

TITLE 3 TAXATION
CHAPTER 13 BUSINESS TAX CREDITS
PART 2 INVESTMENT TAX CREDIT

3.13.2.1 ISSUING AGENCY: Taxation and Revenue Department
[3.13.2.1 NMAC - N, 4/28/2000]

3.13.2.2 SCOPE: This part applies to all persons carrying on a manufacturing operation in New Mexico and to any other person eligible to obtain the investment tax credit.
[3.13.2.2 NMAC - N, 4/28/2000]

3.13.2.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.13.2.3 NMAC - N, 4/28/2000]

3.13.2.4 DURATION: Permanent.
[3.13.2.4 NMAC - N, 4/28/2000]

3.13.2.5 EFFECTIVE DATE: April 28, 2000, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.13.2.5 NMAC - N, 4/28/2000]

3.13.2.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Investment Credit Act.
[3.13.2.6 NMAC - N, 4/28/2000]

3.13.2.7 DEFINITIONS; "SUBJECT TO DEPRECIATION" DEFINED: For purposes of Section 7-9A-3 NMSA 1978, "subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to equipment for which an investment credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, I.R.C. Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 are "subject to depreciation"
[3.13.2.7 NMAC - Rp 3 NMAC 13.6.7, 4/28/2000]

3.13.2.8 INDUSTRIAL REVENUE BONDS

A. Any equipment that is placed into service on or after January 1, 1991, under the provisions of either the Industrial Revenue Bond Act or the County Industrial Revenue Bond and that otherwise meets the requirements of the Investment Credit Act is "qualified equipment" for the purpose of the Investment Credit Act.

B. Tangible personal property placed into service prior to January 1, 1991, under the provisions of either the Industrial Revenue Bond Act or the County Industrial Revenue Bond Act is not "equipment" for the purpose of the Investment Credit Act.

[3.13.2.8 NMAC - Rp 3 NMAC 13.6.8, 4/28/2000]

3.13.2.9 ITEMS NOT "EQUIPMENT": Tangible personal property which is not a machine, mechanism or tool, or a component or fitting thereof, is not "equipment" for the purpose of the Investment Credit Act. Accordingly such items as furniture, shelving and supplies are not "equipment". Equipment that is neither essential to nor used in conjunction with the manufacturing plant will not qualify for the investment credit, even if that equipment is physically located in the plant. Nonqualifying equipment may include, but is not limited to: coffee makers, kitchen equipment used in an employee cafeteria and televisions or radios used in an employee lounge or in a reception area.

[3.13.2.9 NMAC - Rp 3 NMAC 13.6.9, 4/28/2000]

3.13.2.10 ITEMS WHICH MAY BE INCLUDED AS "EQUIPMENT": The term "manufacturing operation" is defined as a plant where personnel perform production tasks "in conjunction with equipment not previously existing at the site" to produce goods. Equipment need not be employed exclusively in the manufacturing process as long as the equipment is physically located in the plant and is used in conjunction with the production of goods. Therefore, equipment used in conjunction with the production of goods may include, but is not limited to, such items as manufacturing process equipment, lights, boilers, air conditioners, smoke detectors and other

equipment essential to maintaining the proper climate for the manufacturing process, packaging equipment used to put the manufactured product in marketable form, warehousing equipment and computers used to control the manufacturing process or to inventory and schedule the shipping of manufactured products.
[3.13.2.10 NMAC - Rp 3 NMAC 13.6.10, 4/28/2000]

3.13.2.11 EQUIVALENT OF ONE FULL-TIME EMPLOYEE: To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than forty hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees.
[3.13.2.11 NMAC - Rp 3 NMAC 13.7.8, 4/28/2000]

3.13.2.12 EMPLOYMENT INCREASE ESSENTIAL:

A. The investment credit is available only to manufacturers who increase employment in the relevant periods. Manufacturers who do not meet the employment requirement do not qualify for the investment credit, regardless of the amount of equipment acquired.

B. Example:

(1) X is a manufacturer who establishes a new manufacturing operation in New Mexico on August 1 of year 1. Prior to establishing this plant, X had no operations or employees in New Mexico. Beginning with June 15 of year 1 through August 1, X hires 20 full-time equivalent employees to work in that plant. On January 15 of year 2, X submits an application for an investment credit with respect to equipment placed in the new plant as of August 1. Since on January 15 of year 1 X had no employees in New Mexico, X may count all 20 employees in meeting the employment requirement for this application.

(2) X acquires and installs additional new equipment during the period September 1 through December 15 of year 1, during which time X hires two more full-time equivalent employees. Unfortunately sales are below X's expectations and so in April of year 2 X lays off 3 full-time employees. In August of year 2, X files a second application for an investment credit with respect to the additional equipment. None of the 20 employees counted in the first application may be counted for purposes of meeting the employment requirement in the second application. Since X has in fact decreased employment over the relevant time period, X does not meet the employment requirement and X's application for a second credit will be denied.

[3.13.2.12 NMAC - N, 4/28/2000]

3.13.2.13 APPLICATION OF THE CREDIT: The credit allowed by Section 7-9A-8 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

[3.13.2.13 NMAC - Rp 3 NMAC 13.8.8, 4/28/2000]

3.13.2.14 CREDIT NOT TRANSFERABLE:

A. Any amount of investment credit claimed and approved may be applied by the claimant only against the gross receipts, compensating and withholding taxes owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.

B. Example:

(1) Corporation T sets up a manufacturing operation in New Mexico. T subsequently qualifies for \$50,000 in investment credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the manufacturing operation. T may not transfer the \$37,000 remaining authorized investment credit to S nor may S apply any of the remaining tax credit to S's gross receipts, compensating and withholding tax liability. T, to the extent T still has gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for investment credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed investment credit held by a predecessor.

[3.13.2.14 NMAC - N, 4/28/2000]

3.13.2.15 REPORTING NUMBER OF EMPLOYEES - ESTIMATES: To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within forty-five days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.
[3.13.2.15 NMAC - N, 5/15/07]

3.13.2.16 WHEN CLAIM BARRED: If a taxpayer claims any amount of research and development small business tax credit with respect to a reporting period, the taxpayer may not claim any amount of approved investment credit with respect to that same period. If for the same reporting period an amount of investment credit is claimed in addition to any amount of research and development small business tax credit, the amount of investment credit will be disallowed by the department, which may result in an underpayment of tax. The taxpayer is not barred from applying for approval of new or additional investment credit with respect to qualified equipment purchased or introduced into New Mexico during that reporting period.
[3.13.2.16 NMAC - N, 5/15/07]

HISTORY OF 3.13.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: R.D.-I.C. Regulation 3(C):1, Regulations Pertaining to the Investment Credit Act Subsection C of Section 7-9A-3 NMSA 1978, 8/1/84.

R.D.-I.C. Regulation 6:1, Regulations Pertaining to the Investment Credit Act Section 7-9A-6 NMSA 1978, 8/1/84.

R.D.-I.C. Regulation 7.1:1, Regulations Pertaining to the Investment Credit Act Subsection C of Section 7-9A-7.1 NMSA 1978, 8/1/84.

R.D.-I.C. Regulation 8:1, Regulations Pertaining to the Investment Credit Act Section 7-9A-8 NMSA 1978, 8/1/84.
TRD Rule IC-93, Regulations Pertaining to the Investment Credit Act, 2/17/94.

History of Repealed Material:

3 NMAC 13.6, Qualified Equipment - Repealed, 4/28/00.

3 NMAC 13.7, Employment Requirements - Repealed, 4/28/00.

3 NMAC 13.8, Credit for Taxes - Repealed, 4/28/00.

NMAC History:

3 NMAC 13.6, Qualified Equipment, filed 9/3/96.

3 NMAC 13.7, Employment Requirements, filed 9/3/96.

3 NMAC 13.8, Credit for Taxes, filed 9/3/96.

3.13.2 NMAC, Investment Tax Credit, filed 4/17/00.