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SENATE BILL 68

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO TAXATION; PROVIDING A CORPORATE INCOME TAX CREDIT FOR NEW OR EXPANDED BUSINESSES; REQUIRING AN INCREMENTAL INCREASE IN EMPLOYMENT TO QUALIFY FOR THE CREDIT; PROVIDING LIMITS AND QUALIFICATIONS; PROVIDING FOR POST-PERFORMANCE ASSESSMENT OF PERFORMANCE OF THE QUALIFYING ACTIVITIES REQUIRED FOR APPROVAL OF THE TAX CREDIT.

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

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

"[NEW MATERIAL] NEW COMMERCIAL ACTIVITY CORPORATE INCOME TAX CREDIT.--

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2013 but before January 1, 2023 that is a new

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1 business or an expanded business that creates additional
2 economic-based jobs in New Mexico may claim, and the department
3 may allow, a tax credit against the taxpayer's corporate income
4 tax liability of fifty percent of the excess above taxes paid
5 to New Mexico in the base year pursuant to the Corporate Income
6 and Franchise Tax Act and the Gross Receipts and Compensating
7 Tax Act. The credit provided in this section may be referred
8 to as the "new commercial activity corporate income tax
9 credit". The department shall allow a new commercial activity
10 corporate income tax credit for a taxpayer that is issued a
11 certificate of eligibility by the economic development
12 department.

13 B. The purposes of the new commercial activity
14 corporate income tax credit are to:

15 (1) encourage corporations to start up in,
16 relocate to or expand in New Mexico and invest significant
17 amounts of capital in the state to start up, relocate or
18 expand;

19 (2) increase the number of economic-based jobs
20 available to New Mexico residents in New Mexico; and

21 (3) generate new state revenue from
22 construction, employment and business activity developed in New
23 Mexico.

24 C. The new commercial activity corporate income tax
25 credit may be claimed for ten consecutive years beginning with

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1 the first taxable year in which the taxpayer is eligible to claim
2 that credit.

3 D. The department shall recapture the entire amount
4 of new commercial activity corporate income tax credits allowed a
5 taxpayer if the taxpayer fails to remain in business for at least
6 five consecutive years from the first taxable year in which the
7 taxpayer is allowed a new commercial activity corporate income
8 tax credit.

9 E. A taxpayer may be allowed by the department a
10 maximum aggregate amount of new commercial activity corporate
11 income tax credits for the ten-year period for which the taxpayer
12 is able to claim new commercial activity corporate income tax
13 credits not to exceed thirty percent of the increase in state
14 revenue above the first base year for which the taxpayer has
15 claimed a new commercial activity corporate income tax credit.

16 F. Prior to January 1, 2013, the taxation and revenue
17 department and the economic development department shall each
18 adopt rules to implement the provisions of this section for which
19 that department is responsible.

20 G. A corporation claiming a new commercial activity
21 corporate income tax credit shall apply to the economic
22 development department for a certificate of eligibility that
23 states that the taxpayer qualifies for a new commercial activity
24 corporate income tax credit on a form and in a manner authorized
25 by the economic development department.

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1 H. A certificate of eligibility is valid for only the
2 taxpayer that is found eligible by the economic development
3 department to receive a new commercial activity corporate income
4 tax credit and may not be transferred to another taxpayer.

5 I. The economic development department shall provide
6 a certificate of eligibility to each taxpayer that has applied
7 for and been found to qualify to receive a new commercial
8 activity corporate income tax credit. The economic development
9 department shall maintain records of the certificates of
10 eligibility issued pursuant to this section.

11 J. To be eligible to receive a new commercial
12 activity corporate income tax credit, a taxpayer shall provide
13 the economic development department with:

14 (1) evidence of expenditures to establish a new
15 business located in New Mexico or the expenditures for an
16 expanded business within the immediately preceding four years but
17 not before July 1, 2012;

18 (2) evidence of one full year of operation in
19 New Mexico using the capital improvements that are reported to
20 the economic development department to support the taxpayer's
21 eligibility for the new commercial activity corporate income tax
22 credit, including evidence of paying eligible employees within
23 the taxable year for which the new commercial activity corporate
24 income tax credit is to be claimed;

25 (3) evidence of payment of taxes by the business

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1 to the state of New Mexico in the taxable year pursuant to the
2 Corporate Income and Franchise Tax Act and the Gross Receipts and
3 Compensating Tax Act;

4 (4) evidence that the business has capital,
5 credit or income potential necessary to continue operation for at
6 least a five-year period from the first taxable year in which the
7 taxpayer applies to the economic development department for a
8 certificate of eligibility; and

9 (5) statements signed by the taxpayer:

10 (a) authorizing the economic development
11 department and the taxation and revenue department to reveal to
12 the legislature and its agencies information from the taxpayer's
13 tax returns needed to evaluate the effectiveness of the new
14 commercial activity corporate income tax credit in fulfilling its
15 purposes; and

16 (b) creating a first priority lien, in
17 favor of the state, on the assets and property of the taxpayer
18 equal to the aggregate amount of new commercial activity
19 corporate income tax credit allowed the taxpayer by the
20 department and claimed pursuant to this section if the taxpayer
21 ceases operation within the five consecutive years following the
22 first taxable year for which the taxpayer was allowed a new
23 commercial activity corporate income tax credit.

24 K. To claim the new commercial activity corporate
25 income tax credit, a taxpayer shall submit with the taxpayer's

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1 New Mexico corporate income tax return a certificate of
2 eligibility issued by the economic development department
3 pursuant to this section, individually identifiable and
4 displaying the date on which the certificate of eligibility is
5 issued. The certificate of eligibility shall state:

6 (1) the details that make the taxpayer eligible
7 to receive the new commercial activity corporate income tax
8 credit;

9 (2) the number of eligible employees employed by
10 the taxpayer in the base year;

11 (3) the total wages paid by the taxpayer in the
12 base year to employees of the business for which the credit is
13 being claimed; and

14 (4) the amount of the taxpayer's investment to
15 create, relocate or expand the taxpayer's business.

16 L. The taxation and revenue department shall provide
17 a credit claim form on which a taxpayer may claim a new
18 commercial activity corporate income tax credit. A credit claim
19 form shall accompany a return filed pursuant to the Corporate
20 Income and Franchise Tax Act in which the taxpayer is applying
21 for a new commercial activity corporate income tax credit. The
22 taxation and revenue department shall determine the amount of the
23 new commercial activity corporate income tax credit that is
24 allowed the taxpayer for the taxable year.

25 M. The amount of the new commercial activity

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1 corporate income tax credit shall be determined by subtracting
2 the tax liability of the taxpayer paid for the base year from the
3 tax liability of the taxpayer for the taxable year for which the
4 taxpayer is claiming the new commercial activity corporate income
5 tax credit and multiplying the difference by fifty percent. If
6 the difference is zero or a negative number, the tax credit for
7 that year shall be zero.

8 N. Any amount of the new commercial activity
9 corporate income tax credit that the taxpayer is approved to
10 claim that exceeds the tax liability of the taxpayer for the
11 taxable year, up to the maximum allowable aggregate credit, shall
12 be refunded to the taxpayer.

13 O. A taxpayer claiming the new commercial activity
14 corporate income tax credit pursuant to this section is
15 ineligible for a high-wage jobs tax credit or a rural jobs tax
16 credit.

17 P. The department shall compile an annual report that
18 includes the following information regarding the last fiscal
19 year:

20 (1) the number of taxpayers approved by the
21 department to receive a new commercial activity corporate income
22 tax credit;

23 (2) the aggregate amount of new commercial
24 activity corporate income tax credits allowed in the fiscal year;

25 (3) the number of economic-based jobs created in

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1 the fiscal year by taxpayers claiming the new commercial activity
2 corporate income tax credit;

3 (4) the increase in wages paid by taxpayers
4 claiming the new commercial activity corporate income tax credit
5 in the fiscal year;

6 (5) the number of taxpayers whose businesses
7 have failed to complete the five-year operational period;

8 (6) the amount of revenue that the state has
9 been able to recapture from businesses that did not complete the
10 five-year operational period; and

11 (7) any other information that the department,
12 the legislative finance committee or the revenue stabilization
13 and tax policy committee deems necessary to evaluate the
14 effectiveness of the credit in fulfilling its purposes.

15 Beginning in 2016, the department shall present to the revenue
16 stabilization and tax policy committee an analysis of whether the
17 new commercial activity corporate income tax credit is fulfilling
18 the purposes for which it was created. Recommendations for
19 amending or repealing the new commercial activity corporate
20 income tax credit based on the analysis shall be included in the
21 report.

22 Q. As used in this section:

23 (1) "average wage" means the annual average wage
24 amount by county as stated on the web site of the bureau of
25 business and economic research at the university of New Mexico as

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1 the average annual covered wages by major sector and county found
2 in the economic data tables for the most recent year published
3 for the county in which a taxpayer has established a new business
4 or expanded a business;

5 (2) "base year" means the fiscal year
6 immediately prior to the fiscal year in which the new commercial
7 activity corporate income tax credit is being claimed;

8 (3) "business" means a for-profit corporation
9 that is required to pay corporate and franchise taxes pursuant to
10 the Corporate Income and Franchise Tax Act;

11 (4) "corporate tax liability" means a taxpayer's
12 corporate tax liability pursuant to the Corporate Income and
13 Franchise Tax Act;

14 (5) "economic-based job" means a job that is
15 occupied for at least forty-eight consecutive weeks by an
16 eligible employee;

17 (6) "eligible employee" means an individual who
18 is a resident of New Mexico for purposes of the Income Tax Act,
19 is employed by the taxpayer claiming a new commercial activity
20 corporate income tax credit and is paid a wage in the qualifying
21 period that is at least one hundred percent of the average wage
22 in the county in which the employee is employed;

23 (7) "expanded business" means a business to
24 which capital improvements have been made to business facilities
25 or capital equipment that enable the business to increase its

1 output and hire at least five additional full-time employees;
2 provided that the expanded business:

3 (a) is located in New Mexico;

4 (b) is required to pay tax pursuant to the
5 Corporate Income and Franchise Tax Act and the Gross Receipts and
6 Compensating Tax Act; and

7 (c) was in operation on or before July 1,
8 2007 or at least five years prior to the taxable year in which
9 the new commercial activity corporate income tax credit is first
10 claimed but began capital improvements within the two years prior
11 to the date on which the taxpayer first seeks a certificate of
12 eligibility pursuant to this section;

13 (8) "five-year operational period" means the
14 five-year period beginning with the taxable year in which a
15 taxpayer is issued a certificate of eligibility;

16 (9) "new business" means a corporation:

17 (a) that operates a business in New
18 Mexico, that owns or leases real property as a physical address
19 for the business in New Mexico and that employs personnel at that
20 physical address;

21 (b) that is required to pay tax pursuant
22 to the Corporate Income and Franchise Tax Act and the Gross
23 Receipts and Compensating Tax Act;

24 (c) that began business operations on or
25 after July 1, 2012; and

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(d) in which the taxpayer has invested more than twenty-five million dollars (\$25,000,000);

(10) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in an economic-based job; and

(11) "wages" means all remuneration in cash and the cash value of remuneration paid in any other form for services performed by an employee for an employer; "wages" includes the value of benefits."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012.