

*Film and Other
Business Incentive Tax Credits*

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Film and Other Business Incentive Tax Credits

Overview

My presentation today will cover three topics:

- 1. Policy principles for evaluating business incentive tax credits;**
- 2. Descriptions of New Mexico business incentive tax credits; and**
- 3. Amounts spent on New Mexico business incentive tax credits for FY2003 through FY2009 and year-to-date FY2010 approvals of film credits**

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Policy Principles for Evaluating Business Incentives Tax Credits

- **Business incentive tax credits are intended to promote economic development, encourage development and use of alternative energy sources, or to meet some other goal**
- **The goals of these credits are not the goals of the tax system, but rather expenditure-type goals**
- **Consequently, these credits are “tax expenditures” and need to be evaluated by expenditure, not tax, policy principles**
- **This critical distinction becomes clear if we attempt to apply the four tax policy principles to business incentive tax credits:**
 1. **Adequacy means that the tax system should generate sufficient revenues to pay for government spending**
 - **Business incentive tax credits directly reduce revenue, so are inconsistent with the Adequacy principle of tax policy**
 2. **Efficiency means that taxes should interfere as little as possible with economic incentives (relative prices)**

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Policy Principles for Evaluating Business Incentives Tax Credits – Cont.

- **Business incentive tax credits are specifically intended to provide economic incentives, so are inconsistent with the Efficiency principle**
- 3. Equity has two dimensions: “horizontal” equity means that similarly situated individuals should pay similar taxes, and “vertical” equity means that individuals’ tax burdens should reflect their ability to pay**
- **Business incentive tax credits, if considered part of the tax system, reduce the amount of taxes paid by credit recipients relative to other taxpayers, so are inconsistent with the Equity principle**
- 4. Simplicity means that taxes should be designed to minimize taxpayers’ cost of complying with the tax and the cost of tax departments (like TRD) to administer the tax**
- **Business incentive tax credits are administered through the tax system, so necessarily add some complexity and if considered in isolation from alternative administrative mechanisms are inconsistent with the Simplicity principle**

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Policy Principles for Evaluating Business Incentives Tax Credits – Cont.

- **Because business incentive tax credits are inherently inconsistent with tax policy principles, evaluating these credits (and other tax expenditures) by tax policy principles will automatically make them appear to be unsuccessful**
- **Of course, all tax expenditures, including business incentive tax credits, need to be evaluated periodically to insure that they are meeting their intended goals**
- **Such evaluations should be based on the same expenditure principles that are used to evaluate other expenditure programs**
- **Quantitative analyses like “return on investment” (ROI) for business incentive tax credits and other tax expenditures require data, methodological tools and a commitment of resources**

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Descriptions of Business Incentive Tax Credits

- **Table 1 (pages 6 and 7) provides a summary description of the key features of New Mexico business incentive tax credits**
- **Only some of these credits are primarily intended to promote economic development by providing incentives for economic activity, jobs and investment in New Mexico**
- **Other credits are primarily intended to encourage the production or use of alternative energy, to develop affordable housing, preserve cultural properties and open land, and other goals**
- **Table 2 (page 8) summarizes the key features of the 27 New Mexico business incentive credits currently in effect and the 3 that have already expired**
- **Table 2 shows that there is a fair amount of variation in the key features of these credits**
 - **For example, some credits can be taken:**
 - **Only against the personal income tax (PIT);**
 - **Some only against the corporate income tax (CIT);**
 - **Some against both PIT and CIT;**
 - **Some against combined reporting system (CRS) taxes (primarily gross receipts, compensating tax and withholding); and**
 - **Some against PIT, CIT and CRS**

Table 1: Descriptions of New Mexico Business Incentive Tax Credits

Credit	Statute(s)	Year Enacted	Date Repealed	Credit Applies Against ¹	Description	Pre-Certifying Agency	Overall Cap	Carry Forward	Transferable	Refundable	Recapture	Overlap with Other Credits?	Report Required
Advanced Energy	7-2-18.25, 7-2A-25, 7-9G-2	2007 2009 (PIT and CIT)		PIT, CIT, State GRT, Comp., Withholding	6% of costs for development and construction of a solar thermal or photovoltaic electric, geothermal electric, recycled energy, or new or repowered coal electric generating facility; construction must begin by 12/31/2015; credit limited to \$60 million per facility	NMED		5 years	No	No	Yes	Partial	Annual report by NMED to interim Legislative committee
Affordable Housing	7-9I	2005		PIT, CIT, all CRS except local GRTs and GGRT	50% of the value of cash or land, buildings, or services donated	MFA	Population x \$1.85 (inflation adjusted)	5 years	Yes	No	No	Yes	
Agricultural Water Conservation Expenses	7-2-18.20, 7-2A-22	2007	1/1/2013	PIT, CIT	50% (35% for expenses before 1/1/09) for improvements in irrigation systems or water management, credit limited to \$10,000/year			5 years	No	No	No	Yes	
Alternative Energy Product Manufacturers	7-9J	2007		All CRS except local GRTs	5% of expenditures for manufacturing equipment used to make certain alternative energy products, subject to employment requirements			5 years	No	No	Yes	Partial	
Angel Investment	7-2-18.17	2007	1/1/2013	PIT	25% of up to \$100,000 of equity investment in a New Mexico business engaged in high-technology research or	EDD	\$750,000 per year	3 years	No	No	No	Yes	Annual report by EDD to LFC
Biodiesel Blending Facility	7-9-79.2	2007		GRT, Comp.	30% of cost of biodiesel blending equipment and the cost of installation; credit limited to \$50,000 per facility	EMNRD	\$1,000,000	4 years	No	No	No	Yes	
Blended Biodiesel Fuel	7-2-18.21, 7-2A-23	2007		PIT, CIT	2011, \$0.01/gal. in 2012 of blended biodiesel fuel			5 years	No	No	No	Yes	
Business Facility Rehabilitation	7-2-18.4	1994		PIT	50% of qualified costs up to \$50,000 per facility			4 years	No	No	No	Partial	
Capital Equipment	7-9D	1999	7/1/2004	GRT, Comp., Withholding	GRT rate or Compensating tax rate times the value of capital equipment for call center			Unlimited	No	No	Yes	Yes	
Corporate-Supported Child Care	7-2A-14	1983		CIT	30% of eligible expenses up to \$30,000 per year			3 years	No	No	No	Yes	
Cultural Property Preservation	7-2-18.2 7-2A-8.6	1984		PIT, CIT	50% of eligible expenses up to \$25,000 (\$50,000 in arts and cultural districts) maximum per property	Cultural Properties Review Committee		4 years	No	No	No	Yes	
Electronic ID Card Reader	7-2-18.8, 7-2A-18	2001		PIT, CIT	\$300 per business location with eligible equipment			No	No	No	No	Yes	
Film Production	7-2F	2002		PIT, CIT	25% of direct production expenditures and certain post-production expenditures; 20% if the tax payer receives a federal new markets tax credit	Film Division of EDD		No	No	Yes	No	Yes	
Geothermal Ground-Coupled Heat Pump	7-2-18.24, 7-2A-24	2009		PIT, CIT	30% of cost of geothermal ground-coupled heat pump and the cost of installation; credit limited to \$9,000	EMNRD certifies pumps	\$2,000,000 per year	10 years	No	No	No	Yes	
High-Wage Jobs	7-9G-1	2004		All CRS except local GRTs	10% of eligible wages up to \$12,000 per employee for up to 4 years; jobs must pay at least \$40,000 (city of 40,000 or more) or \$28,000 (all other areas)			No	No	Yes	No	Yes	

Credit	Statute(s)	Year Enacted	Date Repealed	Credit Applies Against ¹	Description	Pre-Certifying Agency	Overall Cap	Carry Forward	Transferable	Refundable	Recapture	Overlap with Other Credits?	Report Required
Investment	7-9A	1979		State GRT, Comp., Withholding	Compensating tax rate (5%) times the value of qualified equipment subject to employment requirements (which change 1/1/2020); limited to 85% of total liability			Unlimited	No	In certain instances	No	Yes	
Job Mentorship	7-2-18.11, 7-2A-17.1	2003		PIT, CIT	50% of wages of qualified students for up to 10 students; maximum of \$12,000	school principal		3 years	No	No	No	Yes	
Laboratory Partnership with Small Business	7-9E	2000		State GRT	Qualified expenditures of national laboratory up to \$10,000 per small business (\$20,000 per small rural business)		\$2,400,000 per year per lab	No	No	No	No	Yes	Annual report by national labs to TRD, EDD, interim Legislative committee
Land Conservation	7-2-18.10, 7-2A-8.9	2003		PIT, CIT	50% of fair market value of donated land; maximum \$250,000 for land conveyed	EMNRD		20 years	Yes	No	No	Yes	
Produced Water	7-2A-20	2002	1/1/2006	CIT	\$1,000 per acre foot up to \$400,000			3 years	No	No	No	Yes	
Qualified Business Facility Rehabilitation	7-2A-15	1994		CIT	50% of eligible expenses up to \$50,000 per project			4 years	No	No	No	Partial	
Renewable Energy Production	7-2-18.18 7-2A-19	2007 (PIT), 2002 (CIT)		PIT, CIT	Credit is 1 cent/KwH for wind and biomass and from 1.5 cent/KHz to 4 cents/KwH for solar	EMNRD	Based on KwH capacity	5 years	Partial	Yes, after 10/1/2007	No	Yes	
Research and Development Small Business	7-9H	2005		GRT, Comp., Withholding	100% of CRS liability of qualified firms for 3 years			No	No	No	No	No	
Rural Health Care Practitioner	7-2-18.22	2007		PIT	Up to \$5,000 for physicians, etc. and up to \$3,000 for nurses, etc. practicing in a rural health care underserved area	DoH		3 years	No	No	No	Yes	
Rural Job	7-2E	1999		PIT, CIT, all CRS except local GRTs	6.25% of first \$16,000 of wages for up to four periods in a tier 1 area or two periods in a tier 2 area; employers must be approved for in-plant training	EDD		3 years	Yes	No	No	Partial	Annual report by EDD, TRD and DWS to
Solar Market Development	7-2-18.14	2006	1/31/2016	PIT	10% (30% prior to 2009) of solar system costs (less, prior to 2009, applicable federal credits); credit limit of \$9,000	EMNRD certifies systems	\$2,000,000 thermal \$3,000,000 photo-voltaic per year	10 years	No	No	No	Yes	
Sustainable Building	7-2-18.19, 7-2A-21	2007		PIT, CIT	Rate varies with size, type, and efficiency of building from \$0.30 to \$9.00 per sq. ft.	EMNRD	\$5,000,000 commercial \$5,000,000 residential per year	7 years	Yes	No	No	Yes	
Technology Jobs - Basic	7-9F	2000		State GRT, Comp.,	4% (8% in rural areas) of qualified expenditures			Unlimited	No	No	Yes	Yes	Annual report by TRD to LFC and RSTP
Technology Jobs - Additional	7-9F	2000		PIT, CIT	4% (8% in rural areas) of qualified research expenditures if in-State payroll raised \$75,000 per \$1 million in qualified expenditures claimed			Unlimited	No	No	Yes	Yes	
Welfare-to-Work	7-2-18.5, 7-2A-8.8	1998	1/1/2006 ²	PIT, CIT	50% of Federal Welfare-To-Work credit amount	DWS		3 years	No	No	No	Yes	

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¹ CIT is corporate income tax; CRS includes gross receipts tax (GRT), compensating tax (Comp), withholding, interstate telecommunications GRT, leased vehicle GRT, Leased Vehicle Surcharge and Governmental GRT (GGRT); PIT is personal income tax.

² This is the date the federal Welfare-to-Work credit expired.

**Table 2: Number of New Mexico Business Incentive Tax Credits
by Key Features**

1. Total Number of Credits	30
Currently in Effect	27
Expired (since FY2003)	3
2. Period Credit Enacted*	
Before 1990	3
1990 to 1999	5
2000 to 2004	10
2005 to 2009	12
3. Repeal Date?	
Yes	6
No	24
4. Credit Applies Against:	
PIT only	4
CIT only	3
PIT and CIT	12
CRS only	8
PIT, CIT and CRS	3
5. Pre-Certifying Agency?	
Yes	15
No	15
6. Overall Cap?	
Yes	8
No	22
7. Carryforward?	
Yes - 5 years or less	17
Yes - 6 years or more (includes unlimited)	8
No	5
8. Transferable?	
Yes**	5
No	25
9. Refundable?	
Yes**	4
No	26
10. Recapture?	
Yes**	5
No	25
11. Potentially Overlaps with Other Credits?	
Yes	29
No	1
12. Report Required?	
Yes	5
No	25

* Credits with multiple enactment dates are classified by the earliest date.

** Includes credits with partial transferability, refundability or recapture.

Business Incentive Tax Credits

Business Incentive Tax Credits Claimed, FY2003 – FY2009

- **Table 3 (page 10) shows the number and amount of claims for New Mexico business incentive tax credits for FY2003 through FY2008, and available claims for FY2009**
- **The rapid growth in the number and amount of claims is due in part to the relatively recent adoption of most credits**
- **The number of claims increased substantially in FY2008, the first year of claims for the Rural Health Care Practitioner credit (PIT returns for 2007)**
- **Increases in the Film Production, High-Wage Jobs, Renewable Energy Production and Rural Health Care Practitioner credits account for most of the growth in amounts claimed over the past several years**
- **Table 4 (page 11) shows the number and amount of approved Film Production credits for FY2003 through FY2009 and for FY2010 through October 31**
 - **The amount of Film Production credits approved through October 31 of FY2009 was \$26,992 thousand for 26 applications**

Table 3: New Mexico Business Incentive Tax Credits Claimed, FY2003 to FY2009¹

Credit		Fiscal Year ²							
		2003	2004	2005	2006	2007	2008	2009 ³	
Affordable Housing	Number of Claims	Enacted in 2005				13	37		
	Amount					\$26,782	\$88,135		
Angel Investment	Number of Claims	Enacted in 2007					14		
	Amount						\$117,854		
Blended Biodiesel Fuel	Number of Claims	Enacted in 2007					*		
	Amount						*		
Business Facility Rehabilitation	Number of Claims		6	3					
	Amount		\$4,860	\$12,995					
Corporate-Supported Child Care	Number of Claims						*		
	Amount						*		
Cultural Property Preservation	Number of Claims	76	114	66	51	75	87		
	Amount	\$247,106	\$330,134	\$196,665	\$183,701	\$228,177	\$228,390		
Electronic ID Card Reader	Number of Claims	8	3	3		*	*		
	Amount	\$3,569	\$900	\$900		*	*		
Film Production ⁴	Number of Claims	4	8	13	35	34	52	78	
	Amount	\$1,219,508	\$3,404,963	\$2,072,633	\$10,742,480	\$17,578,139	\$46,029,904	\$76,706,379	
High-Wage Jobs	Number of Claims	Enacted in 2004				18	29	37	45
	Amount					\$743,452	\$1,657,879	\$4,724,655	\$14,440,779
Investment	Number of Claims	N/A	N/A	25	21	24	18	19	
	Amount	\$715,747	\$2,150,947	\$5,039,864	\$14,789,417	\$6,095,168	\$1,828,916	\$11,602,742	
Job Mentorship	Number of Claims		*	3	6	5	5		
	Amount		*	\$12,864	\$14,329	\$15,156	\$12,691		
Laboratory Partnership with Small Business	Number of Claims	1	1	1	1	1	2	2	
	Amount	\$764,585	\$1,897,764	\$1,467,779	\$1,454,338	\$1,694,415	\$2,589,428	\$2,525,333	
Land Conservation	Number of Claims	Enacted in 2003		21	15	22	24		
	Amount			\$378,890	\$250,308	\$441,781	\$288,431		
Renewable Energy Production	Number of Claims					4	5		
	Amount					\$3,699,673	\$2,675,313		
Research and Development Small Business	Number of Claims	Enacted in 2005				5	7	6	
	Amount					\$303,129	\$249,599	\$107,106	
Rural Health Care Practitioner	Number of Claims	Enacted in 2007					1,193		
	Amount						\$4,845,412		
Rural Job	Number of Claims	N/A	N/A	6	6	4	15	8	
	Amount	\$177,751	\$345,124	\$186,121	\$189,043	\$86,630	\$589,753	\$382,458	
Solar Market Development	Number of Claims	Enacted in 2006				84	179		
	Amount					\$338,304	\$566,542		
Sustainable Building	Number of Claims	Enacted in 2007					4		
	Amount						\$10,702		
Technology Jobs	Number of Claims	N/A	N/A	50	54	59	63	34	
	Amount	\$479,071	\$3,229,546	\$4,429,843	\$4,136,145	\$5,430,557	\$5,679,615	\$5,956,356	
Welfare-to-Work	Number of Claims	32	48	6	*	*	7		
	Amount	\$72,095	\$96,355	\$10,549	*	*	\$41,479		
Totals	Number of Claims	121	180	197	207	359	1,749	192	
	Amount	\$3,679,432	\$11,460,594	\$13,809,102	\$32,503,212	\$37,595,789	\$70,566,818	\$111,721,153	

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* Number of claims and amount of credit claimed suppressed to protect taxpayer confidentiality. N/A Not available.

¹ No credit claims have been reported on CRS returns filed in FY2003 - FY2009 or PIT or CIT returns filed for tax years 2002 - 2007 (see footnote 2) for the following credits: Advance Energy, Agricultural Water Conservation Expenses, Biodiesel Blending Facility, Capital Equipment (expired 7/1/2004), Geothermal Ground-Coupled Heat Pump (enacted in 2009), Produced Water (expired 1/1/2006), or Qualified Business Facility Rehabilitation.

² Credits claimed on personal income tax (PIT) returns and corporate income tax (CIT) returns are shown in the fiscal year the return was due. Returns for 2008, due in FY2009, have not been filed and processed for taxpayers with automatic extensions, so no credit information is included for 2008 PIT and CIT returns.

³ The number of credit claims and amounts claimed for FY2009 exclude PIT and CIT credits claimed on 2008 returns (see footnote 2).

⁴ Film production tax credit claims and amounts are for approved credits.

Table 4: Approved Film Production Tax Credits, FY03-FY10 (through 10/31/09)

	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10*
Number of Approved Applications	4	8	13	35	34	52	78	23
Approved Film Credits (\$000)	\$1,220	\$3,405	\$2,073	\$10,742	\$17,578	\$46,030	\$76,706	\$13,576

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* Through 10/31/09