Proposed

FIFTY-SIXTH LEGISLATURE
FIRST SESSION, 2023

March 17, 2023

Mr. Speaker:

Your **CONFERENCE COMMITTEE**, to whom has been referred

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR HOUSE BILL 547, as amended

has had it under consideration and reports same with the following recommendation:

1. Items 1 and 2 of House Floor Amendment number 1 be APPROVED.

2. Item 3 of House Floor Amendment number 1 be DISAPPROVED.

3. All items of House Floor Amendment number 2 be APPROVED.

4. All items of House Floor Amendment number 3 be DISAPPROVED.

5. The following senate tax, business and transportation committee amendments be APPROVED:

Nos. 1, 3, 5, 6, 7 AND 9.

6. The following senate tax, business and transportation committee amendments be DISAPPROVED:

Nos. 2, 4, 8, 10 and 11.

7. All items of Senate Floor Amendment number 1 be DISAPPROVED.

and that the bill be amended further as follows:

8. On page 1, line 24, after the semicolon, strike the remainder of the line, strike line 25 in its entirety, on page 2, strike line 1 in its entirety, on line 17, after the semicolon, strike the remainder of the line, strike line 18 up to the period and insert in lieu thereof:

"PROVIDING FOR THE INDEXING OF ADJUSTED GROSS INCOME FOR A SOCIAL SECURITY INCOME TAX EXEMPTION PURSUANT TO THE INCOME TAX ACT; INCREASING THE AMOUNT OF THE SPECIAL NEEDS ADOPTED CHILD TAX CREDIT; PROVIDING AN INCOME TAX DEDUCTION FOR SCHOOL SUPPLIES PURCHASED BY A PUBLIC SCHOOL TEACHER; CREATING THE GEOTHERMAL ELECTRICITY GENERATION INCOME TAX CREDIT, THE GEOTHERMAL ELECTRICITY GENERATION CORPORATE INCOME TAX CREDIT AND GROSS RECEIPTS TAX AND COMPENSATING TAX DEDUCTIONS FOR GEOTHERMAL ELECTRICITY GENERATION FACILITY CONSTRUCTION COSTS; EXTENDING THE GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDITS PURSUANT TO THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT, INCREASING THE ANNUAL AGGREGATE CAPS OF THE CREDITS, MAKING THE CREDIT PURSUANT TO THE INCOME TAX ACT REFUNDABLE AND AMENDING THE DEFINITION OF "GEOTHERMAL GROUND-COUPLED HEAT PUMP" FOR THE CREDIT PURSUANT TO THE CORPORATE INCOME AND FRANCHISE TAX ACT; INCREASING THE ANNUAL AGGREGATE CAP AND ADDITIONAL AMOUNTS OF TAX CREDITS PURSUANT TO THE FILM PRODUCTION TAX CREDIT ACT; AMENDING CERTAIN REQUIREMENTS TO BE ELIGIBLE FOR THE CREDITS; EXPANDING A GROSS RECEIPTS TAX DEDUCTION FOR HEALTH CARE PRACTITIONERS AND ASSOCIATIONS OF HEALTH CARE PRACTITIONERS TO INCLUDE RECEIPTS FOR THE PAYMENT OF COPAYMENTS AND DEDUCTIBLES; PROVIDING GROSS RECEIPTS AND COMPENSATING TAX DEDUCTIONS FOR DYED DIESEL USED FOR AGRICULTURAL PURPOSES; INCREASING THE RATE OF TAX ON

TOBACCO PRODUCTS ON CIGARS, AMENDING DEFINITIONS IN THE TOBACCO PRODUCTS TAX ACT AND DISTRIBUTING A PORTION OF THE TAX TO THE TOBACCO SETTLEMENT PERMANENT FUND; REQUIRING THE BUSINESS INCOME OF MOST CORPORATIONS TO BE APPORTIONED TO THIS STATE BY THE SALES FACTOR BUT PROVIDING A TEMPORARY EXCEPTION".

9. On page 15, line 13, strike "through" and on line 14, strike "2031" and insert in lieu thereof "and thereafter".

10. On page 33, lines 21 and 22, strike "three hundred thousand dollars ($300,000)" and insert in lieu thereof "one million dollars ($1,000,000)".

11. On page 52, strike lines 20 through 24 in their entirety and insert in lieu thereof the following:

"(1) prior to July 1, 2024, four and three-fourths percent;

(2) beginning July 1, 2024 and prior to July 1, 2025, four and five-eighths percent;

(3) beginning July 1, 2025 and prior to July 1, 2026, four and one-half percent; and

(4) beginning July 1, 2026, four and three-eighths percent, except as provided in Subsection C of this section.".

12. On page 53, line 3, strike "2025" and insert in lieu thereof "2027" and strike "2030" and insert in lieu thereof "2037".

13. On page 53, line 8, strike "four and three-fourths" and insert in lieu thereof "four and seven-eighths".

14. On page 53, line 13, strike "four and three-fourths" and insert in lieu thereof "four and seven-eighths".

15. On page 53, line 19, strike "four and three-fourths" and insert in lieu thereof "four and seven-eighths".

16. On page 54, strike lines 6 and 7 in their entirety and strike line 8 up to the comma and insert in lieu thereof "four and three-fourths percent prior to July 1, 2024; beginning July 1, 2024 and prior to July 1, 2025, four and five-eighths percent; beginning July 1, 2025 and prior to July 1, 2026, four and one-half percent; and beginning July 1, 2026, four and three-eighths percent".

17. On page 56, line 1, strike "four and three-fourths" and insert in lieu thereof "four and seven-eighths".

18. On page 56, lines 3 and 4, strike "four and three-fourths" and insert in lieu thereof "four and seven-eighths".

19. On pages 68 and 69, strike Sections 26 and 27 in their entirety and insert in lieu thereof the following new sections:

"**SECTION 21.** Section 7-1-6.40 NMSA 1978 (being Laws 1997, Chapter 182, Section 1, as amended) is amended to read:

"7-1-6.40. DISTRIBUTION OF LIQUOR EXCISE TAX--LOCAL DWI GRANT FUND--CERTAIN MUNICIPALITIES--DRUG COURT FUND--ALCOHOL HARMS ALLEVIATION FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to [~~forty-five~~] forty percent of the net receipts attributable to the liquor excise tax shall be made to the local DWI grant fund.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 [~~of twenty thousand seven hundred fifty dollars ($20,750) monthly from~~] in an amount equal to one percent of the net receipts attributable to the liquor excise tax shall be made to a municipality that is located in a class A county and that has a population according to the most recent federal decennial census of more than thirty thousand but less than sixty thousand and shall be used by the municipality only for the provision of alcohol treatment and rehabilitation services for street inebriates.

C. [~~Beginning July 1, 2019~~] A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to [~~five~~] six percent of the net receipts attributable to the liquor excise tax shall be made to the drug court fund.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to fifty-three percent of the net receipts attributable to the liquor excise tax shall be made to the alcohol harms alleviation fund."

SECTION 22. Section 7-17-5 NMSA 1978 (being Laws 1993, Chapter 65, Section 8, as amended) is amended to read:

"7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--

A. There is imposed on a wholesaler who sells alcoholic beverages on which the tax imposed by this section has not been paid an excise tax, to be referred to as the "liquor excise tax", at the [~~following~~] rates provided in Subsections B through F of this section on alcoholic beverages sold.

[~~(1) on spirituous liquors, except as provided in Paragraph (9) of this subsection, one dollar sixty cents ($1.60)~~

~~per liter;~~

~~(2) on beer, except as provided in Paragraph (5) of this subsection, forty-one cents ($.41) per gallon;~~

~~(3) on wine, except as provided in Paragraphs (4) and (6) of this subsection, forty-five cents ($.45) per liter;~~

~~(4) on fortified wine, one dollar fifty cents ($1.50) per liter;~~

~~(5) on beer manufactured or produced by a microbrewer and sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer, eight cents ($.08) per gallon on the first thirty thousand barrels sold, twenty-eight cents ($.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels and forty-one cents ($.41) per gallon for sixty thousand or more barrels sold;~~

~~(6) on wine manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winegrower:~~

~~(a) ten cents ($.10) per liter on the first eighty thousand liters sold;~~

~~(b) twenty cents ($.20) per liter on each liter sold over eighty thousand liters but not over nine hundred fifty thousand liters; and~~

~~(c) thirty cents ($.30) per liter on each liter sold over nine hundred fifty thousand liters but not over~~

~~one million five hundred thousand liters;~~

~~(7) on cider, except as provided in Paragraph (8) of this subsection, forty-one cents ($.41) per gallon;~~

~~(8) on cider manufactured or produced by a small winegrower and sold in this state, provided that proof is furnished to the department that the cider was manufactured or produced by a small winegrower, eight cents ($.08) per gallon on the first thirty thousand barrels sold, twenty-eight cents ($.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels and forty-one cents ($.41) per gallon for sixty thousand or more barrels sold; and~~

~~(9) on spirituous liquors manufactured or produced by a craft distiller licensed pursuant to Section 60-6A-6.1 NMSA 1978, provided that proof is provided to the department that the spirituous liquors were manufactured or produced by a craft distiller, for products up to ten percent alcohol by volume, eight cents ($.08) per liter for the first two hundred fifty thousand liters sold and twenty-eight cents ($.28) per liter for the next two hundred fifty thousand liters sold and for products over ten percent alcohol by volume, thirty-two cents ($.32) per liter on the first one hundred seventy-five thousand liters sold and sixty-five cents ($.65) per liter on the next two hundred thousand liters sold.~~]

B. The liquor excise tax imposed on spirituous liquors is:

(1) if manufactured or produced by a craft distiller licensed pursuant to Section 60-6A-6.1 NMSA 1978; provided that proof is provided to the department that the spirituous liquors were manufactured or produced by a craft

distiller:

(a) for products up to ten percent alcohol by volume: 1) eight cents ($.08) per liter for the first two hundred fifty thousand liters sold; and 2) twenty-eight cents ($.28) per liter over two hundred fifty thousand liters sold; and

(b) for products over ten percent alcohol by volume: 1) thirty-two cents ($.32) per liter on the first one hundred seventy-five thousand liters sold; and 2) sixty-five cents ($.65) per liter over two hundred thousand liters sold; and

(2) for all other manufacturers and producers, one dollar ninety-two cents ($1.92) per liter sold.

C. The liquor excise tax imposed on beer is:

(1) if manufactured or produced by a microbrewer and sold in this state; provided that proof is furnished to the department that the beer was manufactured or produced by a microbrewer:

(a) eight cents ($.08) per gallon on the first thirty thousand barrels sold;

(b) twenty-eight cents ($.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels sold; and

(c) forty-one cents ($.41) per gallon for sixty thousand or more barrels sold; and

(2) for all other manufacturers or producers, forty-nine cents ($.49) per gallon sold.

D. The liquor excise tax imposed on cider is:

(1) if manufactured or produced by a small winegrower and sold in this state; provided that proof is furnished to the department that the cider was manufactured or produced by a small winegrower:

(a) eight cents ($.08) per gallon on the first thirty thousand barrels sold;

(b) twenty-eight cents ($.28) per gallon for all barrels sold over thirty thousand barrels but less than sixty thousand barrels sold; and

(c) forty-one cents ($.41) per gallon for sixty thousand or more barrels sold; and

(2) for all other manufacturers and producers, forty-nine cents ($.49) per gallon sold.

E. The liquor excise tax imposed on wine is:

(1) if manufactured or produced by a small winegrower and sold in this state; provided that proof is furnished to the department that the wine was manufactured or produced by a small winegrower:

(a) ten cents ($.10) per liter on the first eighty thousand liters sold;

(b) twenty cents ($.20) per liter on each liter sold over eighty thousand liters but not over nine hundred fifty thousand liters sold; and

(c) thirty cents ($.30) per liter on each liter sold over nine hundred fifty thousand liters but not over one million five hundred thousand liters sold; and

(2) for all other manufacturers and producers, fifty-four cents ($.54) per liter sold.

F. The liquor excise tax imposed on fortified wine is one dollar eighty cents ($1.80) per liter sold.

[~~B.~~] G. The volume of wine transferred from one winegrower to another winegrower for processing, bottling or storage and subsequent return to the transferor shall be excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable volume of wine of the transferee. Wine transferred from an initial winegrower to a second winegrower remains a tax liability of the transferor, provided that if the wine is transferred to the transferee for the transferee's use or for resale, the transferee then assumes the liability for the tax due pursuant to this section.

[~~C.~~] H. A transfer of wine from a winegrower to a wholesaler for distribution of the wine transfers the liability for payment of the liquor excise tax to the wholesaler upon the sale of the wine by the wholesaler."

SECTION 23. Section 7-2-5.14 NMSA 1978 (being Laws 2022, Chapter 47, Section 7) is amended to read:

"7-2-5.14. EXEMPTION--SOCIAL SECURITY INCOME.--

A. An individual may claim an exemption in an amount equal to the amount included in adjusted gross income pursuant to Section 86 of the Internal Revenue Code, as that section may be

amended or renumbered, of income includable except for this exemption in net income; provided that the individual's adjusted gross income shall not exceed the following amounts, except as provided in Subsection B of this section:

[~~A.~~] (1) seventy-five thousand dollars ($75,000) for married individuals filing separate returns;

[~~B.~~] (2) one hundred fifty thousand dollars ($150,000) for heads of household, surviving spouses and married individuals filing joint returns; and

[~~C.~~] (3) one hundred thousand dollars ($100,000) for single individuals.

B. For the 2024 taxable year and each subsequent taxable year, the amounts of adjusted gross income provided in Subsection A of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of adjusted gross income by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending in taxable year 2022. The result of the multiplication shall be rounded down to the nearest one hundred dollars ($100), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.

C. For purposes of this section, "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30."

SECTION 24. Section 7-2-18.16 NMSA 1978 (being Laws 2007,

Chapter 45, Section 10) is amended to read:

"7-2-18.16. CREDIT--SPECIAL NEEDS ADOPTED CHILD TAX CREDIT--CREATED--QUALIFICATIONS--DURATION OF CREDIT.--

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who adopts a special needs child on or after January 1, 2007 or has adopted a special needs child prior to January 1, 2007, may claim a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The credit authorized pursuant to this section may be referred to as the "special needs adopted child tax credit".

B. A taxpayer may claim and the department may allow a special needs adopted child tax credit in the amount of [~~one thousand dollars ($1,000)~~] one thousand five hundred dollars ($1,500) to be claimed against the taxpayer's tax liability for the taxable year imposed pursuant to the Income Tax Act.

C. A taxpayer may claim a special needs adopted child tax credit for each year that the child may be claimed as a dependent for federal taxation purposes by the taxpayer.

D. If the amount of the special needs adopted child tax credit due to the taxpayer exceeds the taxpayer's individual income tax liability, the excess shall be refunded.

E. [~~A husband and wife~~] Married individuals 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 special needs adopted child tax credit provided in this section that would have been allowed on a joint return.

F. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

G. The department shall compile an annual report on the credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. 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 tax credit.

[~~F.~~] H. As used in this section, "special needs adopted child" means an individual who may be over eighteen years of age and who is certified by the children, youth and families department or a licensed child placement agency as meeting the definition of a "difficult to place child" pursuant to the Adoption Act; provided, however, if the classification as a "difficult to place child" is based on a physical or mental impairment or an emotional disturbance the physical or mental impairment or emotional disturbance shall be at least moderately disabling."

SECTION 25. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--SCHOOL SUPPLIES PURCHASED BY A PUBLIC SCHOOL TEACHER.--

A. A taxpayer who is not a dependent of another individual and is a public school teacher may claim a deduction from net income in an amount equal to the costs of school supplies purchased by the public school teacher in a taxable

year, not to exceed:

(1) for a taxable year beginning on January 1, 2023 and prior to January 1, 2024, five hundred dollars ($500); and

(2) for a taxable year beginning on January 1, 2024 and prior to January 1, 2028, one thousand dollars ($1,000).

B. To claim a deduction pursuant to this section, a taxpayer shall submit to the department information required by the secretary establishing that the taxpayer is eligible to claim a deduction pursuant to this section.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction to the department in a manner required by the department.

D. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers approved by the department to receive the deduction, the aggregate amount of deductions approved and any other information necessary to evaluate 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.

E. As used in this section:

(1) "public school teacher" means a person who is licensed as a teacher pursuant to the Public School Code and who teaches at a public school; and

(2) "school supplies" means items purchased by a

public school teacher and used by the students of the teacher in the teacher's classroom for educational purposes, including notebooks, paper, writing instruments, crayons, art supplies, rulers, maps and globes, but not including computers or other similar digital devices, watches, radios, digital music players, headphones, sporting equipment, portable or desktop telephones, cellular telephones or other electronic communication devices, copiers, office equipment, furniture or fixtures."

SECTION 26. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] GEOTHERMAL ELECTRICITY GENERATION INCOME TAX CREDIT.--

A. For taxable years prior to January 1, 2028, a taxpayer who is not a dependent of another individual and who holds an interest in a geothermal electricity generation facility may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The tax credit provided by this section may be referred to as the "geothermal electricity generation income tax credit".

B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents ($.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility for which the taxpayer holds an interest.

C. A taxpayer shall apply for certification of eligibility for the credit provided by this section from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. The aggregate amount of credits that may be certified pursuant to this section and

Section 27 of this 2023 act in any calendar year is five million dollars ($5,000,000). Completed applications shall be considered in the order received. Applications for certification received after this limitation has been met in a calendar year shall not be approved. For taxpayers eligible to receive the credit, the energy, minerals and natural resources department shall issue a certificate of eligibility stating the amount of credit to which the taxpayer is entitled for the taxable year. The certificate of eligibility shall be numbered for identification and declare the date of issuance and the amount of the tax credit allowed.

D. To receive the credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification made pursuant to Subsection C of this section.

E. That portion of a credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be carried forward for up to seven consecutive years; provided the total credits claimed pursuant to this section shall not exceed the annual aggregate amount pursuant to Subsection C of this section.

F. 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 credit that would have been claimed on a joint return.

G. A taxpayer may be allocated the right to claim a credit provided by this section in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all of the requirements to be eligible for the credit.

The total credit claimed by all members of the partnership or limited liability company shall not exceed the maximum amount of the credit allowed pursuant to this section.

H. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

I. The department shall compile an annual report on the credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. 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 tax credit.

J. As used in this section:

(1) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for new facilities, begins construction on or after July 1, 2023; or

(b) for existing facilities, on or after July 1, 2023, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(2) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth

present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system; and

(3) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility."

SECTION 27. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] GEOTHERMAL ELECTRICITY GENERATION CORPORATE INCOME TAX CREDIT.--

A. For taxable years prior to January 1, 2028, a taxpayer that holds an interest in a geothermal electricity generation facility may apply for, and the department may allow, a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act. The tax credit

provided by this section may be referred to as the "geothermal electricity generation corporate income tax credit".

B. The amount of a tax credit allowed pursuant to this section shall be an amount equal to one and one-half cents ($0.015) per kilowatt-hour of electricity generated in New Mexico in a taxable year by the geothermal electricity generation facility for which the taxpayer holds an interest.

C. A taxpayer shall apply for certification of eligibility for the credit provided by this section from the energy, minerals and natural resources department on forms and in the manner prescribed by that department. The aggregate amount of credits that may be certified pursuant to this section and Section 26 of this 2023 act in any calendar year is five million dollars ($5,000,000). Completed applications shall be considered in the order received. Applications for certification received after this limitation has been met in a calendar year shall not be approved. For taxpayers eligible to receive the credit, the energy, minerals and natural resources department shall issue a certificate of eligibility stating the amount of credit to which the taxpayer is entitled for the taxable year. The certificate of eligibility shall be numbered for identification and declare the date of issuance and the amount of the tax credit allowed.

D. To receive the credit provided by this section, a taxpayer shall apply to the department on forms and in the manner prescribed by the department. The application shall include a certification made pursuant to Subsection C of this section.

E. That portion of a credit that exceeds a taxpayer's tax liability in the taxable year in which the credit is claimed may be carried forward for up to seven consecutive years; provided the total credits claimed pursuant to this section shall

not exceed the annual aggregate amount pursuant to Subsection C of this section.

F. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by that department.

G. The department shall compile an annual report on the credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. 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 tax credit.

H. As used in this section:

(1) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for new facilities, begins construction on or after July 1, 2023; or

(b) for existing facilities, on or after July 1, 2023, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(2) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth present in, resulting from, created by or that may be extracted

from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system; and

(3) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility."

SECTION 28. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTIONS--GROSS RECEIPTS TAX--COMPENSATING TAX--GEOTHERMAL ELECTRICITY GENERATION-RELATED SALES AND USE.--

A. Prior to July 1, 2028, receipts from:

(1) selling tangible personal property installed as part of, or services rendered in connection with, constructing and equipping a geothermal electricity generation facility may be deducted from gross receipts;

(2) selling tangible personal property installed as part of a system used for the distribution of electricity generated from a geothermal electricity generation facility may be deducted from gross receipts; and

(3) selling or leasing tangible personal property or selling services that are construction plant costs to a person who holds an interest in a geothermal electricity generation facility may be deducted from gross receipts if the holder of the interest delivers an appropriate nontaxable transaction certificate to the seller or lessor or provides alternative evidence pursuant to Section 7-9-43 NMSA 1978.

B. Prior to July 1, 2028, the value of:

(1) tangible personal property installed as part of, or services rendered in connection with, constructing and equipping a geothermal electricity generation facility may be deducted in computing compensating tax due;

(2) tangible personal property installed as part of a system used for the distribution of electricity generated from a geothermal electricity generation facility may be deducted in computing compensating tax due; and

(3) construction plant costs purchased by a person who holds an interest in a geothermal electricity generation facility may be deducted in computing the compensating tax due.

C. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

D. The department and the energy, minerals and natural

resources department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers that claimed the deductions, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. The departments shall present the annual report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deductions.

E. As used in this section:

(1) "construction plant costs" means actual expenditures for the development and construction of a geothermal electricity generation facility, including the drilling of wells to at least twelve thousand feet; permitting; site characterization and assessment; engineering; design; site and equipment acquisition; raw materials; and fuel supply development used directly and exclusively in the facility;

(2) "geothermal electricity generation facility" means a facility located in New Mexico that generates electricity from geothermal resources and:

(a) for a new facility, begins construction on or after July 1, 2023; or

(b) for an existing facility, on or after July 1, 2023, increases the amount of electricity generated from geothermal resources the facility generated prior to that date by at least one hundred percent;

(3) "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit or the energy, in whatever form, below the surface of the earth

present in, resulting from, created by or that may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit as may be used for the heating and cooling of buildings through an on-site geoexchange heat pump or similar on-site system; and

(4) "interest in a geothermal electricity generation facility" means title to a geothermal electricity generation facility; a leasehold interest in such facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in such facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in such facility."

SECTION 29. Section 7-2-18.24 NMSA 1978 (being Laws 2009, Chapter 271, Section 1) is amended to read:

"7-2-18.24. GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDIT.--

A. A taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, [~~2010~~] 2023 and who purchases and installs after January 1, [~~2010~~] 2023 but before December 31, [~~2020~~] 2028 a geothermal ground-coupled heat pump in a residence, business or agricultural

enterprise in New Mexico owned by that taxpayer may apply for, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

B. [~~A~~] That portion of [~~the~~] a geothermal ground-coupled heat pump tax credit that [~~remains unused in a~~] exceeds a taxpayer's tax liability in the taxable year [~~may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended~~] in which the credit is claimed shall be refunded to the taxpayer.

C. [~~Prior to July 1, 2010~~] The energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The department may allow a maximum annual aggregate of [~~two million dollars ($2,000,000)~~] four million dollars ($4,000,000) in geothermal ground-coupled heat pump tax credits.

Applications for the credit shall be considered in the order received by the department.

E. A taxpayer who otherwise qualifies and claims a geothermal ground-coupled heat pump tax credit with respect to property owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the property shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

F. [~~A husband and wife~~] Married individuals 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 credit that would have been allowed on a joint return.

G. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

H. The department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. 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 tax credit.

[~~G.~~] I. As used in this section, "geothermal ground-coupled heat pump" means a system that uses energy from the ground, water or, ultimately, the sun for distribution of

heating, cooling or domestic hot water; that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of sixteen or greater; and that is installed by an accredited installer certified by the international ground source heat pump association."

SECTION 30. Section 7-2A-24 NMSA 1978 (being Laws 2009, Chapter 271, Section 2) is amended to read:

"7-2A-24. GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDIT.--

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, [~~2010~~] 2023 and that purchases and installs after January 1, [~~2010~~] 2023 but before December 31, [~~2020~~] 2028 a geothermal ground-coupled heat pump in a property owned by the taxpayer may claim against the taxpayer's corporate income tax liability, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars ($9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

B. A portion of the geothermal ground-coupled heat pump tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

C. [~~Prior to July 1, 2010~~] The energy, minerals and

natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The department may allow a maximum annual aggregate of [~~two million dollars ($2,000,000)~~] four million dollars ($4,000,000) in geothermal ground-coupled heat pump tax credits. Applications for the credit shall be considered in the order received by the department.

E. A taxpayer allowed a tax credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

F. The department shall compile an annual report on the tax credit provided by this section that shall include the number of taxpayers approved by the department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the credit. 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 tax credit.

[~~E.~~] G. As used in this section, "geothermal ground-coupled heat pump" means a [~~reversible refrigerator device~~] refrigeration system that provides space heating, space cooling, domestic hot water, processed hot water, processed chilled water

or any other application where hot air, cool air, hot water or chilled water is required and that utilizes the ground [~~water~~] or water circulating through pipes buried in the ground as a condenser in the cooling mode [~~and~~] or an evaporator in the heating mode."

SECTION 31. Section 7-2F-2 NMSA 1978 (being Laws 2003, Chapter 127, Section 2, as amended) is amended to read:

"7-2F-2. DEFINITIONS.--As used in the Film Production Tax Credit Act:

A. "affiliated person" 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. "background artist" means a person who is not a performing artist but is a person of atmospheric business whose work includes atmospheric noise, normal actions, gestures and facial expressions of that person's assignment; or a person of atmospheric business whose work includes special abilities that are not stunts; or a substitute for another actor, whether photographed as a double or acting as a stand-in;

C. "below-the-line crew" means a person in a position that is off-camera and who provides technical services during the physical production of a film. "Below-the-line crew" does not include a person who is a writer, director, producer or background artist or performing artist for the film;

D. "commercial audiovisual product" means a film or a video game intended for commercial exploitation;

E. "direct production expenditure" means a transaction that is subject to taxation in New Mexico and is certified pursuant to Subsection A of Section 7-2F-12 NMSA 1978:

(1) including an expenditure for:

(a) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;

(b) payment for standard industry craft inventory when provided by a below-the-line crew that is a New Mexico resident in addition to its below-the-line crew services;

(c) payment for wages and per diem for a performing artist who is not a New Mexico resident and who is directly employed by the film production company; provided that the film production company deducts and remits, or causes to be deducted and remitted, income tax from the first day of services rendered in New Mexico at the maximum rate pursuant to the Withholding Tax Act;

(d) payment to a personal services business for the services of a performing artist if: 1) the personal services business pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and 2) the film production company deducts and remits, or causes to be deducted and remitted, income tax at the maximum rate in New Mexico pursuant to Subsection H of Section 7-3A-3 NMSA 1978 on the portion of those payments qualifying for the tax credit paid to a personal services business where the performing artist is a full or part owner of that business or subcontracts with a personal services business where the performing artist is a full or part owner of that business; and

(e) any of the following provided by a vendor: 1) the story and scenario to be used for a film; 2) set construction and operations, wardrobe, accessories and related services; 3) photography, sound synchronization, lighting and related services; 4) editing and related services; 5) rental of facilities and equipment; 6) the first one hundred fifty dollars ($150) of the daily expense of leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure; 7) food; 8) the first three hundred dollars ($300) of lodging per individual, per day; 9) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production; 10) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; 11) subcontracted goods and services from businesses; provided that the ordinary course of business of the vendor procuring the goods and services from the subcontractor directly relates to standard film industry goods and services; and 12) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(2) does not include an expenditure for:

(a) a gift with a value greater than one hundred dollars ($100);

(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars ($2,500);

(c) entertainment, amusement or recreation;

(d) subcontracted goods or services provided by a vendor when the subcontractors providing those goods or services to the vendor are not subject to state taxation, such as equipment and locations provided by the military, government and organizations that demonstrate to the taxation and revenue department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered;

(e) subcontracted services provided by a vendor when the subcontracted services are provided by a person who is below-the-line crew and is not a New Mexico resident;

(f) hidden or other indirect service fees, costs, commissions or other remuneration received by third parties and that are not directly paid by the film production company or expressly enumerated on a film production company's filing to claim a new film production tax credit;

(g) wages for a person who is not a New Mexico resident and who falsely claims to be a New Mexico resident. The wages of such person shall not be considered an eligible expense for two years from the date in which the person is determined by the taxation and revenue department as having made a false claim, regardless of whether the person becomes a New Mexico resident within that time frame; or

(h) which the film production company receives funding pursuant to Section 21-19-7.1 NMSA 1978;

F. "division" means the New Mexico film division of the

economic development department;

G. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;

H. "film" means a single medium or multimedia program, including television programs but excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

(1) is fixed on film, a digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used;

I. "film production company" means a person that produces one or more films or commercial audiovisual products or any part of a film or commercial audiovisual product;

J. "fiscal year" means the state fiscal year beginning on July 1;

K. "New Mexico film partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Mexico and has purchased or executed a ten-year contract to lease a qualified production facility;

[~~K.~~] L. "New Mexico resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year and who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Film Production Tax Credit Act for periods after that change of abode;

[~~L.~~] M. "performing artist" means an actor, on-camera stuntperson, puppeteer, pilot who is a stuntperson or actor, specialty foreground performer or narrator; and who speaks a line of dialogue, is identified with the product or reacts to narration as assigned. "Performing artist" does not include a background artist;

[~~M.~~] N. "personal services business" means a business organization, with or without physical presence, that receives payments pursuant to the Film Production Tax Credit Act for the services of a performing artist;

[~~N.~~] O. "physical presence" means a physical address in New Mexico from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company and the vendor or an employee of the vendor is a resident;

[~~O.~~] P. "postproduction expenditure" means an expenditure, certified pursuant to Subsection A of Section 7-2F-12 NMSA 1978, for editing, Foley recording, automatic

dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments;

[~~P.~~] Q. "principal photography" means the production of a film during which the main visual elements are created;

[~~Q.~~] R. "qualified production facility" means a building, or complex of buildings, building improvements and associated back-lot facilities in which films are or are intended to be regularly produced and that contain at least one:

(1) sound stage with contiguous floor space of at least seven thousand square feet and a ceiling height of no less than eighteen feet; or

(2) standing set that includes at least one interior, and at least five exteriors, built or re-purposed for film production use on a continual basis and is located on at least fifty acres of contiguous space designated for film production use; and

[~~R.~~] S. "vendor" means a person who sells or leases goods or services that are related to standard industry craft inventory, who has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act or income tax pursuant to the Income Tax Act or corporate income tax pursuant to the Corporate Income and Franchise Tax Act but excludes a personal services business and services provided by nonresidents hired or subcontracted if the tasks and responsibilities are associated with the standard

industry job position of director, writer or producer."

SECTION 32. Section 7-2F-12 NMSA 1978 (being Laws 2019, Chapter 87, Section 6) is amended to read:

"7-2F-12. CREDIT CLAIMS--CERTIFICATION OF DIRECT PRODUCTION AND POSTPRODUCTION EXPENDITURES--AGGREGATE AMOUNT OF CLAIMS ALLOWED--EXCEPTION.--

A. The division shall certify a film production company's budget for direct production expenditures and postproduction expenditures during a preproduction meeting with the division; provided that the division is prohibited from certifying a film production company's budget if the total expected claims in excess of the aggregate amount of claims that may be authorized for payment pursuant to Subsection B of this section would exceed one hundred million dollars ($100,000,000) in any fiscal year; and provided further that the limitation in this subsection shall not apply to certification of a budget for a New Mexico film partner.

B. Except as provided in [~~Section 10 of this 2019 act~~] Laws 2019, Chapter 87, Section 10, the aggregate amount of claims for a credit provided by the Film Production Tax Credit Act that may be authorized [~~for payment~~] in any fiscal year [~~is one hundred ten million dollars ($110,000,000)~~] with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products shall be in the following amounts; provided that direct production expenditures and postproduction expenditures made by a New Mexico film partner shall not be subject to the aggregate amount of claims provided by this subsection:

(1) prior to fiscal year 2024, one hundred ten

million dollars ($110,000,000);

(2) from fiscal year 2024 through fiscal year 2028, the amount provided in Paragraph (1) of this subsection shall be increased by ten million dollars ($10,000,000) in each of those fiscal years; and

(3) for fiscal year 2029 and subsequent fiscal years, one hundred sixty million dollars ($160,000,000).

C. If a film production company submits a claim for a credit pursuant to the Film Production Tax Credit Act and the aggregate amount of claims pursuant to Subsection B of this section has been met for the fiscal year, the claim shall be placed at the front of a queue for payment in a subsequent fiscal year. Claims shall be placed in order of the date on which the completed return in which the credit is claimed is filed. Claims authorized for payment shall be paid pursuant to the Tax Administration Act.

[~~D. If, in fiscal years 2020 through 2022, the aggregate amount of claims authorized for payment is less than one hundred ten million dollars ($110,000,000), excluding claims by a New Mexico film partner, then the difference in that fiscal year or twenty million dollars ($20,000,000), whichever is less, shall be added to the aggregate amount of claims that may be authorized for payment pursuant to Subsection B of this section in the immediately following fiscal year.~~

~~E.~~] D. To provide guidance to film production companies regarding the amount of credit capacity remaining in the fiscal year, the taxation and revenue department shall post monthly on that department's website the aggregate amount of credits claimed and paid for the fiscal year. In addition, the division shall

post monthly on the division's website the aggregate amount of claims certified pursuant to Subsection A of this section for the fiscal year or any subsequent fiscal year.

[~~F. As used in this section, "New Mexico film partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Mexico and has purchased or executed a ten-year contract to lease a qualified production facility.~~]"

SECTION 33. Section 7-2F-13 NMSA 1978 (being Laws 2019, Chapter 87, Section 7) is amended to read:

"7-2F-13. NEW FILM PRODUCTION TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "new film production tax credit".

B. A film production company that meets the requirements of the Film Production Tax Credit Act may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to twenty-five percent of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico;

(c) exclude direct production expenditures for

which another taxpayer claims the new film production tax credit; and

(d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico;

(d) exclude postproduction expenditures for which another taxpayer claims the new film production tax credit; and

(e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

C. With respect to expenditures attributable to a production for which the film production company receives a tax

credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the amount of credit allowed pursuant to the Film Production Tax Credit Act is twenty percent.

D. A claim for new film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act or an information return filed by an entity assigned payment of an authorized credit pursuant to Section 7-2F-5 NMSA 1978. The date a complete credit claim is received by the taxation and revenue department shall determine the order that a credit claim is authorized for payment by the department. The film production company may apply all or a portion of the new film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

E. A credit claim shall only be considered received by the taxation and revenue department if the credit claim is made on a complete return filed after the close of the taxable year. All direct production expenditures and postproduction expenditures incurred during the taxable year by a film production company shall be submitted as part of the same income tax return and paid pursuant to this section. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

F. For purposes of determining the payment of credit claims pursuant to this section, the secretary of taxation and revenue may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.

G. The new film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978 or alternative evidence pursuant to Section 7-9-43 NMSA 1978.

H. A production for which the new film production tax credit is claimed pursuant to Paragraph (1) of Subsection B of this section shall contain an acknowledgment to the state of New Mexico. Unless otherwise agreed upon in writing by the film production company and the division, the acknowledgment shall be in the end screen credits that the production was filmed in New Mexico and a three-second static or animated state logo provided by the division shall be included and embedded in the following:

(1) end screen credits before the below-the-line crew crawl for the life of the project of long-form narrative film productions; and

(2) body of the program for the life of television episodes, the placement of which shall be:

(a) in the opening sequence;

(b) as a bumper into or out of a commercial break; or

(c) in a prominent position in each single project's end credits with no less than a half screen exposure, but not covering content.

I. To be eligible for the new film production tax credit, a film production company shall submit to the division

information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act, including production data deemed necessary by the division and the economic development department to determine the effectiveness of the credit, and a projection of the new film production tax credit claim the film production company plans to submit. In addition, the film production company shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to post a notice at completion of principal photography on the website of the division that:

(a) contains production company information, including the name of the production and contact information that includes a working phone number and email address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(b) remains posted on the website until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived should a creditor fail to file;

(4) to delay filing of a claim for the new film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the new film production tax credit and supporting documentation to the division within one year of making the final expenditures in New Mexico that were incurred for the registered project and that are included in the credit claim.

J. The division, in consultation with the taxation and revenue department, shall determine the eligibility of the film production company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its website all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns.

K. To receive a new film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the credit; provided that for the credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico. If the amount of the requested tax credit exceeds five million dollars ($5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, the taxation and revenue department shall approve the credit and issue a document granting

the credit.

L. Except as provided in Subsection M of this section, that amount of a new film production tax credit for total payments as applied to direct production expenditures for the services of performing artists shall not exceed five million dollars ($5,000,000) for services rendered by nonresident performing artists [~~and resident principal performing artists~~] in a production. This limitation shall not apply to the services of background artists or resident performing artists cast in industry standard feature performing roles.

M. In addition to the amount of payments allowed pursuant to Subsection L of this section, that amount of a new film production tax credit for total payments as applied to direct production expenditures made by a New Mexico film partner for the services of nonresident performing artists, directors, producers, screenwriters and editors shall not exceed ten million dollars ($10,000,000) for services rendered for each production; provided that the total payments allowed pursuant to this subsection shall not exceed an annual aggregate maximum of forty million dollars ($40,000,000) for all productions in a fiscal year. If the aggregate amount of payments made in a fiscal year is less than the annual aggregate maximum, then the difference in that fiscal year shall be added to the annual aggregate maximum allowed in the following fiscal year."

SECTION 34. Section 7-2F-14 NMSA 1978 (being Laws 2019, Chapter 87, Section 8) is amended to read:

"7-2F-14. ADDITIONAL AMOUNTS TO BE APPLIED IN CALCULATING CREDIT AMOUNTS--EXPENDITURES MADE IN CERTAIN AREAS OF THE STATE--TELEVISION PILOTS AND SERIES.--

A. In addition to the percentage of direct production expenditures and postproduction expenditures calculated pursuant to Section [~~7 of this 2019 act~~] 7-2F-13 NMSA 1978, an additional [~~five percent~~] percentage shall be applied for payments for direct production expenditures and postproduction expenditures, as follows:

(1) ten percent for work, services or items provided on location for a production of a film or commercial audiovisual product that is located in New Mexico [~~but~~] at least sixty miles [~~outside of the exterior boundaries~~] from the city hall of the county seat of certain counties; and

(2) five percent for either of the following:

(a) on a standalone pilot intended for series television in New Mexico or on series television productions intended for commercial distribution with an order for at least six episodes in a single season; provided that the New Mexico budget for each of those six episodes is fifty thousand dollars ($50,000) or more; or

(b) on a production in a qualified production facility.

B. As used in this section, "certain counties" [~~includes~~] means class A counties with a net taxable value of property for property taxation purposes of greater than [~~six billion dollars ($6,000,000,000)~~] seven billion five hundred million dollars ($7,500,000,000)."

SECTION 35. Section 7-2F-15 NMSA 1978 (being Laws 2019, Chapter 87, Section 9) is amended to read:

"7-2F-15. NONRESIDENT BELOW-THE-LINE CREW CREDIT.--[~~A.~~] A film production company may apply for, and the taxation and revenue department may allow, a tax credit, which may be referred to as the "nonresident below-the-line crew credit", in an amount equal to fifteen percent of the payment of wages for below-the-line crew who are not New Mexico residents, that are directly attributable to the production in New Mexico of a film or commercial audiovisual product for which the film production company is claiming a new film production tax credit; provided that:

[~~(1)~~] A. the service for which payment is made is rendered in New Mexico;

[~~(2)~~] B. the payment of wages excludes payments:

(1) for below-the-line crew who are producers, directors, screenwriters, cast and production assistants; and

(2) made to a personal services business;

C. prior to July 1, 2028, for a film production company that is a New Mexico film partner, the total amount of wages applied toward the additional credit allowed pursuant to this section may be up to one hundred percent of the amount of wages of resident below-the-line wages claimed; provided that the film production company provides a seventy-two-hour notice of the opportunity to be hired to resident below-the-line crew, which may be through a collective bargaining unit that represents resident below-the-line crew; and

D. for a film production company that is not a New Mexico film partner and, beginning July 1, 2028, for a film production company that is a New Mexico film partner:

(1) the total eligible wages for below-the-line crew who are not New Mexico residents are [~~(a)~~] not more than fifteen percent of the production's total New Mexico budget for below-the-line crew wages [~~or~~

~~(b) as determined by the division, up to twenty percent of the production's total New Mexico budget for below-the-line crew wages; provided that sufficient and qualified below-the-line crew who are New Mexico residents are not available. A film production company that is approved for the additional credit by meeting the requirements of this paragraph shall make a financial or promotional contribution toward educational, media-related nonprofit or workforce development efforts in New Mexico, as determined by the division; and~~

~~(3) the film production company makes financial or promotional contributions toward educational or workforce development efforts in New Mexico as determined by the division, including:~~

~~(a) a payment to a New Mexico educational institution that administers at least one industry-recognized film or multimedia program, as determined by the division, equal to at least two and one-half percent of the direct production expenditures for the payment of wages, fringe benefits and per diem for nonresident industry crew made by the film production company to nonresident industry crew; or~~

~~(b) promotion of the New Mexico film industry by directors, actors or producers affiliated with the film production company's project through: 1) social media that is managed by the state; 2) radio interviews facilitated by the division; 3) enhanced screen credit acknowledgments; or 4) related events that are facilitated, conducted or sponsored by~~

~~the division.~~

~~B. The credit provided by this section may be referred to as the "nonresidential below-the-line crew credit~~]; and

(2) the film production company may claim the nonresident below-the-line crew credit for employing up to the following numbers of nonresident below-the-line crew in New Mexico and shall be as calculated by the division upon application for certification pursuant to Subsection A of Section 7-2F-12 NMSA 1978; provided that the total number shall not exceed twenty positions:

(a) five positions if the production's final New Mexico budget is up to two million seven hundred fifty thousand dollars ($2,750,000);

(b) ten positions if the production's final New Mexico budget is greater than two million seven hundred fifty thousand dollars ($2,750,000) and up to seven million five hundred thousand dollars ($7,500,000);

(c) fifteen positions if the production's final New Mexico budget is greater than seven million five hundred thousand dollars ($7,500,000) and up to eleven million dollars ($11,000,000);

(d) one position in addition to the number of positions provided in Subparagraph (c) of this paragraph for every ten million dollars ($10,000,000) over eleven million dollars ($11,000,000) of the production's final New Mexico budget; and

(e) five positions in addition to the number

of positions provided in Subparagraphs (a) through (d) of this paragraph for a television pilot episode that has been ordered to series; provided that the film production company certifies to the division that the series is intended to be produced in New Mexico."

SECTION 36. Section 7-9-93 NMSA 1978 (being Laws 2004, Chapter 116, Section 6, as amended) is amended to read:

"7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR SERVICES PROVIDED BY HEALTH CARE PRACTITIONER OR ASSOCIATION OF HEALTH CARE PRACTITIONERS.--

A. Receipts of a health care practitioner or an association of health care practitioners for commercial contract services or medicare part C services paid by a managed [~~health~~] care [~~provider~~] organization or health care insurer may be deducted from gross receipts if the services are within the scope of practice of the health care practitioner providing the service. Receipts from fee-for-service payments by a health care insurer may not be deducted from gross receipts.

B. Prior to July 1, 2028, receipts from a copayment or deductible paid by an insured or enrollee to a health care practitioner or an association of health care practitioners for commercial contract services pursuant to the terms of the insured's health insurance plan or enrollee's managed care health plan may be deducted from gross receipts.

[~~B.~~] C. The [~~deduction~~] deductions provided by this section shall be applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken [~~and shall be separately stated by the taxpayer~~].

D. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

E. The department shall compile an annual report on the deductions provided by this section that shall include the number of taxpayers that claimed the deductions, the aggregate amount of deductions claimed and any other information necessary to evaluate the effectiveness of the deductions. 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 deductions.

[~~C. For the purposes of~~] F. As used in this section:

(1) "association of health care practitioners" means a corporation, unincorporated business entity or other legal entity organized by, owned by or employing one or more health care practitioners; provided that the entity is not:

(a) an organization granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(b) a health maintenance organization, hospital, hospice, nursing home or an entity that is solely an outpatient facility or intermediate care facility licensed pursuant to the Public Health Act;

(2) "commercial contract services" means health care services performed by a health care practitioner pursuant to a contract with a managed [~~health~~] care [~~provider~~] organization

or health care insurer other than those health care services provided for medicare patients pursuant to Title 18 of the federal Social Security Act or for medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

(3) "copayment or deductible" means the amount of covered charges an insured or enrollee is required to pay in a plan year for commercial contract services before the insured's health insurance plan or enrollee's managed care health plan begins to pay for applicable covered charges;

(4) "fee-for-service" means payment for health care services by a health care insurer for covered charges under an indemnity insurance plan;

[~~(3)~~] (5) "health care insurer" means a person that:

(a) has a valid certificate of authority in good standing pursuant to the New Mexico Insurance Code to act as an insurer, health maintenance organization or nonprofit health care plan or prepaid dental plan; and

(b) contracts to reimburse licensed health care practitioners for providing basic health services to enrollees at negotiated fee rates;

[~~(4)~~] (6) "health care practitioner" means:

(a) a chiropractic physician licensed pursuant to the provisions of the Chiropractic Physician Practice Act;

(b) a dentist or dental hygienist licensed pursuant to the Dental Health Care Act;

(c) a doctor of oriental medicine licensed pursuant to the provisions of the Acupuncture and Oriental Medicine Practice Act;

(d) an optometrist licensed pursuant to the provisions of the Optometry Act;

(e) an osteopathic physician [~~or an osteopathic physician assistant~~] licensed pursuant to the provisions of the [~~Osteopathic Medicine~~] Medical Practice Act;

(f) a physical therapist licensed pursuant to the provisions of the Physical Therapy Act;

(g) a physician or physician assistant licensed pursuant to the provisions of the Medical Practice Act;

(h) a podiatrist licensed pursuant to the provisions of the Podiatry Act;

(i) a psychologist licensed pursuant to the provisions of the Professional Psychologist Act;

(j) a registered lay midwife registered by the department of health;

(k) a registered nurse or licensed practical nurse licensed pursuant to the provisions of the Nursing Practice Act;

(l) a registered occupational therapist licensed pursuant to the provisions of the Occupational Therapy Act;

(m) a respiratory care practitioner licensed pursuant to the provisions of the Respiratory Care Act;

(n) a speech-language pathologist or audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(o) a professional clinical mental health counselor, marriage and family therapist or professional art therapist licensed pursuant to the provisions of the Counseling and Therapy Practice Act who has obtained a master's degree or a doctorate;

(p) an independent social worker licensed pursuant to the provisions of the Social Work Practice Act; and

(q) a clinical laboratory that is accredited pursuant to 42 U.S.C. Section 263a but that is not a laboratory in a physician's office or in a hospital defined pursuant to 42 U.S.C. Section 1395x;

(7) "managed care health plan" means a health care plan offered by a managed care organization that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in the plan other than those services provided to medicare patients pursuant to Title 18 of the federal Social Security Act or to medicaid patients pursuant to Title 19 or Title 21 of the federal Social Security Act;

[~~(5)~~] (8) "managed [~~health~~] care [~~provider~~] organization" means a person that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in a plan through its own

employed health care providers or by contracting with selected or participating health care providers. "Managed [~~health~~] care [~~provider~~] organization" includes only those persons that provide comprehensive basic health care services to enrollees on a contract basis, including the following:

(a) health maintenance organizations;

(b) preferred provider organizations;

(c) individual practice associations;

(d) competitive medical plans;

(e) exclusive provider organizations;

(f) integrated delivery systems;

(g) independent physician-provider organizations;

(h) physician hospital-provider organizations; and

(i) managed care services organizations; and

[~~(6)~~] (9) "medicare part C services" means services performed pursuant to a contract with a managed health care provider for medicare patients pursuant to Title 18 of the federal Social Security Act."

SECTION 37. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--COMPENSATING TAX--DYED DIESEL USED FOR AGRICULTURAL PURPOSES.--

A. Prior to July 1, 2028, receipts from selling and the use of special fuel dyed in accordance with federal regulations and used for agricultural purposes may be deducted from gross receipts.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. The department shall compile an annual report on the deduction provided by this section that shall include the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and any other information necessary to 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."

SECTION 38. Section 7-12A-2 NMSA 1978 (being Laws 1986, Chapter 112, Section 3, as amended) is amended to read:

"7-12A-2. DEFINITIONS.--As used in the Tobacco Products Tax Act:

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

B. "cigar" means a roll for smoking made wholly or in part of tobacco and weighing greater than four and one-half

pounds per thousand;

C. "distribute" means to sell or to give;

D. "closed system cartridge" means a single-use, pre-filled disposable cartridge containing five milliliters or less of e-liquid for use in an e-cigarette;

E. "e-cigarette" means any [~~electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substance the use or inhalation of which simulates smoking and includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor; "E-cigarette" does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act~~] device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device and includes any component, part or accessory of such a device that is used during the operation of the device but does not include a battery or battery charger;

F. "e-liquid" means liquid or other substance intended for use in an e-cigarette [~~not including any substance containing cannabis or oil derived from cannabis~~];

G. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

H. "first purchaser" means a person engaging in business in New Mexico that manufactures tobacco products or that purchases or receives on consignment tobacco products from any

person outside of New Mexico, which tobacco products are to be distributed in New Mexico in the ordinary course of business;

I. "little cigar" means a roll for smoking made wholly or in part of tobacco, using an integrated cellulose acetate or other similar filter, and weighing not more than four and one-half pounds per thousand;

J. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, limited liability company, limited liability partnership, other association or gas, water or electric utility owned or operated by a county or municipality or other entity of the state; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality;

K. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in the case of tobacco products received on consignment, the value of the tobacco products received or, in the case of tobacco products manufactured and sold in New Mexico, the proceeds from the sale by the manufacturer of the tobacco products; and

L. "tobacco product":

(1) means:

[~~(1)~~] (a) any product, other than cigarettes, [~~cigars and little cigars~~] made from or containing tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved or inhaled;

[~~(2)~~] (b) e-liquid;

[~~(3)~~] (c) e-cigarettes; and

[~~(4)~~] (d) closed system cartridges; and

(2) does not mean any product regulated as a drug or device by the United States food and drug administration pursuant to the Federal Food, Drug, and Cosmetic Act."

SECTION 39. Section 7-12A-3 NMSA 1978 (being Laws 1986, Chapter 112, Section 4, as amended) is amended to read:

"7-12A-3. IMPOSITION AND RATES OF TAX--REDUCTION OF RATE FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

A. For the manufacture or acquisition of tobacco products in New Mexico [~~not including cigars, little cigars, e-liquid, e-cigarettes or closed system cartridges~~] to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the [~~rate of twenty-five percent of the product value of the tobacco products~~

~~B. For the manufacture or acquisition of~~] following rates:

(1) for cigars, [~~in New Mexico to be distributed in the ordinary course of business and for the consumption of cigars in New Mexico, there is imposed an excise tax at a rate equal to~~] twenty-five percent of the product value of the cigar; [~~not to exceed fifty cents ($.50) per cigar~~

~~C. For the manufacture or acquisition of~~]

(2) for little cigars, [~~in New Mexico to be distributed in the ordinary course of business and for the consumption of little cigars in New Mexico, there is imposed an excise tax at~~] a rate equal to the rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978 per package of little cigars;

[~~D. For the manufacture or acquisition of~~]

(3) for e-liquid, [~~in New Mexico to be distributed in the ordinary course of business and for the consumption of e-liquid in New Mexico, there is imposed an excise tax at a rate equal to~~] twelve and one-half percent of the product value of the e-liquid;

[~~E. For the manufacture or acquisition of~~]

(4) for closed system cartridges, [~~in New Mexico to be distributed in the ordinary course of business, there is imposed an excise tax at a rate of~~] fifty cents ($.50) per closed system cartridge; and

(5) for all other tobacco products, twenty-five percent of the product value of the tobacco product.

[~~H.~~] B. The taxes imposed by this section may be referred to as the "tobacco products tax".

[~~I.~~] C. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs."

SECTION 40. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS TAX--TOBACCO SETTLEMENT PERMANENT FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the tobacco settlement permanent fund in an amount equal to thirteen percent of the net receipts attributable to the tobacco products tax."

SECTION 41. Section 7-14-10 NMSA 1978 (being Laws 1988, Chapter 73, Section 20, as amended) is amended to read:

"7-14-10. DISTRIBUTION OF PROCEEDS.--

A. The receipts from the tax and any associated interest and penalties shall be deposited in the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net receipts attributable to the tax and associated penalties and interest shall be distributed as follows:

(1) beginning July 1, 2023 and prior to July 1, 2025:

(a) thirty-two percent to the general fund;

(b) forty-nine and one-fourth percent to the state road fund; and

(c) eighteen and three-fourths percent to the transportation project fund;

(2) beginning July 1, 2025, except as provided in Paragraph (3) of this subsection:

(a) seventy-five percent to the state road fund; and

(b) twenty-five percent to the transportation project fund; and

(3) if, for any single fiscal year occurring after fiscal year 2027 and prior to fiscal year 2037, gross receipts tax revenues are less than ninety-five percent of the gross receipts tax revenues for the previous fiscal year, as determined by the secretary of finance and administration, beginning on the July 1 following the determination made by the secretary of finance and administration:

[~~A.~~] (a) fifty-nine and thirty-nine hundredths percent to the general fund;

[~~B.~~] (b) twenty-one and eighty-six hundredths percent to the state road fund; and

[~~C.~~] (c) eighteen and seventy-five hundredths percent to the transportation project fund.

B. Between fifty and seventy-five percent of the amount distributed to the state road fund pursuant to this section shall be used for maintenance of transportation infrastructure."

SECTION 42. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1, as amended) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. Except as provided in Subsections B and C of this section, all business income shall be apportioned to this state

by multiplying the income by the sales factor.

B. For a taxable year prior to January 1, 2027, all business income of a taxpayer that is a railroad shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

C. Except as provided in Subsection D of this section, the business income of a qualifying entity shall be apportioned by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

[~~B. If eighty percent or more of the New Mexico numerators of the property and payroll factors for a filing group, or for a taxpayer that is not a member of a filing group, are employed in manufacturing or operating a computer processing facility, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year.~~

~~C. If a filing group, or a taxpayer that is not a member of a filing group, has a headquarters operation in New Mexico, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor; for the taxable year~~]

D. A qualifying entity may elect to have business income apportioned by multiplying the income by the sales factor; provided that, once the election is made, the qualifying entity shall apportion business income in that manner for each taxable year thereafter; and provided further that, for taxable years

beginning on or after January 1, 2029, the qualifying entity shall apportion business income by the single sales factor pursuant to Subsection A of this section.

[~~D.~~] E. To elect the method of apportionment provided by Subsection [~~B or C~~] D of this section, [~~the taxpayer~~] a qualifying entity shall notify the department of the election, in writing, no later than the date on which the [~~taxpayer~~] qualifying entity files the return for the first taxable year to which the election will apply. [~~The election shall apply as follows:~~

~~(1) if the election is made for taxable years beginning prior to January 1, 2020, to the taxable year in which the election is made and to each taxable year thereafter for three years, or until the taxable year ending prior to January 1, 2020, whichever is earlier;~~

~~(2) if the election is made for a taxable year beginning on or after January 1, 2020, to the taxable year in which the election is made and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by Subsection B or C of this section has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months; and~~

~~(3) if the election is made by a qualifying filing group, the election shall apply to the members of the filing group properly included pursuant to Section 7-2A-8.3 NMSA 1978.~~]

[~~E.~~] F. For purposes of this section:

(l) "filing group" means "filing group" as that term is defined in the Corporate Income and Franchise Tax Act; and

[~~(2) "headquarters operation" means:~~

~~(a) the center of operations of a business: 1) where corporate staff employees are physically employed; 2) where the centralized functions are primarily performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; 3) the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; 4) from which final authority over regional or subregional offices, operating facilities and any other offices of the business are issued; and 5) including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters; or~~

~~(b) the center of operations of a business: 1) the function and purpose of which is to manage and direct most aspects of one or more centralized functions; and 2) from which final authority over one or more centralized functions is issued;~~

~~(3) "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:~~

~~(a) construction;~~

~~(b) farming;~~

~~(c) power generation; provided that for taxable years beginning prior to January 1, 2024, "manufacturing" includes electricity generation at a facility that does not require location approval and a certificate of convenience and necessity prior to commencing construction or operation of the facility pursuant to the Public Utility Act;~~

~~(d) processing natural resources, including hydrocarbons; or~~

~~(e) processing or preparation of meals for immediate consumption; and~~

~~(4) "operating a computer processing facility" means managing the necessary and ancillary activities for the operation of a facility primarily used to process data or information, but does not include managing the operation of facilities that are predominantly used to support sales of tangible property or the provision of banking, financial or professional services~~]

(2) "qualifying entity" means the presence of a business unit of a corporation or a group of corporations in a combined filing group:

(a) with one hundred or more employees for whom wages are withheld pursuant to the Withholding Tax Act. The employee measurement date is the first day of the taxable year immediately prior to the taxable year for which the election is made, and shall be certified by audit; and

(b) with a cumulative investment in property in New Mexico exceeding fifty million dollars ($50,000,000).

Property owned by the qualifying entity shall be valued at the property's original cost, which shall be deemed to be the basis of the property for federal income tax purposes, prior to any federal adjustments, at the time of acquisition by the qualifying entity and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange or abandonment. For purposes of this subparagraph, "cumulative investment in property in New Mexico" means the average value of the taxpayer's real and tangible personal property owned or rented and used in New Mexico during the tax period."

SECTION 43. APPLICABILITY.--

A. The provisions of Sections 5, 7 through 9, 12 through 14, 23 through 27, 29 and 30 of this act apply to taxable years beginning on or after January 1, 2023.

B. The provisions of Sections 31 through 35 of this act apply to film production companies that commence principal photography for a film or commercial audiovisual product on or after July 1, 2023.

C. The provisions of Sections 6, 10, 15 and 42 of this act apply to taxable years beginning on or after January 1, 2024.

SECTION 44. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 11 of this act is April 1, 2023.

B. The effective date of the provisions of Sections 1 through 4, 16 through 19, 28 and 36 through 41 of this act is July 1, 2023.

C. The effective date of the provisions of Sections 6, 10, 15, 20 through 22 and 42 of this act is January 1, 2024.".

20. Renumber sections to correspond with these amendments.

Respectfully submitted,

_____
Derrick J. Lente

_____
Micaela Lara Cadena

_____
Jason C. Harper

Adopted_____ Not Adopted_____
(Chief Clerk) (Chief Clerk)

Date _____