

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 10

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11 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

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AN ACT

RELATING TO TAXATION; CREATING THE NEW REVENUE INCOME TAX
CREDIT AND THE NEW REVENUE CORPORATE INCOME TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Income Tax Act is enacted
to read:

"NEW MATERIAL NEW REVENUE INCOME TAX CREDIT.--

A. A taxpayer who is not a dependent of another
individual and who creates new jobs or makes a capital
investment in the state may apply for, and the department may
allow, a credit of thirty percent of new revenue created by the
taxpayer against the taxpayer's tax liability imposed pursuant
to the Income Tax Act. The credit provided in this section may
be referred to as the "new revenue income tax credit".

B. The purposes of the new revenue income tax

1 credit are to:

2 (1) encourage businesses that would not do so
3 without the new revenue income tax credit to relocate or expand
4 their operations in New Mexico;

5 (2) encourage businesses to create well-paid
6 jobs and make capital investments in New Mexico;

7 (3) generate new revenue for the state; and

8 (4) strengthen and diversify the state's
9 economy.

10 C. The new revenue income tax credit may be claimed
11 and allowed in an amount equal to thirty percent of new revenue
12 created by a taxpayer in the taxable year in which a taxpayer's
13 qualifying period closes.

14 D. That portion of a new revenue income tax credit
15 approved by the department that exceeds a taxpayer's income tax
16 liability in the taxable year in which the credit is claimed
17 shall be refunded to the taxpayer.

18 E. To be eligible for a new revenue income tax
19 credit, a taxpayer shall:

20 (1) have created a minimum number of new jobs
21 in a qualifying period in which a new revenue income tax credit
22 is claimed, as follows:

23 (a) at least five jobs if the jobs are
24 performed or based in a municipality with a population of less
25 than sixty thousand according to the most recent federal

1 decennial census, or in an unincorporated area that is not
2 within ten miles of the external boundaries of a municipality
3 with a population of sixty thousand or more, of a county other
4 than a class H county; or

5 (b) at least ten jobs if the jobs are
6 performed or based in or within ten miles of the external
7 boundaries of a municipality with a population of sixty
8 thousand or more according to the most recent federal decennial
9 census or in a class H county; or

10 (2) have made a minimum amount of capital
11 investment in a qualifying period in which a new revenue income
12 tax credit is being claimed, as follows:

13 (a) at least two million five hundred
14 thousand dollars (\$2,500,000) if the capital investment is made
15 in a municipality with a population of less than sixty thousand
16 according to the most recent federal decennial census, or in an
17 unincorporated area that is not within ten miles of the
18 external boundaries of a municipality with a population of
19 sixty thousand or more, of a county other than a class H
20 county; or

21 (b) at least five million dollars
22 (\$5,000,000) if the capital investment is made in or within ten
23 miles of the external boundaries of a municipality with a
24 population of sixty thousand or more according to the most
25 recent federal decennial census or in a class H county.

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1 F. A taxpayer shall not be eligible for a credit
2 pursuant to Paragraph (1) of Subsection E of this section
3 unless the taxpayer's total number of employees on the last day
4 of a qualifying period at the location at which the new jobs
5 are performed or based is at least:

6 (1) five more than the number on the last day
7 of the prior taxable year if the taxpayer claims a credit
8 pursuant to Subparagraph (a) of Paragraph (1) of Subsection E
9 of this section; and

10 (2) ten more than the number on the last day
11 of the prior taxable year if the taxpayer claims a credit
12 pursuant to Subparagraph (b) of Paragraph (1) of Subsection E
13 of this section.

14 G. A taxpayer who provides retail sales of goods or
15 services is eligible for the new revenue income tax credit only
16 if the taxpayer made fifty percent or more of the taxpayer's
17 sales or services produced in New Mexico to persons outside New
18 Mexico during the applicable qualifying period.

19 H. A job shall not be considered a new job pursuant
20 to this section if:

21 (1) the job is created due to a business
22 merger or acquisition or other change in business organization;

23 (2) the eligible employee was terminated from
24 employment in New Mexico by another employer involved in the
25 business merger or acquisition or other change in business

1 organization with the taxpayer; and

2 (3) the job is performed by:

3 (a) the person who performed the job or
4 its functional equivalent prior to the business merger or
5 acquisition or other change in business organization; or

6 (b) a person replacing the person who
7 performed the job or its functional equivalent prior to a
8 business merger or acquisition or other change in business
9 organization.

10 I. Notwithstanding the provisions of Subsection H
11 of this section, a new job that was created by another employer
12 and for which an application for the new revenue income tax
13 credit was received and is under review by the department prior
14 to the time of the business merger or acquisition or other
15 change in business organization shall remain eligible for the
16 new revenue income tax credit. The new employer that results
17 from a business merger or acquisition or other change in
18 business organization may only claim the new revenue income tax
19 credit for the qualifying period for which the new job is
20 otherwise eligible.

21 J. A job shall not be considered a new job pursuant
22 to this section if the job is created due to a taxpayer
23 entering into a contract or becoming a subcontractor to a
24 contract with a governmental entity that replaces one or more
25 entities performing functionally equivalent services for the

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1 governmental entity unless the job is one that was not being
2 performed by an employee of the replaced entity.

3 K. A taxpayer seeking a new revenue income tax
4 credit shall submit the following information to the economic
5 development department and the taxation and revenue department:

6 (1) if the taxpayer is seeking a credit based
7 on requirements pursuant to Paragraph (1) of Subsection E of
8 this section:

9 (a) the amount of wages paid to each
10 eligible employee in a new job during a qualifying period;

11 (b) the number of weeks the position was
12 occupied during the qualifying period;

13 (c) whether the job meets the criteria
14 described in Subparagraph (a), (b) or (c) of Paragraph (7) of
15 Subsection U of this section; and

16 (d) the total number of new jobs created
17 by the taxpayer at the job location as measured on the day
18 prior to the qualifying period and on the last day of the
19 qualifying period; and

20 (2) if the taxpayer is seeking a credit based
21 on requirements pursuant to Paragraph (2) of Subsection E of
22 this section:

23 (a) the amount of capital investment in
24 the qualifying period for which the new revenue income tax
25 credit is being claimed; and

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1 (b) the county in which the capital
2 investment was made.

3 L. To claim a new revenue income tax credit, a
4 taxpayer shall apply for approval to the department after the
5 close of a taxpayer's qualifying period, but not later than
6 twelve months following the end of the calendar year in which
7 the taxpayer's qualifying period closes. The application shall
8 be on forms and in a manner required by the department.

9 M. Within ten years of becoming eligible to claim a
10 new revenue income tax credit, a taxpayer may claim the credit
11 for an additional qualifying period for:

12 (1) every five new jobs that are created in
13 addition to the minimum required pursuant to Subparagraph (a)
14 of Paragraph (1) of Subsection E of this section, up to a
15 maximum of ten qualifying periods; and

16 (2) every ten new jobs that are created in
17 addition to the minimum required pursuant to Subparagraph (b)
18 of Paragraph (1) of Subsection E of this section, up to a
19 maximum of ten qualifying periods.

20 N. If an eligible employee who was hired to fill a
21 new job is terminated by the taxpayer within five years of
22 being hired to fill the new job, the terminated employee's
23 position is not filled within ninety days by an eligible
24 employee and the taxpayer's eligibility for the new revenue
25 income tax credit was based on meeting the requirements of

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1 Paragraph (1) of Subsection E of this section, the taxpayer
2 shall remit to the department an amount of the new revenue
3 income tax credit taken by the taxpayer for each terminated
4 employee. The amount of credit remitted for the terminated
5 employee shall be calculated as the percentage that the total
6 terminated employee's job bears to the total number of new jobs
7 created during the qualifying period in which the terminated
8 employee was hired, multiplied by the new revenue income tax
9 credit claimed for that qualifying period.

10 0. If a taxpayer or a successor in business of the
11 taxpayer ceases operations in New Mexico for at least one
12 hundred eighty consecutive days within a two-year period after
13 the taxpayer has claimed a new revenue income tax credit at a
14 facility with respect to which the taxpayer has claimed the
15 credit, the department shall grant no further credit to the
16 taxpayer with respect to that facility. In addition, any
17 amount of credit not claimed against the taxpayer's income tax
18 liability shall be extinguished, and within thirty days after
19 the one hundred eightieth day of the cessation of operations,
20 the taxpayer shall pay the amount of any income tax against
21 which an approved credit was taken. For purposes of this
22 section, a taxpayer shall not be deemed to have ceased
23 operations during reasonable periods for maintenance or
24 retooling or for the repair or replacement of facilities
25 damaged or destroyed or during the continuance of labor

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1 disputes.

2 P. A husband and wife filing separate returns for a
3 taxable year for which they could have filed a joint return may
4 each claim only one-half of the new revenue income tax credit
5 that would have been claimed on a joint return.

6 Q. A taxpayer may be allocated the right to claim a
7 new revenue income tax credit in proportion to the taxpayer's
8 ownership interest if the taxpayer owns an interest in a
9 business entity that is taxed for federal income tax purposes
10 as a partnership and that business entity has met all of the
11 requirements to be eligible for the credit. The total credit
12 claimed by all members of the partnership or limited liability
13 company shall not exceed the allowable credit pursuant to this
14 section.

15 R. A taxpayer allowed a credit pursuant to this
16 section shall report the amount of the credit to the department
17 in a manner required by the department.

18 S. The economic development department and the
19 taxation and revenue department shall compile an annual report
20 on the new revenue income tax credit that shall include the
21 information submitted pursuant to Subsection K of this section,
22 the number of taxpayers approved by the taxation and revenue
23 department to receive the credit, the aggregate amount of
24 credits approved and any other information necessary to
25 evaluate the effectiveness of the credit. Beginning in 2020

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1 and every five years thereafter that the credit is in effect,
2 the economic development department and the taxation and
3 revenue department shall compile and present the annual reports
4 to the revenue stabilization and tax policy committee and the
5 legislative finance committee with an analysis of the
6 effectiveness and cost of the credit and whether the credit is
7 performing the purposes for which it was created.

8 T. The department shall promulgate rules to
9 implement the provisions of this section.

10 U. As used in this section:

11 (1) "benefits" means all remuneration for work
12 performed that is provided to an employee in whole or in part
13 by the employer, other than wages, including insurance
14 programs, health care, medical, dental and vision plans, life
15 insurance, employer contributions to pensions, such as a
16 401(k), and employer-provided services, such as child care,
17 offered by an employer to the employee. "Benefits" does not
18 include the employer's share of payroll taxes, social security
19 or medicare contributions, federal or state unemployment
20 insurance contributions or workers' compensation;

21 (2) "capital investment" means capital
22 investment in equipment, land, buildings or infrastructure, any
23 of which is necessary to support new or expanding business
24 activity;

25 (3) "economic base job" means employment with

1 an employer engaged primarily in creating goods and services
2 that are exported out of state;

3 (4) "eligible employee" means an individual
4 who is employed in New Mexico and who is a resident of New
5 Mexico; "eligible employee" does not include an individual who:

6 (a) bears any of the relationships
7 described in Subsection (a) of Section 152 of the Internal
8 Revenue Code to the employer or, if the employer is a
9 corporation, to an individual who owns, directly or indirectly,
10 more than fifty percent in value of the outstanding stock of
11 the corporation or, if the employer is an entity other than a
12 corporation, to an individual who owns, directly or indirectly,
13 more than fifty percent of the capital and profits interest in
14 the entity;

15 (b) if the employer is an estate or
16 trust, is a grantor, beneficiary or fiduciary of the estate or
17 trust or is an individual who bears any of the relationships
18 described in Subsection (a) of Section 152 of the Internal
19 Revenue Code to a grantor, beneficiary or fiduciary of the
20 estate or trust; or

21 (c) is working or has worked as an
22 employee or as an independent contractor for an entity that,
23 directly or indirectly, owns stock in a corporation of the
24 eligible employer or other interest of the eligible employer
25 that represents fifty percent or more of the total voting power

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1 of that entity or has a value equal to fifty percent or more of
2 the capital and profits interest in the entity;

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

12 (6) "modified combined tax liability" means
13 the total liability for the qualifying period for the gross
14 receipts tax imposed by Section 7-9-4 NMSA 1978, the
15 compensating tax imposed pursuant to Section 7-9-7 NMSA 1978
16 and the withholding tax imposed on wages pursuant to Section
17 7-3-3 NMSA 1978. "Modified combined tax liability" excludes
18 any liability with respect to local option gross receipts
19 taxes;

20 (7) "new job" means a job created in New
21 Mexico by a taxpayer that is occupied for at least forty-eight
22 weeks of a qualifying period by an eligible employee who is
23 paid wages calculated for the qualifying period to be at least:

24 (a) one hundred twenty-five percent of
25 the annual average wage for the county, as determined by the

1 bureau of business and economic research at the university of
2 New Mexico, if the job is not an economic base job and is
3 performed or based in or within ten miles of the external
4 boundaries of a municipality with a population of sixty
5 thousand or more according to the most recent federal decennial
6 census or in a class H county;

7 (b) one hundred fifteen percent of the
8 annual average wage for the county, as determined by the bureau
9 of business and economic research at the university of New
10 Mexico, if the job is an economic base job and is performed or
11 based in or within ten miles of the external boundaries of a
12 municipality with a population of sixty thousand or more
13 according to the most recent federal decennial census or in a
14 class H county; or

15 (c) one hundred percent of the annual
16 average wage for the county, as determined by the bureau of
17 business and economic research at the university of New Mexico,
18 if the job is performed or based in a municipality with a
19 population of less than sixty thousand according to the most
20 recent federal decennial census or in the unincorporated area,
21 that is not within ten miles of the external boundaries of a
22 municipality with a population of sixty thousand or more, of a
23 county other than a class H county;

24 (8) "new revenue" means the difference between
25 the following sums, provided that the difference results in a

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1 positive amount:

2 (a) the sum of the amount of a
3 taxpayer's modified combined tax liability, less the amount of
4 any credit claimed against the modified combined tax liability,
5 and tax liability pursuant to the Income Tax Act, minus the
6 amount of any income tax credit or deduction other than the new
7 revenue income tax credit, in a taxpayer's taxable year; and

8 (b) the sum of the amount of a
9 taxpayer's modified combined tax liability, less the amount of
10 any credit claimed against the modified combined tax liability,
11 and tax liability pursuant to the Income Tax Act, minus the
12 amount of any income tax credit or deduction other than the new
13 revenue income tax credit, in the taxable year immediately
14 prior to the taxpayer's taxable year;

15 (9) "qualifying period" means the taxable year
16 in which an eligible employee begins working in a new job or
17 the taxable year in which a capital investment is made; and

18 (10) "wages" means all compensation paid by a
19 taxpayer to an eligible employee through the taxpayer's payroll
20 system, including those wages that the employee elects to defer
21 or redirect or the employee's contribution to a 401(k) or
22 cafeteria plan program, but "wages" does not include benefits
23 or the employer's share of payroll taxes."

24 SECTION 2. A new section of the Corporate Income and
25 Franchise Tax Act is enacted to read:

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1 "[NEW MATERIAL] NEW REVENUE CORPORATE INCOME TAX CREDIT.--

2 A. A taxpayer that creates new jobs or makes a
3 capital investment in the state may apply for, and the
4 department may allow, a credit of thirty percent of new revenue
5 created by the taxpayer against the taxpayer's tax liability
6 imposed pursuant to the Corporate Income and Franchise Tax Act.
7 The credit provided in this section may be referred to as the
8 "new revenue corporate income tax credit".

9 B. The purposes of the new revenue corporate income
10 tax credit are to:

11 (1) encourage businesses that would not do so
12 without the new revenue corporate income tax credit to relocate
13 or expand their operations in New Mexico;

14 (2) encourage businesses to create well-paid
15 jobs and make capital investments in New Mexico;

16 (3) generate new revenue for the state; and

17 (4) strengthen and diversify the state's
18 economy.

19 C. The new revenue corporate income tax credit may
20 be claimed and allowed in an amount equal to thirty percent of
21 new revenue created by a taxpayer in the taxable year in which
22 a taxpayer's qualifying period closes.

23 D. That portion of a new revenue corporate income
24 tax credit approved by the department that exceeds a taxpayer's
25 corporate income tax liability in the taxable year in which the

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1 credit is claimed shall be refunded to the taxpayer.

2 E. To be eligible for a new revenue corporate
3 income tax credit, a taxpayer shall:

4 (1) have created a minimum number of new jobs
5 in a qualifying period in which a new revenue corporate income
6 tax credit is claimed, as follows:

7 (a) at least five jobs if the jobs are
8 performed or based in a municipality with a population of less
9 than sixty thousand according to the most recent federal
10 decennial census, or in an unincorporated area that is not
11 within ten miles of the external boundaries of a municipality
12 with a population of sixty thousand or more, of a county other
13 than a class H county; or

14 (b) at least ten jobs if the jobs are
15 performed or based in or within ten miles of the external
16 boundaries of a municipality with a population of sixty
17 thousand or more according to the most recent federal decennial
18 census or in a class H county; or

19 (2) have made a minimum amount of capital
20 investment in a qualifying period in which a new revenue
21 corporate income tax credit is being claimed, as follows:

22 (a) at least two million five hundred
23 thousand dollars (\$2,500,000) if the capital investment is made
24 in a municipality with a population of less than sixty thousand
25 according to the most recent federal decennial census, or in an

1 unincorporated area that is not within ten miles of the
2 external boundaries of a municipality with a population of
3 sixty thousand or more, of a county other than a class H
4 county; or

5 (b) at least five million dollars
6 (\$5,000,000) if the capital investment is made in or within ten
7 miles of the external boundaries of a municipality with a
8 population of sixty thousand or more according to the most
9 recent federal decennial census or in a class H county.

10 F. A taxpayer shall not be eligible for a credit
11 pursuant to Paragraph (1) of Subsection E of this section
12 unless the taxpayer's total number of employees on the last day
13 of a qualifying period at the location at which the new jobs
14 are performed or based is at least:

15 (1) five more than the number on the last day
16 of the prior taxable year if the taxpayer claims a credit
17 pursuant to Subparagraph (a) of Paragraph (1) of Subsection E
18 of this section; and

19 (2) ten more than the number on the last day
20 of the prior taxable year if the taxpayer claims a credit
21 pursuant to Subparagraph (b) of Paragraph (1) of Subsection E
22 of this section.

23 G. A taxpayer that provides retail sales of goods
24 or services is eligible for the new revenue corporate income
25 tax credit only if the taxpayer made fifty percent or more of

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1 its sales or services produced in New Mexico to persons outside
2 New Mexico during the applicable qualifying period.

3 H. A job shall not be considered a new job pursuant
4 to this section if:

5 (1) the job is created due to a business
6 merger or acquisition or other change in business organization;

7 (2) the eligible employee was terminated from
8 employment in New Mexico by another employer involved in the
9 business merger or acquisition or other change in business
10 organization with the taxpayer; and

11 (3) the job is performed by:

12 (a) the person who performed the job or
13 its functional equivalent prior to the business merger or
14 acquisition or other change in business organization; or

15 (b) a person replacing the person who
16 performed the job or its functional equivalent prior to a
17 business merger or acquisition or other change in business
18 organization.

19 I. Notwithstanding the provisions of Subsection H
20 of this section, a new job that was created by another employer
21 and for which an application for the new revenue corporate
22 income tax credit was received and is under review by the
23 department prior to the time of the business merger or
24 acquisition or other change in business organization shall
25 remain eligible for the new revenue corporate income tax

1 credit. The new employer that results from a business merger
2 or acquisition or other change in business organization may
3 only claim the new revenue corporate income tax credit for the
4 qualifying period for which the new job is otherwise eligible.

5 J. A job shall not be considered a new job pursuant
6 to this section if the job is created due to a taxpayer
7 entering into a contract or becoming a subcontractor to a
8 contract with a governmental entity that replaces one or more
9 entities performing functionally equivalent services for the
10 governmental entity unless the job is one that was not being
11 performed by an employee of the replaced entity.

12 K. A taxpayer seeking a new revenue corporate
13 income tax credit shall submit the following information to the
14 economic development department and the taxation and revenue
15 department:

16 (1) if the taxpayer is seeking a credit based
17 on requirements pursuant to Paragraph (1) of Subsection E of
18 this section:

19 (a) the amount of wages paid to each
20 eligible employee in a new job during a qualifying period;

21 (b) the number of weeks the position was
22 occupied during the qualifying period;

23 (c) whether the job meets the criteria
24 described in Subparagraph (a), (b) or (c) of Paragraph (7) of
25 Subsection S of this section; and

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1 (d) the total number of new jobs created
2 by the taxpayer at the job location as measured on the day
3 prior to the qualifying period and on the last day of the
4 qualifying period; and

5 (2) if the taxpayer is seeking a credit based
6 on requirements pursuant to Paragraph (2) of Subsection E of
7 this section:

8 (a) the amount of capital investment in
9 the qualifying period for which the new revenue corporate
10 income tax credit is being claimed; and

11 (b) the county in which the capital
12 investment was made.

13 L. To claim a new revenue corporate income tax
14 credit, a taxpayer shall apply for approval to the department
15 after the close of a taxpayer's qualifying period, but not
16 later than twelve months following the end of the calendar year
17 in which the taxpayer's qualifying period closes. The
18 application shall be on forms and in a manner required by the
19 department.

20 M. Within ten years of becoming eligible to claim a
21 new revenue corporate income tax credit, a taxpayer may claim
22 the credit for an additional qualifying period for:

23 (1) every five new jobs that are created in
24 addition to the minimum required pursuant to Subparagraph (a)
25 of Paragraph (1) of Subsection E of this section, up to a

1 maximum of ten qualifying periods; and

2 (2) every ten new jobs that are created in
3 addition to the minimum required pursuant to Subparagraph (b)
4 of Paragraph (1) of Subsection E of this section, up to a
5 maximum of ten qualifying periods.

6 N. If an eligible employee who was hired to fill a
7 new job is terminated by the taxpayer within five years of
8 being hired to fill the new job, the terminated employee's
9 position is not filled within ninety days by an eligible
10 employee and the taxpayer's eligibility for the new revenue
11 corporate income tax credit was based on meeting the
12 requirements of Paragraph (1) of Subsection E of this section,
13 the taxpayer shall remit to the department an amount of the new
14 revenue corporate income tax credit taken by the taxpayer for
15 each terminated employee. The amount of credit remitted for
16 the terminated employee shall be calculated as the percentage
17 that the total terminated employee's job bears to the total
18 number of new jobs created during the qualifying period in
19 which the terminated employee was hired, multiplied by the new
20 revenue corporate income tax credit claimed for that qualifying
21 period.

22 O. If a taxpayer or a successor in business of the
23 taxpayer ceases operations in New Mexico for at least one
24 hundred eighty consecutive days within a two-year period after
25 the taxpayer has claimed a new revenue corporate income tax

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1 credit at a facility with respect to which the taxpayer has
2 claimed the credit, the department shall grant no further
3 credit to the taxpayer with respect to that facility. In
4 addition, any amount of credit not claimed against the
5 taxpayer's income tax liability shall be extinguished, and
6 within thirty days after the one hundred eightieth day of the
7 cessation of operations, the taxpayer shall pay the amount of
8 any corporate income tax against which an approved credit was
9 taken. For purposes of this section, a taxpayer shall not be
10 deemed to have ceased operations during reasonable periods for
11 maintenance or retooling or for the repair or replacement of
12 facilities damaged or destroyed or during the continuance of
13 labor disputes.

14 P. A taxpayer allowed a credit pursuant to this
15 section shall report the amount of the credit to the department
16 in a manner required by the department.

17 Q. The economic development department and the
18 taxation and revenue department shall compile an annual report
19 on the new revenue corporate income tax credit that shall
20 include the information submitted pursuant to Subsection K of
21 this section, the number of taxpayers approved by the taxation
22 and revenue department to receive the credit, the aggregate
23 amount of credits approved and any other information necessary
24 to evaluate the effectiveness of the credit. Beginning in 2020
25 and every five years thereafter that the credit is in effect,

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1 the economic development department and the taxation and
2 revenue department shall compile and present the annual reports
3 to the revenue stabilization and tax policy committee and the
4 legislative finance committee with an analysis of the
5 effectiveness and cost of the credit and whether the credit is
6 performing the purposes for which it was created.

7 R. The department shall promulgate rules to
8 implement the provisions of this section.

9 S. As used in this section:

10 (1) "benefits" means all remuneration for work
11 performed that is provided to an employee in whole or in part
12 by the employer, other than wages, including insurance
13 programs, health care, medical, dental and vision plans, life
14 insurance, employer contributions to pensions, such as a
15 401(k), and employer-provided services, such as child care,
16 offered by an employer to the employee. "Benefits" does not
17 include the employer's share of payroll taxes, social security
18 or medicare contributions, federal or state unemployment
19 insurance contributions or workers' compensation;

20 (2) "capital investment" means capital
21 investment in equipment, land, buildings or infrastructure, any
22 of which is necessary to support new or expanding business
23 activity;

24 (3) "economic base job" means employment with
25 an employer engaged primarily in creating goods and services

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1 that are exported out of state;

2 (4) "eligible employee" means an individual
3 who is employed in New Mexico and who is a resident of New
4 Mexico; "eligible employee" does not include an individual who:

5 (a) bears any of the relationships
6 described in Subsection (a) of Section 152 of the Internal
7 Revenue Code to the employer or, if the employer is a
8 corporation, to an individual who owns, directly or indirectly,
9 more than fifty percent in value of the outstanding stock of
10 the corporation or, if the employer is an entity other than a
11 corporation, to an individual who owns, directly or indirectly,
12 more than fifty percent of the capital and profits interest in
13 the entity;

14 (b) if the employer is an estate or
15 trust, is a grantor, beneficiary or fiduciary of the estate or
16 trust or is an individual who bears any of the relationships
17 described in Subsection (a) of Section 152 of the Internal
18 Revenue Code to a grantor, beneficiary or fiduciary of the
19 estate or trust; or

20 (c) is working or has worked as an
21 employee or as an independent contractor for an entity that,
22 directly or indirectly, owns stock in a corporation of the
23 eligible employer or other interest of the eligible employer
24 that represents fifty percent or more of the total voting power
25 of that entity or has a value equal to fifty percent or more of

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1 the capital and profits interest in the entity;

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

11 (6) "modified combined tax liability" means
12 the total liability for the qualifying period for the gross
13 receipts tax imposed by Section 7-9-4 NMSA 1978, the
14 compensating tax imposed pursuant to Section 7-9-7 NMSA 1978
15 and the withholding tax imposed on wages pursuant to Section
16 7-3-3 NMSA 1978. "Modified combined tax liability" excludes
17 any liability with respect to local option gross receipts
18 taxes;

19 (7) "new job" means a job created in New
20 Mexico by a taxpayer that is occupied for at least forty-eight
21 weeks of a qualifying period by an eligible employee who is
22 paid wages calculated for the qualifying period to be at least:

23 (a) one hundred twenty-five percent of
24 the annual average wage for the county, as determined by the
25 bureau of business and economic research at the university of

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1 New Mexico, if the job is not an economic base job and is
2 performed or based in or within ten miles of the external
3 boundaries of a municipality with a population of sixty
4 thousand or more according to the most recent federal decennial
5 census or in a class H county;

6 (b) one hundred fifteen percent of the
7 annual average wage for the county, as determined by the bureau
8 of business and economic research at the university of New
9 Mexico, if the job is an economic base job and is performed or
10 based in or within ten miles of the external boundaries of a
11 municipality with a population of sixty thousand or more
12 according to the most recent federal decennial census or in a
13 class H county; or

14 (c) one hundred percent of the annual
15 average wage for the county, as determined by the bureau of
16 business and economic research at the university of New Mexico,
17 if the job is performed or based in a municipality with a
18 population of less than sixty thousand according to the most
19 recent federal decennial census or in the unincorporated area,
20 that is not within ten miles of the external boundaries of a
21 municipality with a population of sixty thousand or more, of a
22 county other than a class H county;

23 (8) "new revenue" means the difference between
24 the following sums, provided that the difference results in a
25 positive amount:

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1 (a) the sum of the amount of a
2 taxpayer's modified combined tax liability, less the amount of
3 any credit claimed against the modified combined tax liability,
4 and tax liability pursuant to the Corporate Income and
5 Franchise Tax Act, minus the amount of any corporate income tax
6 credit or deduction other than the new revenue corporate income
7 tax credit, in a taxpayer's taxable year; and

8 (b) the sum of the amount of a
9 taxpayer's modified combined tax liability, less the amount of
10 any credit claimed against the modified combined tax liability,
11 and tax liability pursuant to the Corporate Income and
12 Franchise Tax Act, minus the amount of any income tax credit or
13 deduction other than the new revenue corporate income tax
14 credit, in the taxable year immediately prior to the taxpayer's
15 taxable year;

16 (9) "qualifying period" means the taxable year
17 in which an eligible employee begins working in a new job or
18 the taxable year in which a capital investment is made; and

19 (10) "wages" means all compensation paid by a
20 taxpayer to an eligible employee through the taxpayer's payroll
21 system, including those wages that the employee elects to defer
22 or redirect or the employee's contribution to a 401(k) or
23 cafeteria plan program, but "wages" does not include benefits
24 or the employer's share of payroll taxes."

25 SECTION 3. APPLICABILITY.--The provisions of this act

.196391.3

1 apply to taxable years beginning on or after January 1, 2015.

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underscoring = new
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