

(5) an economic impact study of jobs created, jobs retained, cost savings and increased sales generated by small businesses for which small business assistance is provided.

D. At any time after receipt of an annual report required pursuant to this section from one or more national laboratories eligible for tax credits authorized pursuant to the Laboratory Partnership with Small Business Tax Credit Act, the department or the economic development department may provide written instructions to a national laboratory identifying future improvements in the laboratory's small business assistance program for which it receives that tax credit.

History: Laws 2007, ch. 172, § 20.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 172, § 30 made Laws 2007, ch. 172, § 20 effective July 1, 2007.

ARTICLE 9F

Technology Jobs and Research and Development Tax Credit

7-9F-1. Short title.

Chapter 7, Article 9F NMSA 1978 may be cited as the "Technology Jobs and Research and Development Tax Credit Act".

History: Laws 2000 (2nd S.S.), ch. 22, § 1; 2015 (1st S.S.), ch. 2, § 10.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective January 1, 2016, changed the title of the Technology Jobs Tax Credit Act to the "Technology Jobs and Research and Development Tax Credit Act", and changed the statutory reference from "This act" to "Chapter 7, Article 9F NMSA 1978".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 10 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

Temporary provisions. — Laws 2015 (1st S.S.), ch. 2, § 22 provided that a taxpayer that becomes eligible for a research and development small business tax credit prior to January 1, 2016 but has not claimed the credit prior to January 1, 2016 may claim the credit in accordance with the provisions of the Research and Development Small Business Tax Credit Act in effect immediately prior to January 1, 2016. The taxation and

revenue department shall approve claims submitted but not approved prior to January 1, 2016 if the claim meets the requirements of the Research and Development Small Business Tax Credit Act in effect immediately prior to January 1, 2016. Claiming the research and development small business tax credit pursuant to this section with respect to a reporting period renders the taxpayer ineligible to claim a credit for the same reporting period pursuant to the Technology Jobs and Research and Development Tax Credit Act.

Laws 2015 (1st S.S.), ch. 2, § 23 provided that on and after January 1, 2016, references in law to the Technology Jobs Tax Credit Act shall be deemed to be references to the Technology Jobs and Research and Development Tax Credit Act.

7-9F-2. Purpose of act.

It is the purpose of the Technology Jobs and Research and Development Tax Credit Act to provide a favorable tax climate for technology-based businesses engaging in research, development and experimentation and to promote increased employment and higher wages in those fields in New Mexico.

History: Laws 2000 (2nd S.S.), ch. 22, § 2; 2015 (1st S.S.), ch. 2, § 11.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective January 1, 2016, added "and Research and Development" after "Technology Jobs".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 11 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

7-9F-3. Definitions.

As used in the Technology Jobs and Research and Development Tax Credit Act:

A. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity;

B. "annual payroll expense" means the wages paid or payable to employees in the state by the taxpayer in the taxable year for which the taxpayer applies for an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act;

C. "base payroll expense" means the wages paid or payable by the taxpayer in the taxable year prior to the taxable year for which the taxpayer applies for an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act,

adjusted for any increase from the preceding taxable year in the consumer price index for the United States for all items as published by the United States department of labor in the taxable year for which the additional credit is claimed. In a taxable year during which a taxpayer has been part of a business merger or acquisition or other change in business organization, the taxpayer's base payroll expense shall include the payroll expense of all entities included in the reorganization for all positions that are included in the business entity resulting from the reorganization;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "facility" means a factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the land on which it is located and all machinery, equipment and other real and tangible personal property located at or within it and used in connection with its operation;

F. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon a taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], and required to be collected by the department at the same time and in the same manner as the gross receipts tax;

G. "qualified expenditure" means an expenditure or an allocated portion of an expenditure by a taxpayer in connection with qualified research at a qualified facility, including expenditures for depletable land and rent paid or incurred for land, improvements, the allowable amount paid or incurred to operate or maintain a facility, buildings, equipment, computer software, computer software upgrades, consultants and contractors performing work in New Mexico, payroll, technical books and manuals and test materials, but not including any expenditure on property that is owned by a municipality or county in connection with an industrial revenue bond project, property for which the taxpayer has received any credit pursuant to the Investment Credit Act, property that was owned by the taxpayer or an affiliate before July 3, 2000 or research and development expenditures reimbursed by a person who is not an affiliate of the taxpayer. If a "qualified expenditure" is an allocation of an expenditure, the cost accounting methodology used for the allocation of the expenditure shall be the same cost accounting methodology used by the taxpayer in its other business activities;

H. "qualified facility" means a facility in New Mexico at which qualified research is conducted other than a facility operated by a taxpayer for the United States or any agency, department or instrumentality thereof;

I. "qualified research" means research:

(1) that is undertaken for the purpose of discovering information:

(a) that is technological in nature; and

(b) the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

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

J. "qualified research and development small business" means a taxpayer that:

(1) employed no more than fifty employees as determined by the number of employees for which the taxpayer was liable for unemployment insurance coverage in the taxable year for which an additional credit is claimed;

(2) had total qualified expenditures of no more than five million dollars (\$5,000,000) in the taxable year for which an additional credit is claimed; and

(3) did not have more than fifty percent of its voting securities or other equity interest with the right to designate or elect the board of directors or other governing body of the business owned directly or indirectly by another business;

K. "rural area" means any area of the state other than the state fairgrounds, an incorporated municipality with a population of thirty thousand or more according to the most recent federal decennial census and any area within three miles of the external boundaries of an incorporated municipality with a population of thirty thousand or more according to the most recent federal decennial census;

L. "taxpayer" means any of the following persons, other than a federal, state or other governmental unit or subdivision or an agency, department, institution or instrumentality thereof:

(1) a person liable for payment of any tax;

(2) a person responsible for withholding and payment or collection and payment of any tax;

(3) a person to whom an assessment has been made if the assessment remains unabated or the assessed amount has not been paid; or

(4) for purposes of the additional credit against the taxpayer's income tax pursuant to the Technology Jobs and Research and Development Tax Credit Act and to the extent of their respective interest in that entity, the shareholders, members, partners or other owners of:

(a) a small business corporation that has elected to be treated as an S corporation for federal income tax purposes; or

(b) an entity treated as a partnership or disregarded entity for federal income tax purposes; and

M. "wages" means remuneration for services performed by an employee in New Mexico for an employer.

History: Laws 2000 (2nd S.S.), ch. 22, § 3; 2015 (1st S.S.), ch. 2, § 12; 2019, ch. 270, § 38; 2019, ch. 274, § 12.

ANNOTATIONS

Compiler's notes. — Laws 2019, ch. 270, § 38 and Laws 2019, ch. 274, § 12, both effective July 1, 2019, enacted almost identical amendments to this section, except that Laws 2019, ch. 270, § 38, in Subsection F, changed "the taxpayer's" to "a taxpayer's". Laws 2019, ch. 274, § 12 as the last act signed by the governor is set out above and incorporates both amendments. To view the session laws in their entirety, see the 2019 session laws on *NMOneSource.com*.

The 2019 amendment, effective July 1, 2019, revised the definition of "local option gross receipts tax" as used in the Technology Jobs and Research and Development Tax Credit Act; and in Subsection F, deleted "'local option gross receipts tax' includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as maybe enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax".

The 2015 (1st S.S.) amendment, effective January 1, 2016, amended and added certain definitions in the Technology Jobs and Research and Development Tax Credit Act; in the introductory sentence, after "Technology Jobs", added "and Research and Development"; in Subsection B, after "paid or payable", added "to employees in the state", after "taxpayer", deleted "for the one year period ending on the day" and added "in the taxable year for which", after "Technology Jobs", added "and Research and Development"; in Subsection C, after "payable by the taxpayer", deleted "for the one year period ending on the day one year prior to the day" and added "in the taxable year prior to the taxable year for which", after "Technology Jobs", added "and Research and Development", after "any increase", added "from the preceding taxable year", and after "department of labor", deleted "since that day" and added the remainder of the subsection; in Subsection E, after "land on which", deleted "the facility" and added "it", after "located at or within", deleted "the facility" and added "it", after "connection with", deleted "the" and added "its", and after "operation", deleted "of the facility"; added a new

Subsection F and redesignated former Subsections F, G and H as Subsections G, H and I, respectively; in Subsection G, after "credit pursuant to the", deleted "Capital Equipment Tax Credit Act or the", after "an affiliate before", deleted "the effective date of the Technology Jobs Tax Credit Act" and added "July 3, 2000", and after "If", deleted "an" and added "a qualified"; added a new Subsection J and redesignated former Subsections I, J and K as Subsections K, L and M, respectively; in Subsection K, after "any area of the state other than", deleted "a class A county, a class B county that has a net taxable value for rate-setting purposes for any property tax year of more than three billion dollars (\$3,000,000,000), the municipality of Rio Rancho and the area within three miles of the exterior boundaries of a class A county" and added the remainder of the subsection; in Paragraph (4) of Subsection L, after "Technology Jobs", added "and Research and Development"; and in Subsection M, after "remuneration", deleted "in cash or other form", and after "an employee", added "in New Mexico".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 12 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

Time to apply for tax credit. — Because the provisions of this section, Sections 7-9F-6 and 7-9F-12 NMSA 1978 indicate a legislative concentration on annual reporting and annual payroll expense, these sections indicate no intention to provide a taxpayer an open-ended time to apply for a tax credit. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

"Cost accounting methodology" construed. — A "cost accounting method" as used in the definition of "qualified expenditure" NMSA 1978, § 7-9F-3(G), is a method for capturing a company's total cost of production by assessing the variable costs at each step in production. *Process Equip. & Serv. Co. v. N.M. Tax'n & Revenue*, 2023-NMCA-060.

7-9F-4. Administration of act.

The department shall administer the Technology Jobs and Research and Development Tax Credit Act pursuant to the Tax Administration Act.

History: Laws 2000 (2nd S.S.), ch. 22, § 4; 2015 (1st S.S.), ch. 2, § 13.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective January 1, 2016, added "and Research and Development" after "Technology Jobs".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 13 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

7-9F-5. Basic credit; additional credit; amounts; claimant.

A. The basic credit provided for in the Technology Jobs and Research and Development Tax Credit Act is an amount equal to five percent of the amount of qualified expenditures made by a taxpayer conducting qualified research at a qualified facility.

B. The additional credit provided for in the Technology Jobs and Research and Development Tax Credit Act is an amount equal to five percent of the amount of qualified expenditures made by a taxpayer conducting qualified research at a qualified facility.

History: Laws 2000 (2nd S.S.), ch. 22, § 5; 2015 (1st S.S.), ch. 2, § 14.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective January 1, 2016, amended language to reflect the new title of the Technology Jobs and Research and Development Tax Credit Act and increased the basic and additional tax credits provided for in the Technology Jobs and Research and Development Tax Credit Act from four percent to five percent of the amount of qualified expenditures; in Subsection A, after "Technology Jobs", added "and Research and Development", and after "an amount equal to", deleted "four" and added "five"; in Subsection B, after "Technology Jobs", added "and Research and Development", and after "an amount equal to", deleted "four" and added "five".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 14 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

7-9F-6. Eligibility requirements.

A. A taxpayer conducting qualified research at a qualified facility and making qualified expenditures is eligible to claim the basic credit pursuant to the Technology Jobs and Research and Development Tax Credit Act.

B. A taxpayer conducting qualified research at a qualified facility and making qualified expenditures is eligible to claim the additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act if:

(1) the taxpayer increases the taxpayer's annual payroll expense at the qualified facility by at least seventy-five thousand dollars (\$75,000) over the base payroll expense of the taxpayer;

(2) the increase in Paragraph (1) of this subsection has not previously been used to meet the requirements of this subsection; and

(3) there is at least a seventy-five-thousand-dollar (\$75,000) increase in the taxpayer's annual payroll expense for every one million dollars (\$1,000,000) in qualified expenditures claimed by the taxpayer in a taxable year in the same claim.

History: Laws 2000 (2nd S.S.), ch. 22, § 6; 2015 (1st S.S.), ch. 2, § 15.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective January 1, 2016, amended language to reflect the new title of the Technology Jobs and Research and Development Tax Credit Act; in Subsection A, after "Technology Jobs", added "and Research and Development"; and in the introductory sentence of Subsection B, after "Technology Jobs", added "and Research and Development".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 15 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

Temporary provisions. — Laws 2015 (1st S.S.), ch. 2, § 22 provided that a taxpayer that becomes eligible for a research and development small business tax credit prior to January 1, 2016 but has not claimed the credit prior to January 1, 2016 may claim the credit in accordance with the provisions of the Research and Development Small Business Tax Credit Act in effect immediately prior to January 1, 2016. The taxation and revenue department shall approve claims submitted but not approved prior to January 1, 2016 if the claim meets the requirements of the Research and Development Small Business Tax Credit Act in effect immediately prior to January 1, 2016. Claiming the research and development small business tax credit pursuant to this section with respect to a reporting period renders the taxpayer ineligible to claim a credit for the same reporting period pursuant to the Technology Jobs and Research and Development Tax Credit Act.

Time to apply for tax credit. — Because the provisions of this section, Sections 7-9F-3 and 7-9F-12 NMSA 1978 indicate a legislative concentration on annual reporting and annual payroll expense, these sections indicate no intention to provide a taxpayer an open-ended time to apply for a tax credit. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

"Cost accounting methodology" construed. — A "cost accounting method" as used in the definition of "qualified expenditure" NMSA 1978, § 7-9F-3(G), is a method for capturing a company's total cost of production by assessing the variable costs at each step in production. *Process Equip. & Serv. Co. v. N.M. Tax'n & Revenue*, 2023-NMCA-060.

Taxpayer met the requirements for a tax credit based on qualified expenditures. — Where taxpayer, a designer and manufacturer of products used in the oil and gas industry, protested the taxation and revenue department's (department) denial of

taxpayer's request for a state tax credit for the 2014 and 2016 tax years under the Technology Jobs and Research and Development Tax Credit Act (act), NMSA 1978, §§ 7-9F-1 through 7-9F-13, and where, following an independent administrative hearing, the hearing officer concluded that taxpayer met the requirements for a tax credit under the act for both years, and where, on appeal, the department claimed that taxpayer did not satisfy the statutory requirements for entitlement to the credit because taxpayer failed to use a cost accounting methodology to allocate wages, and failed to use the same cost accounting methodology in its other business activities, the hearing officer did not err in concluding that taxpayer used a cost accounting method, based on witness testimony that the method taxpayer used was designed to record and analyze taxpayer's labor costs incident to the research and development projects it was engaged in, and to that extent, it constituted a cost accounting method, and there was substantial evidence to support the hearing officer's finding that taxpayer used the same cost accounting method in its other business activities based on witness testimony that taxpayer used the same method when deciding whether a project will proceed or not. *Process Equip. & Serv. Co. v. N.M. Tax'n & Revenue*, 2023-NMCA-060.

7-9F-7. Repealed.

History: Laws 2000 (2nd S.S.), ch. 22, § 7.

ANNOTATIONS

Repeals. — Laws 2015 (1st S.S.), ch. 2, § 24, repealed 7-9F-7 NMSA 1978, as enacted by Laws 2000 (2nd S.S.), ch. 22, § 7, relating to qualified expenditures, effective January 1, 2016. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

7-9F-8. Rural areas.

The amount of the basic and additional credit for which a taxpayer is otherwise eligible shall be doubled if the qualified expenditures were incurred with respect to a qualified facility in a rural area.

History: Laws 2000 (2nd S.S.), ch. 22, § 8.

ANNOTATIONS

Effective dates. — Laws 2000 (2nd S.S.), ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective July 3, 2000, 90 days after the adjournment of the legislature.

7-9F-9. Claiming the basic credit.

A. A taxpayer may apply for approval of a credit within one year following the end of the reporting period in which the qualified expenditure was made.

B. A taxpayer having applied for and been granted approval for a basic credit by the department pursuant to the Technology Jobs and Research and Development Tax Credit Act may claim the amount of the approved basic credit against the taxpayer's compensating tax, withholding tax or gross receipts tax, excluding local option gross receipts tax, due to the state of New Mexico; provided that no taxpayer may claim an amount of approved basic credit for a reporting period in which the basic credit is being claimed that exceeds the sum of the taxpayer's compensating tax, withholding tax and gross receipts tax, excluding local option gross receipts tax, due for that reporting period.

C. Any amount of approved basic credit not claimed against the taxpayer's compensating tax, withholding tax or gross receipts tax, excluding local option gross receipts tax, due may be claimed in subsequent reporting periods for a period of up to three years from the date of the original claim.

History: Laws 2000 (2nd S.S.), ch. 22, § 9; 2015 (1st S.S.), ch. 2, § 16.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective January 1, 2016, amended the provisions for claiming the basic credit pursuant to the Technology Jobs and Research and Development Tax Credit Act; in the catchline, added "basic", and after "credit", deleted "for certain taxes"; in Subsection A, after "the end of the", deleted "calendar year" and added "reporting period"; in Subsection B, after "Technology Jobs", added "and Research and Development", after "compensating tax," added "withholding tax", after the first occurrence of "gross receipts tax," deleted "or withholding tax" and added "excluding local option gross receipts tax", after "approved basic credit for", deleted "any" and added "a"; after "reporting period", added "in which the basic credit is being claimed", after "sum of the taxpayer's", added "compensating tax, withholding tax and", after the second occurrence of "gross receipts tax," deleted "compensating tax and withholding tax" and added "excluding local option gross receipts tax"; deleted Subsection C, relating to claiming the tax credit against the taxpayer's income tax or corporate income tax due to the state of New Mexico, and redesignated former Subsection D as Subsection C; and in Subsection C, after "against the taxpayer's", added "compensating tax, withholding tax or", after the first occurrence of "gross receipts tax", deleted "compensating tax or withholding tax" and added "excluding local option gross receipts tax", after "due", deleted "and any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax due for a reporting period", and after "subsequent reporting periods", deleted "provided that a husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the additional credit that would have been allowed them on a joint return" and added "for a period of up to three years from the date of the original claim".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 16 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

Specific period for application. — The Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act] does not allow a taxpayer to apply for a tax credit during any other period than specified in this section. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

Legislature intended a one-year limitation period in enacting Subsection A of this section. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

Mandatory period to apply for credit. — The one-year prescribed period contained in Subsection A of this section to apply for a tax credit is mandatory. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

No authority to grant extension. — The Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act] contains no provision granting the department the authority to grant an extension of the one-year period. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

The use of “may” in Subsection A of this section does not require the conclusion that the department must, or has the discretion to, permit filing beyond the one-year mentioned in this section. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

Taxpayer was not denied substantive due process because the hearing officer found that the failure of taxpayer to file the application on time under this section was because of the negligence of their former employees and not because of their malfeasance and criminal conduct. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

7-9F-9.1. Claiming the additional credit.

A. A taxpayer may apply for approval of an additional credit pursuant to the Technology Jobs and Research and Development Tax Credit Act within one year following the end of the taxable year in which the qualified expenditure was made.

B. A taxpayer that has applied for and been granted approval for an additional credit by the department pursuant to the Technology Jobs and Research and Development Tax Credit Act may claim the amount of the approved additional credit against the taxpayer's income tax or corporate income tax liability. Except as provided in Subsection C of this section, no taxpayer may claim an amount of approved additional

credit for a taxable year in which the additional credit is being claimed that exceeds the amount of the taxpayer's income tax or corporate income tax due for that taxable year.

C. If a taxpayer is a qualified research and development small business and the amount of approved additional credit for the taxable year in which the additional credit is being claimed exceeds the taxpayer's income tax liability or corporate income tax liability, the excess shall be refunded to the taxpayer pursuant to Paragraphs (1) through (3) of this subsection. If the taxpayer's total qualified expenditures for the taxable year for which the claim is made is:

(1) less than three million dollars (\$3,000,000), the excess additional credit shall be refunded to the taxpayer;

(2) greater than or equal to three million dollars (\$3,000,000) and less than four million dollars (\$4,000,000), two-thirds of the excess additional credit shall be refunded to the taxpayer; and

(3) greater than or equal to four million dollars (\$4,000,000) and less than or equal to five million dollars (\$5,000,000), one-third of the excess additional credit shall be refunded to the taxpayer.

D. Any amount of approved additional credit not claimed against the taxpayer's income tax or corporate income tax due for a taxable year or refunded to the taxpayer may be claimed in subsequent reporting periods for a period of up to three years from the date of the original claim.

E. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the additional credit that would have been claimed on a joint return.

History: 1978 Comp., § 7-9F-9.1, enacted by Laws 2015 (1st S.S.) ch. 2, § 17.

ANNOTATIONS

Effective dates. — Laws 2015 (1st S.S.), ch. 2 § 26 makes Laws 2015 (1st S.S.), ch. 2, § 17 effective January 1, 2016.

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 17 apply to taxable years beginning on or after January 1, 2015 and apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.

7-9F-10. Credit claim forms.

The department shall provide credit claim forms. A credit claim shall accompany any return in which the taxpayer wishes to apply for an approved basic or additional credit,

and the claim shall specify the amount and type of credit intended to apply to each return.

History: Laws 2000 (2nd S.S.), ch. 22, § 10.

ANNOTATIONS

Effective dates. — Laws 2000 (2nd S.S.), ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective July 3, 2000, 90 days after the adjournment of the legislature.

7-9F-11. Recapture.

If the taxpayer or a successor in business of the taxpayer ceases operations in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed a basic credit or an additional credit at a facility with respect to which the taxpayer has claimed the basic credit or the additional credit, the department shall grant no further basic credit or additional credit to the taxpayer with respect to that facility. In addition, any amount of approved basic credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax and any amount of approved additional credit not claimed against the taxpayer's income tax or 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 gross receipts tax, compensating tax or withholding tax for which an approved basic credit was taken and any income tax or corporate income tax against which an approved additional 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 the continuance of labor disputes.

History: Laws 2000 (2nd S.S.), ch. 22, § 11.

ANNOTATIONS

Effective dates. — Laws 2000 (2nd S.S.), ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective July 3, 2000, 90 days after the adjournment of the legislature.

7-9F-12. Department report.

In October 2003 and each year thereafter, the department shall report to the legislative finance committee and the revenue stabilization and tax policy committee on the fiscal and economic impacts of the Technology Jobs Tax Credit Act [Technology Jobs and Research and Development Tax Credit Act] using the most recently available data for the two prior fiscal years. The report shall include the number of taxpayers who have received basic credits or additional credits under the Technology Jobs Tax Credit

Act [Technology Jobs and Research and Development Tax Credit Act], the amounts of the basic credits and additional credits, the geographic locations of the qualified facilities and the payroll increases of taxpayers related to additional credits, subject to the confidentiality provisions of Section 7-1-8 NMSA 1978.

History: Laws 2000 (2nd S.S.), ch. 22, § 12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2015 (1st S.S.), ch. 2, § 10 changed the name of the Technology Jobs Tax Credit Act to the Technology Jobs and Research and Development Tax Credit Act, effective January 1, 2016.

Effective dates. — Laws 2000 (2nd S.S.), ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective July 3, 2000, 90 days after the adjournment of the legislature.

Time to apply for tax credit. — Because the provisions in this section, Sections 7-9F-3 and 7-9F-6 NMSA 1978, indicate a legislative concentration on annual reporting and annual payroll expense, these sections indicate no intention to provide a taxpayer an open-ended time to apply for a tax credit. *Team Specialty Prods., Inc v. Taxation & Revenue Dep't.*, 2005-NMCA-020, 137 N.M. 50, 107 P.3d 4.

7-9F-13. Taxpayer reporting requirement.

A taxpayer claiming a credit pursuant to the Technology Jobs and Research and Development Tax Credit Act shall file reports with the department. The reports shall be submitted on or before June 30 of the year following a calendar year in which the taxpayer claims a basic or additional credit and by June 30 of each of the two succeeding years. The reports shall contain information describing the taxpayer's business operations in New Mexico that is sufficient for the department to enforce the recapture provision pursuant to Section 7-9F-11 NMSA 1978. If a taxpayer fails to submit a required report, the amount of any basic or additional credit claimed for that year shall be subject to the recapture provision.

History: Laws 2015 (1st S.S.), ch. 2, § 18.

ANNOTATIONS

Effective dates. — Laws 2015 (1st S.S.), ch. 2 § 26 makes Laws 2015 (1st S.S.), ch. 2, § 18 effective January 1, 2016.

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 18 apply to taxpayers that make a qualified expenditure beginning on or after January 1, 2015.