

evaluate the effectiveness of the deduction. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the cost of the deduction.

D. As used in this section, "feminine hygiene products" means tampons, menstrual pads and sanitary napkins, pantliners, menstrual sponges and menstrual cups.

History: Laws 2022, ch. 47, § 15.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 47, § 17 made Laws 2022, ch. 47, § 15 effective July 1, 2022.

ARTICLE 9A

Investment Credit

7-9A-1. Short title.

Chapter 7, Article 9A NMSA 1978 may be cited as the "Investment Credit Act".

History: Laws 1979, ch. 347, § 1; 1991, ch. 159, § 1; 1991, ch. 162, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "Chapter 7, Article 9A NMSA 1978" for "Sections 1 through 11 of this Act". Laws 1991, ch. 159, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 1. See 12-1-8 NMSA 1978.

Law reviews. — For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

7-9A-2. Purpose of act.

It is the purpose of the Investment Credit Act to provide a favorable tax climate for manufacturing businesses and to promote increased employment in New Mexico.

History: Laws 1979, ch. 347, § 2; 1983, ch. 206, § 1.

7-9A-2.1. Legislative oversight.

The interim revenue stabilization and tax policy committee during the 2005 interim shall conduct a review of the use of the investment credit and the effectiveness of the credit in meeting the state's economic development and tax policy objectives. Following

the study, the committee shall determine whether changes are necessary in the Investment Credit Act and report its findings and recommendations to the second session of the forty-seventh legislature.

History: Laws 2001, ch. 57, § 2 and Laws 2001, ch. 337, § 2.

ANNOTATIONS

Duplicate laws. — Laws 2001, ch. 57, § 2 and Laws 2001, ch. 337, § 2, both effective June 15, 2001, enacted identical sections.

7-9A-3. Definitions.

As used in the Investment Credit Act:

A. "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;

B. "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

C. "manufacturing" means combining or processing components or materials, including recyclable materials, to increase their value for sale in the ordinary course of business, including genetic testing and production, but not including:

(1) construction;

(2) farming;

(3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] and the Electric Utility Industry Restructuring Act of 1999 [repealed]; or

(4) processing natural resources, including hydrocarbons;

D. "manufacturing operation" means a plant, including a genetic testing and production facility, employing personnel to perform production tasks, in conjunction with equipment not previously existing at the site, to produce goods;

E. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials or products; and

F. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment over or for collection and payment over of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid.

History: Laws 1979, ch. 347, § 3; 1983, ch. 206, § 2; 1986, ch. 20, § 69; 1990, ch. 3, § 1; 1991, ch. 159, § 2; 1991, ch. 162, § 2; 2001, ch. 284, § 4; 2002, ch. 37, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2003, ch. 336, § 9 repealed the Electric Utility Industry Restructuring Act of 1999, effective June 20, 2003.

Cross references. — For the Internal Revenue Code, see 26 U.S.C.S. § 1 et seq.

The 2002 amendment, effective May 15, 2002, substituted Subsection C(3) for former provisions, which detailed population and net taxable value requirements for electricity generation facilities in class B counties to be excepted from the exclusion in Subsection C.

The 2001 amendment, effective June 15, 2001, inserted "other than electricity generation facilities in any class B county with" in Paragraph C(3); and added Paragraphs C(3)(a) to (f).

The 1991 amendment, effective June 14, 1991, deleted "'director' or 'division'" following "'department'" in Subsection A; in the introductory paragraph of Subsection C, inserted "including recyclable materials" and substituted "including genetic testing and production, but not including" for "but does not include"; inserted "including a genetic testing and production facility" in Subsection D; added Subsection E; and redesignated former Subsection E as Subsection F. Laws 1991, ch. 159, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 2. See 12-1-8 NMSA 1978.

The 1990 amendment, effective January 1, 1991, in Subsection B, rewrote the first sentence which read: " 'equipment' means an essential machine, or tool, used directly and exclusively in a manufacturing process, and subject to depreciation for purposes of the Internal Revenue Code" and added the language beginning "or any property" at the end of the second sentence.

7-9A-4. Administration of the act.

The department is charged with the administration of the Investment Credit Act.

History: Laws 1979, ch. 347, § 4; 1991, ch. 159, § 3; 1991, ch. 162, § 3.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "department" for "division". Laws 1991, ch. 159, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 3. See 12-1-8 NMSA 1978.

7-9A-5. Investment credit; amount; claimant.

A. The investment credit provided for in the Investment Credit Act may be claimed by a taxpayer carrying on a manufacturing operation in New Mexico in an amount equal to:

(1) the product of the sum of the compensating tax rate and, beginning July 1, 2021, any municipal or county compensating tax rate multiplied by the value of the qualified equipment; or

(2) if the sale is subject to the gross receipts tax, the product of the sum of the gross receipts tax rate and, beginning July 1, 2021, any municipal or county local option gross receipts tax rates multiplied by the seller's gross receipts from the sale of the qualified equipment.

B. If the purchase or the introduction into New Mexico of the qualified equipment is not subject to the gross receipts tax or compensating tax, the rate to determine the amount of the credit shall be equal to a rate of five and one-eighth percent.

History: Laws 1979, ch. 347, § 5; 1983, ch. 206, § 3; 1990, ch. 3, § 2; 1991, ch. 159, § 4; 1991, ch. 162, § 4; 2020, ch. 80, § 7.

ANNOTATIONS

Compiler's notes. — Laws 1991, ch. 159, § 8 and Laws 1991, ch. 162, § 8, effective June 14, 1991, repealed 7-9A-5 NMSA 1978, as enacted by Laws 1990, ch. 3, § 3, which was to become effective on January 1, 1994.

The 2020 amendment, effective July 1, 2020, included a calculation for the investment credit if the sale of qualified equipment for which the credit is allowed is subject to the gross receipts tax and if the qualified equipment is not subject to the gross receipts tax or the compensating tax; in Subsection A, in the introductory clause, after "Investment Credit Act", deleted "is an" and added "may be claimed by a taxpayer carrying on a manufacturing operation in New Mexico in an", after "amount equal to", deleted "the percent of", in Paragraph A(1), after the first occurrence of "the", added "product of the sum of the", after "compensating tax rate", deleted "provided for in the Gross Receipts

and Compensating Tax Act applied to" and added "and, beginning July 1, 2021, any municipal or county compensating tax rate multiplied by", and after "qualified equipment", deleted "and may be claimed by the taxpayer carrying on a manufacturing operation in New Mexico", and added Paragraph A(2); and added Subsection B.

The 1991 amendment, effective June 14, 1991, deleted former Subsections B and C, relating to limitations on claims for investment credit, and made a related stylistic change. Laws 1991, ch. 159, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 4. See 12-1-8 NMSA 1978.

7-9A-6. Qualified equipment.

Equipment not previously used in New Mexico and not previously approved for a credit under the Investment Credit Act that is owned by the taxpayer or owned by the United States or an agency or instrumentality thereof or the state or a political subdivision thereof and leased or subleased to the taxpayer is qualified equipment if it is in New Mexico and is incorporated or to be incorporated within one year into a manufacturing operation.

History: Laws 1979, ch. 347, § 6; 1983, ch. 206, § 4; 1990, ch. 3, § 4.

ANNOTATIONS

Cross references. — For definition of "equipment", see 7-9A-3B NMSA 1978.

The 1990 amendment, effective January 1, 1991, rewrote this section which read: "Equipment not previously used in New Mexico which is owned and used by a taxpayer in a manufacturing process in New Mexico is qualified equipment if it is incorporated into a manufacturing operation and if the taxpayer does not claim the credit pursuant to Section 7-9-79 NMSA 1978."

7-9A-7. Value of qualified equipment.

Prior to July 1, 2030, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

History: Laws 1979, ch. 347, § 7; 1983, ch. 206, § 5; 1990, ch. 3, § 5; 1991, ch. 159, § 5; 1991, ch. 162, § 5; 2001, ch. 57, § 3; 2001, ch. 337, § 3; 2009, ch. 147, § 2; 2020, ch. 80, § 8.

ANNOTATIONS

Cross references. — For the Internal Revenue Code of 1986, see 26 U.S.C.S. § 1 et seq.

Compiler's notes. — Laws 1999, ch. 36, § 1 amended Laws 1990, ch. 3, § 10, as amended by Laws 1992, ch. 17, § 1, Laws 1992, ch. 104, § 1, and Laws 1997, ch. 62, § 3, to change the effective date of Laws 1990, ch. 3, § 6 from January 1, 2000 to January 1, 2004.

Laws 2001, ch. 57, § 7 and Laws 2001, ch. 337, § 7 repealed Laws 1990, ch. 3, § 6, which would have been effective January 1, 2004 as provided by Laws 1999, ch. 36, § 1, effective June 15, 2001.

The 2020 amendment, effective July 1, 2020, extended the date for valuing qualified equipment as the adjusted basis established for the equipment under the Internal Revenue Code, and removed the two million dollar limit on the value of equipment; after "July 1", deleted "2020" and added "2030"; and deleted former Subsection B.

The 2009 amendment, effective June 19, 2009, in Subsections A and B, changed "July 1, 2011" to "July 1, 2020".

The 2001 amendment, effective June 15, 2001, inserted the Subsection A designation; added "Prior to July 1, 2011" to Subsection A; and added Subsection B.

The 1991 amendment, effective June 14, 1991, rewrote this section which read "The value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico."

The 1990 amendment, effective January 1, 1991, deleted "provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars (\$2,000,000)" at the end of the section.

7-9A-7.1. Employment requirements.

A. Prior to July 1, 2030, to be eligible to claim a credit pursuant to the Investment Credit Act, the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) seven hundred fifty thousand dollars (\$750,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars (\$30,000,000); and

(2) one million dollars (\$1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars (\$30,000,000) claimed by the taxpayer in a taxable year in the same claim.

B. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on which the taxpayer applies for the credit, if the employee was only being trained prior to that date or the employee's employment was necessitated by the use of the qualified equipment.

History: 1978 Comp., § 7-9A-7.1, as enacted by Laws 1983, ch. 206, § 6; 1990, ch. 3, § 7; 1991, ch. 159, § 6; 1991, ch. 162, § 6; 2001, ch. 57, § 4; 2001, ch. 337, § 4; 2003, ch. 402, § 1; 2009, ch. 147, § 3; 2020, ch. 80, § 9.

ANNOTATIONS

Compiler's notes. — Laws 1999, ch. 36, § 1 amended Laws 1990, ch. 3, § 10, as amended by Laws 1992, ch. 17, § 1, Laws 1992, ch. 104, § 1, and Laws 1997, ch. 62, § 3, to change the effective date of Laws 1990, ch. 3, § 8 from January 1, 2000 to January 1, 2004.

Laws 2001, ch. 57, § 7 and Laws 2001, ch. 337, § 7 repealed Laws 1990, ch. 3, § 8, which would have been effective January 1, 2004 as provided by Laws 1999, ch. 36, § 1, effective June 15, 2001.

The 2020 amendment, effective July 1, 2020, changed the employment requirement amounts and extended the amounts until July 1, 2030; in Subsection A, in the introductory clause, after "July 1", deleted "2020" and added "2030", in Paragraph A(1), deleted "five hundred thousand dollars (\$500,000)" and added "seven hundred fifty thousand dollars (\$750,000)"; and deleted former Subsection B and redesignated former Subsection C as Subsection B.

Applicability. — Laws 2020, ch. 80, § 16 provided that the provisions of Laws 2020, ch. 80, § 9 apply to qualified equipment purchased or introduced to the state on and after July 1, 2020.

The 2009 amendment, effective June 19, 2009, in Subsections A and B, changed "July 1, 2011" to "July 1, 2020".

The 2003 amendment, effective June 20, 2003, deleted former Paragraph A(1), concerning qualified equipment, and redesignated the subsequent paragraphs accordingly; and deleted "over two million dollars (\$2,000,000)" following "of qualified equipment" near the middle of present Subsection A(1).

The 2001 amendment, effective June 15, 2001, inserted "Prior to July 1, 2011" to Subsection A; added current Subsection B; and redesignated former Subsection B as C.

The 1991 amendment, effective June 14, 1991, rewrote this section to the extent that a detailed analysis is impracticable.

7-9A-8. Claiming the credit for certain taxes.

A. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the qualified equipment for the manufacturing operation is purchased or introduced into New Mexico.

B. A taxpayer having applied for and been granted approval for a credit by the department pursuant to the Investment Credit Act may claim an amount of available credit against the taxpayer's tax liabilities; provided that the credit shall be claimed against the taxpayer's tax liabilities pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], the Municipal Local Option Gross Receipts and Compensating Taxes Act [Chapter 7, Article 19D NMSA 1978] and the County Local Option Gross Receipts and Compensating Taxes Act [Chapter 7, Article 20E NMSA 1978] before being claimed against the taxpayer's tax liabilities pursuant to the Withholding Tax Act [Chapter 7, Article 3 NMSA 1978]; provided further that no taxpayer may claim, except as provided in Subsection C of this section, an amount of available credit for any reporting period that exceeds eighty-five percent of the sum of the taxpayer's tax liabilities for that reporting period. Any amount of available credit not claimed against the taxpayer's tax liabilities for a reporting period may be claimed in subsequent reporting periods.

C. A taxpayer may apply by September 30 of the current calendar year for a refund of the unclaimed balance of the available credit up to a maximum of two hundred fifty thousand dollars (\$250,000) if on January 1 of the current calendar year:

(1) the taxpayer's available credit is less than five hundred thousand dollars (\$500,000); and

(2) the sum of the taxpayer's tax liabilities for the previous calendar year was less than thirty-five percent of the taxpayer's available credit but more than ten thousand dollars (\$10,000).

D. As used in this section, "tax liabilities" means any tax liability a taxpayer incurs pursuant to the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, the Municipal Local Option Gross Receipts and Compensating Taxes Act or the County Local Option Gross Receipts and Compensating Taxes Act.

History: Laws 1979, ch. 347, § 8; 1983, ch. 206, § 7; 1988, ch. 123, § 1; 1990, ch. 3, § 9; 1997, ch. 62, § 1; 2000, ch. 45, § 1; 2020, ch. 80, § 10.

ANNOTATIONS

Cross references. — For withholding tax, see 7-3-1 NMSA 1978 et seq.

For gross receipts tax, see 7-9-1 NMSA 1978 et seq.

The 2020 amendment, effective July 1, 2020, provided that the investment credit will be claimed against a taxpayer's state and local tax liabilities; in Subsection B, after "available credit against the taxpayer's", deleted "compensating tax, gross receipts tax or withholding tax due to the state of New Mexico" and added "tax liabilities", after "provided that", added "the credit shall be claimed against the taxpayer's tax liabilities pursuant to the Gross Receipts and Compensating Tax Act, the Municipal Local Option Gross Receipts and Compensating Taxes Act and the County Local Option Gross Receipts and Compensating Taxes Act before being claimed against the taxpayer's tax liabilities pursuant to the Withholding Tax Act; provided further that", after "sum of the taxpayer's", deleted "gross receipts tax, compensating tax and withholding", after the next occurrence of "tax", deleted "due" and added "liabilities", after "not claimed against the taxpayer's", deleted "gross receipts tax, compensating tax or withholding", and after the next occurrence of "tax", deleted "due" and added "liabilities"; in Subsection C, Paragraph C(2), after "sum of the taxpayer's", deleted "gross receipts tax, compensating tax and withholding", and after the next occurrence of "tax", deleted "due" and added "liabilities"; and added Subsection D.

The 2000 amendment, effective May 17, 2000, inserted "except as provided in Subsection C of this section" in the first sentence of Subsection B and added Subsection C.

The 1997 amendment, effective June 20, 1997, redesignated the second sentence in Subsection A as the first sentence of Subsection B and rewrote the remainder of Subsection B.

The 1990 amendment, effective January 1, 1991, in the first sentence in Subsection A, substituted "following the end of the calendar year" for "after" and added "into New Mexico" at the end and rewrote Subsection B which read "A taxpayer having applied for and been granted approval for an investment credit pursuant to the Investment Credit Act may claim a refund in an amount equal to the investment credit upon evidence satisfactory to the secretary of taxation and revenue that the taxpayer has paid an element of the price denominated a gross receipts tax on the qualified equipment for which a claim for refund is made."

No offset for prior years investment credits. — A taxpayer was not entitled to an offset in the amount it owed for compensating taxes for investment credits it had made in previous years, because it had not claimed the credits within the one-year statute of limitations period. Although the taxpayer argued that it was entitled to an offset under the doctrine of equitable recoupment, a taxpayer is not entitled to seek a credit after the statute-of-limitations period has expired unless the state is imposing a tax on the same taxable event on a ground that is inconsistent with the original payment by the taxpayer. *Vivigen, Inc. v. Minzner*, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

7-9A-9. Credit claim forms.

The department shall provide credit claim forms. A credit claim shall accompany any return to which the taxpayer wishes to apply an approved credit, and the claim shall specify the amount of credit intended to apply to each return.

History: Laws 1979, ch. 347, § 9; 1991, ch. 159, § 7; 1991, ch. 162, § 7.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "department" for "division" in the first sentence and "shall" for "must" in two places in the second sentence. Laws 1991, ch. 159, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 162, § 7. See 12-1-8 NMSA 1978.

7-9A-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 177, § 1, repealed 7-9A-10 NMSA 1978, relating to the inapplicability of the Investment Credit Act for equipment introduced or purchased after January 1, 1982, effective June 19, 1981.

7-9A-11. Transition provisions.

A. The provisions of this section apply on the date that changes to the provisions in the Investment Credit Act become effective limiting the amount of qualified equipment that may be claimed and increasing the employment requirements with respect to qualified equipment.

B. The amount of any available credit unclaimed on the effective date of the changes described in Subsection A of this section may be claimed, until exhausted, in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the changes described in Subsection A of this section.

C. After the effective date described in Subsection A of this section, the department shall approve claims submitted prior to that effective date but not approved by that effective date if the claim meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the amount of any available credit so approved in accordance with the provisions of Section 7-9A-8 NMSA 1978 immediately prior to the effective date of the event described in Subsection A of this section.

D. After the effective date of the changes described in Subsection A of this section, a claimant may submit and the department shall approve claims submitted on or after that effective date if the claim is with respect to qualified equipment located in the state prior to that effective date that otherwise meets the requirements of the Investment Credit Act in effect immediately prior to that effective date. The claimant may claim the