.

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

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

15 I. Water conserved due to improvements in
16 irrigation systems or water management methods and for which a
17 credit is claimed shall not be subject to abandonment or
18 forfeiture [~~nor shall~~]. The conserved water shall not be put
19 to consumptive beneficial use unless allowed by a permit issued
20 by the state engineer pursuant to Subsection C of Section
21 72-5-18 NMSA 1978.

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

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1 ownership."

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

4 "7-2A-22. TAX CREDIT--AGRICULTURAL WATER CONSERVATION
5 EXPENSES.--

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

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

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

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

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

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

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

- 4 (1) made on or after January 1, 2008;
- 5 (2) consistent and complies with a water
6 conservation plan approved by the local soil and water
7 conservation district in which the improvement is located; and

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

- 12 (a) produce agricultural products;
- 13 (b) harvest or grow trees; or
- 14 (c) sustain livestock.

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

24 E. If the allowable tax credit in a taxable year
25 exceeds the corporate income taxes otherwise due from a

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

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

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

19 H. Water conserved due to improvements in
20 irrigation systems or water management methods and for which a
21 credit is claimed shall not be subject to abandonment or
22 forfeiture [~~nor shall~~]. The conserved water shall not be put
23 to consumptive beneficial use unless allowed by a permit issued
24 by the state engineer pursuant to Subsection C of Section
25 72-5-18 NMSA 1978.

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