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SENATE BILL 99

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

INTRODUCED BY

Tim Eichenberg

AN ACT

RELATING TO TAXATION; PROVIDING A CORPORATE INCOME TAX CREDIT FOR NEW 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, 2020 that is a new

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

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

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

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

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

22 C. The new commercial activity corporate income tax  
23 credit may be claimed for seven consecutive years beginning with  
24 the first taxable year in which the taxpayer is eligible to claim  
25 the credit.

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1           D. A taxpayer may be allowed by the department a  
2 maximum aggregate amount of new commercial activity corporate  
3 income tax credits for the seven-year period for which the  
4 taxpayer is able to claim new commercial activity corporate  
5 income tax credits not to exceed fifteen percent of the increase  
6 in state revenue above the first base year for which the taxpayer  
7 has claimed a new commercial activity corporate income tax  
8 credit.

9           E. Prior to January 1, 2013, the taxation and revenue  
10 department and the economic development department shall each  
11 adopt rules to implement the provisions of this section for which  
12 that department is responsible.

13           F. A corporation claiming a new commercial activity  
14 corporate income tax credit shall apply to the economic  
15 development department for a certificate of eligibility that  
16 states that the taxpayer qualifies for a new commercial activity  
17 corporate income tax credit on a form and in a manner authorized  
18 by the economic development department.

19           G. A certificate of eligibility is valid for only the  
20 taxpayer that is found eligible by the economic development  
21 department to receive a new commercial activity corporate income  
22 tax credit and may not be transferred to another taxpayer.

23           H. The economic development department shall provide  
24 a certificate of eligibility to each taxpayer that has applied  
25 for and been found to qualify to receive a new commercial

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1 activity corporate income tax credit. The economic development  
2 department shall maintain records of the certificates of  
3 eligibility issued pursuant to this section.

4 I. To be eligible to receive a new commercial  
5 activity corporate income tax credit, a taxpayer shall provide  
6 the economic development department with:

7 (1) evidence of expenditures to establish a new  
8 business located in New Mexico;

9 (2) evidence of one full year of operation in  
10 New Mexico, including evidence of paying eligible employees  
11 within the taxable year for which the credit is to be claimed;

12 (3) evidence of payment of taxes by the business  
13 to the state of New Mexico in the taxable year pursuant to the  
14 Corporate Income and Franchise Tax Act and the Gross Receipts and  
15 Compensating Tax Act and any other state tax for which the new  
16 business is liable; and

17 (4) statements signed by the taxpayer  
18 authorizing the economic development department and the taxation  
19 and revenue department to reveal to the legislature and its  
20 agencies information from the taxpayer's tax returns needed to  
21 evaluate the effectiveness of the new commercial activity  
22 corporate income tax credit in fulfilling its purposes.

23 J. To claim the new commercial activity corporate  
24 income tax credit, a taxpayer shall submit with the taxpayer's  
25 New Mexico corporate income tax return a certificate of

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1 eligibility issued pursuant to this section, individually  
2 identifiable and displaying the date on which the certificate of  
3 eligibility is issued. The certificate of eligibility shall  
4 state:

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

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

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

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

15 K. The department shall provide a credit claim form  
16 on which a taxpayer may claim a new commercial activity corporate  
17 income tax credit. A credit claim form shall accompany a return  
18 filed pursuant to the Corporate Income and Franchise Tax Act in  
19 which the taxpayer is applying for a new commercial activity  
20 corporate income tax credit. The department shall determine the  
21 amount of new commercial activity corporate income tax credit  
22 that is allowed the taxpayer for the taxable year by determining  
23 the amount of taxes paid by the taxpayer in the base year  
24 pursuant to the Corporate Income and Franchise Tax Act and the  
25 Gross Receipts and Compensating Tax Act.

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

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

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

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

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

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

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1 (3) the number of economic-based jobs created in  
2 the fiscal year by taxpayers claiming the new commercial activity  
3 corporate income tax credit;

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

7 (5) any other information that the department,  
8 the legislative finance committee or the revenue stabilization  
9 and tax policy committee deems necessary to evaluate the  
10 effectiveness of the new commercial activity corporate income tax  
11 credit in fulfilling the purposes of this section. Beginning in  
12 2016, the department shall present to the revenue stabilization  
13 and tax policy committee an analysis of whether the new  
14 commercial activity corporate income tax credit is fulfilling the  
15 purposes for which it was created. Recommendations for amending  
16 or repealing the new commercial activity corporate income tax  
17 based on the analysis shall be included in the report.

18 P. As used in this section:

19 (1) "average wage" means the annual average wage  
20 amount by county as stated on the web site of the bureau of  
21 business and economic research at the university of New Mexico as  
22 the average annual covered wages by major sector and county found  
23 in the economic data tables for the most recent year published  
24 for the county in which a taxpayer has established a new  
25 business;

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

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

7 (4) "corporate tax liability" means a taxpayer's  
8 corporate income tax liability pursuant to the Corporate Income  
9 and Franchise Tax Act;

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

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

19 (7) "new business" means a corporation:

20 (a) that operates a business in New Mexico  
21 that owns or leases real property as a physical address for the  
22 business in New Mexico and employs personnel at that physical  
23 address;

24 (b) that is required to pay tax pursuant  
25 to the Corporate Income and Franchise Tax Act and the Gross

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1 Receipts and Compensating Tax Act;  
2 (c) that began business operations on or  
3 after July 1, 2012; and  
4 (d) in which the taxpayer has invested  
5 over twenty-five million dollars (\$25,000,000);  
6 (8) "qualifying period" means the period of  
7 twelve months beginning on the day an eligible employee begins  
8 working in an economic-based job; and  
9 (9) "wages" means all remuneration in cash and  
10 the cash value of remuneration paid in any other form for  
11 services performed by an employee for an employer; "wages"  
12 includes the value of benefits."

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