

1 SENATE BILL 538

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 John Arthur Smith

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8  
9 AN ACT

10 RELATING TO TAXATION; LOWERING THE CORPORATE INCOME TAX RATE;  
11 PROVIDING A DEFINITION OF "MANUFACTURING" AND "CONSUMABLE" FOR  
12 PURPOSES OF THE DEDUCTION OF RECEIPTS FROM SALES TO  
13 MANUFACTURERS; REQUIRING EXPORTS OF MANUFACTURED PRODUCTS;  
14 CLARIFYING APPLICATION OF THE HIGH-WAGE JOBS TAX CREDIT;  
15 DEFINING "BENEFITS" AND "WAGES"; EXTENDING THE CREDIT FOR FIVE  
16 YEARS; DECLARING AN EMERGENCY.

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

20 SECTION 1. Section 7-2A-5 NMSA 1978 (being Laws 1981,  
21 Chapter 37, Section 38, as amended) is amended to read:

22 "7-2A-5. CORPORATE INCOME TAX RATES.--The corporate  
23 income tax imposed on corporations by Section 7-2A-3 NMSA 1978  
24 shall be at the rates specified in the following table:

25 If the net income is: The tax shall be:

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1 Not over \$500,000 4.8% of net income  
2 Over \$500,000 but not  
3 over \$1,000,000 \$24,000 plus  
4 6.4% of excess  
5 over \$500,000  
6 Over \$1,000,000 \$56,000  
7 plus [~~7.6%~~] 7% of  
8 excess over  
9 \$1,000,000."

10 SECTION 2. Section 7-9-46 NMSA 1978 (being Laws 1969,  
11 Chapter 144, Section 36, as amended) is amended to read:

12 "7-9-46. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL  
13 GROSS RECEIPTS--SALES TO MANUFACTURERS.--

14 A. Receipts from selling tangible personal property  
15 may be deducted from gross receipts or from governmental gross  
16 receipts if the sale is made to a person engaged in the  
17 business of manufacturing who delivers a nontaxable transaction  
18 certificate to the seller. The buyer delivering the nontaxable  
19 transaction certificate must incorporate the tangible personal  
20 property as an ingredient or component part of the product that  
21 the buyer is in the business of manufacturing.

22 B. Receipts from selling tangible personal property  
23 that is a consumable and used in such a way that it is consumed  
24 in the manufacturing process of a product, provided that the  
25 tangible personal property is not a tool or equipment used to

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1 create the manufactured product, to a person engaged in the  
2 business of manufacturing that product in New Mexico, who  
3 exported for sale or use outside of New Mexico at least fifty  
4 percent of the product manufactured in New Mexico in the  
5 previous taxable year for purposes of income tax and who  
6 delivers a nontaxable transaction certificate to the seller may  
7 be deducted in the following percentages from gross receipts or  
8 from governmental gross receipts:

9 (1) twenty percent of receipts received prior to  
10 January 1, 2014;

11 (2) forty percent of receipts received in  
12 calendar year 2014;

13 (3) sixty percent of receipts received in  
14 calendar year 2015;

15 (4) eighty percent of receipts received in  
16 calendar year 2016; and

17 (5) one hundred percent of receipts received on  
18 or after January 1, 2017.

19 C. The purpose of the deductions provided in this  
20 section is to encourage manufacturing businesses to locate in  
21 New Mexico and to reduce the tax burden, including reducing  
22 pyramiding, on the tangible personal property that is consumed  
23 in the manufacturing process and that is purchased by  
24 manufacturing businesses in New Mexico.

25 D. The department shall annually report to the

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1 revenue stabilization and tax policy committee the aggregate  
2 amount of deductions taken pursuant to this section, the number  
3 of taxpayers claiming each of the deductions and any other  
4 information that is necessary to determine that the deductions  
5 are performing the purposes for which they are enacted.

6 E. A taxpayer deducting gross receipts pursuant to  
7 this section shall report the amount deducted separately for  
8 each deduction provided in this section and attribute the  
9 amount of the deduction to the appropriate authorization  
10 provided in this section in a manner required by the department  
11 that facilitates the evaluation by the legislature of the  
12 benefit to the state of these deductions.

13 F. As used in Subsection B of this section:

14 (1) "consumable" means tangible personal  
15 property that is incorporated into, destroyed, depleted or  
16 transformed in the process of manufacturing a product,  
17 including electricity, fuels, manufacturing aids and supplies,  
18 chemicals, gases, repair parts, spares and other tangibles used  
19 to manufacture a product; and

20 (2) "manufacturing" means to combine or process  
21 components or materials, to increase the value of the component  
22 or material for sale in the ordinary course of business, but  
23 does not include:

24 (a) construction;

25 (b) farming;

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1                   (c) power generation; or  
2                   (d) processing of natural resources,  
3 including hydrocarbons."

4           SECTION 3. Section 7-9G-1 NMSA 1978 (being Laws 2004,  
5 Chapter 15, Section 1, as amended) is amended to read:

6           "7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING  
7 HIGH-WAGE JOBS.--

8           A. A taxpayer who is an eligible employer may apply  
9 for, and the taxation and revenue department may allow, a tax  
10 credit for each new high-wage economic-based job. The credit  
11 provided in this section may be referred to as the "high-wage  
12 jobs tax credit".

13           B. The purpose of the high-wage jobs tax credit is to  
14 provide an incentive for urban and rural businesses to create  
15 and fill new high-wage jobs in New Mexico.

16           ~~[B-]~~ C. The high-wage jobs tax credit may be claimed  
17 and allowed in an amount equal to ten percent of the wages and  
18 benefits distributed to an eligible employee in a new high-wage  
19 economic-based job, but shall not exceed twelve thousand  
20 dollars (\$12,000) per job per year.

21           ~~[C-]~~ D. The high-wage jobs tax credit may be claimed  
22 by an eligible employer for each new high-wage economic-based  
23 job performed for the year in which the new high-wage economic-  
24 based job is created and for the three following qualifying  
25 periods. A taxpayer shall apply for approval for the credit

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1 within one year following the end of the calendar year in which  
2 the qualifying period closes.

3 ~~[D.]~~ E. A new high-wage economic-based job shall not  
4 be eligible for a credit pursuant to this section unless the  
5 eligible employer's total number of employees ~~[with new high-~~  
6 ~~wage economic-based jobs]~~ on the last day of the qualifying  
7 period at the location at which the job is performed or based  
8 is at least one more than the number on the day prior to the  
9 date the new high-wage economic-based job was created.

10 F. A new high-wage economic-based job shall not be  
11 eligible for a credit pursuant to this section if:

12 (1) the new high-wage economic-based job is  
13 created due to a business merger or acquisition or other change  
14 in business organization;

15 (2) the eligible employee was terminated from  
16 employment in New Mexico by another employer involved in the  
17 business merger or acquisition or other change in business  
18 organization with the taxpayer; and

19 (3) the new high-wage economic-based job is  
20 performed by:

21 (a) the person who performed the job or its  
22 functional equivalent prior to the business merger or  
23 acquisition or other change in business organization; or

24 (b) a person replacing the person who  
25 performed the job or its functional equivalent prior to a

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1 business merger or acquisition or other change in business  
2 organization.

3 G. Notwithstanding the provisions of Subsection F of  
4 this section, a new high-wage economic-based job that was  
5 created by another employer and for which an application for  
6 the high-wage jobs tax credit was received and is under review  
7 by the taxation and revenue department prior to the time of the  
8 business merger or acquisition or other change in business  
9 organization shall remain eligible for the high-wage jobs tax  
10 credit for the balance of the qualifying periods. The new  
11 employer that results from a business merger or acquisition or  
12 other change in business organization may only claim the high-  
13 wage jobs tax credit for the balance of the qualifying period  
14 for which the qualifying job is otherwise eligible.

15 H. A job shall not be eligible for a credit pursuant  
16 to this section if the job is created due to an eligible  
17 employer entering into a contract or becoming a subcontractor  
18 to a contract with a governmental entity that replaces one or  
19 more entities performing functionally equivalent services for  
20 the governmental entity unless the job is a new high-wage  
21 economic-based job that was not being performed by an employee  
22 of the replaced entity.

23 ~~[E.]~~ I. With respect to each new high-wage economic-  
24 based job for which an eligible employer seeks the high-wage  
25 jobs tax credit, the employer shall certify:

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1 (1) the amount of wages and benefits paid to  
2 each eligible employee in a new high-wage economic-based job  
3 during each qualifying period;

4 (2) the number of weeks the position was  
5 occupied during the qualifying period;

6 (3) whether the new high-wage economic-based job  
7 was in a municipality with a population of [~~forty~~] sixty  
8 thousand or more or with a population of less than [~~forty~~]  
9 sixty thousand according to the most recent federal decennial  
10 census and whether the job was in the unincorporated area of a  
11 county; and

12 (4) the total number of employees employed by  
13 the employer at the job location on the day prior to the  
14 qualifying period and on the last day of the qualifying period.

15 [~~F.~~] J. To receive a high-wage jobs tax credit with  
16 respect to any qualifying period, an eligible employer shall  
17 apply to the taxation and revenue department on forms and in  
18 the manner prescribed by the department. The application shall  
19 include a certification made pursuant to Subsection [~~F~~] I of  
20 this section. Applications for the high-wage jobs tax credit  
21 shall be considered in the order received by the taxation and  
22 revenue department.

23 [~~G.~~] K. The credit provided in this section may be  
24 deducted from the modified combined tax liability of a  
25 taxpayer. If the credit exceeds the modified combined tax

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1 liability of the taxpayer, the excess shall be refunded to the  
2 taxpayer.

3 ~~[H.]~~ L. The economic development department shall  
4 report to the appropriate interim legislative committee before  
5 November 1 of each year the cost of this tax credit to the  
6 state and its impact on company recruitment and job creation.

7 ~~[I.]~~ M. As used in this section:

8 ~~[(1) "benefits" means any employee benefit plan  
9 as defined in Title 1, Section 3 of the federal Employee  
10 Retirement Income Security Act of 1974, 29 U.S.C. 1002;]~~

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) "eligible employee" means an individual who  
22 is employed in New Mexico by an eligible employer and who is a  
23 resident of New Mexico; "eligible employee" does not include an  
24 individual who:

25 (a) bears any of the relationships described

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1 in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to  
2 the employer or, if the employer is a corporation, to an  
3 individual who owns, directly or indirectly, more than fifty  
4 percent in value of the outstanding stock of the corporation  
5 or, if the employer is an entity other than a corporation, to  
6 an individual who owns, directly or indirectly, more than fifty  
7 percent of the capital and profits interest in the entity;

8 (b) if the employer is an estate or trust,  
9 is a grantor, beneficiary or fiduciary of the estate or trust  
10 or is an individual who bears any of the relationships  
11 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
12 152(a) to a grantor, beneficiary or fiduciary of the estate or  
13 trust;

14 (c) is a dependent, as that term is  
15 described in 26 U.S.C. Section 152(a)(9), of the employer or,  
16 if the taxpayer is a corporation, of an individual who owns,  
17 directly or indirectly, more than fifty percent in value of the  
18 outstanding stock of the corporation or, if the employer is an  
19 entity other than a corporation, of an individual who owns,  
20 directly or indirectly, more than fifty percent of the capital  
21 and profits interest in the entity or, if the employer is an  
22 estate or trust, of a grantor, beneficiary or fiduciary of the  
23 estate or trust; or

24 (d) is working or has worked as an employee  
25 or as an independent contractor for an entity that directly or

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1 indirectly owns stock in a corporation of the eligible employer  
2 or other interest of the eligible employer that represents  
3 fifty percent or more of the total voting power of that entity  
4 or has a value equal to fifty percent or more of the capital  
5 and profits interest in the entity;

6 (3) "eligible employer" means an employer that  
7 ~~[(a) made more than fifty percent of its~~  
8 ~~sales to persons outside New Mexico during the most recent~~  
9 ~~twelve months of the employer's modified combined tax liability~~  
10 ~~reporting periods ending prior to claiming a high-wage jobs tax~~  
11 ~~credit; or~~

12 ~~(b)] is certified by the economic development~~  
13 ~~department to be eligible for development training program~~  
14 assistance pursuant to Section 21-19-7 NMSA 1978;

15 (4) "modified combined tax liability" means the  
16 total liability for the reporting period for the gross receipts  
17 tax imposed by Section 7-9-4 NMSA 1978 together with any tax  
18 collected at the same time and in the same manner as the gross  
19 receipts tax, such as the compensating tax, the withholding  
20 tax, the interstate telecommunications gross receipts tax, the  
21 surcharges imposed by Section 63-9D-5 NMSA 1978 and the  
22 surcharge imposed by Section 63-9F-11 NMSA 1978, minus the  
23 amount of any credit other than the high-wage jobs tax credit  
24 applied against any or all of these taxes or surcharges; but  
25 "modified combined tax liability" excludes all amounts

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1 collected with respect to local option gross receipts taxes;

2 (5) "new high-wage economic-based job" means a  
3 new job created in New Mexico by an eligible employer on or  
4 after July 1, 2004 and prior to July 1, [~~2015~~] 2020 that is  
5 occupied for at least forty-eight weeks of a qualifying period  
6 by an eligible employee who is paid wages calculated for the  
7 qualifying period to be at least:

8 (a) for a new high-wage economic-based job  
9 created prior to July 1, 2015: 1) forty thousand dollars  
10 (\$40,000) if the job is performed or based in or within ten  
11 miles of the external boundaries of a municipality with a  
12 population of [~~forty~~] sixty thousand or more according to the  
13 most recent federal decennial census or in a class H county;  
14 and [~~(b)~~] 2) twenty-eight thousand dollars (\$28,000) if the job  
15 is performed or based in a municipality with a population of  
16 less than [~~forty~~] sixty thousand according to the most recent  
17 federal decennial census or in the unincorporated area of a  
18 county other than a class H county; and

19 (b) for a new high-wage economic-based  
20 job created on or after July 1, 2015: 1) sixty thousand  
21 dollars (\$60,000) if the job is performed or based in or within  
22 ten miles of the external boundaries of a municipality with a  
23 population of sixty thousand or more according to the most  
24 recent federal decennial census or in a class H county; and 2)  
25 forty thousand dollars (\$40,000) if the job is performed or

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1 based in a municipality with a population of less than sixty  
2 thousand according to the most recent federal decennial census  
3 or in the unincorporated area of a county other than a class H  
4 county;

5 (6) "qualifying period" means the period of  
6 twelve months beginning on the day an eligible employee begins  
7 working in a new high-wage economic-based job or the period of  
8 twelve months beginning on the anniversary of the day an  
9 eligible employee began working in a new high-wage economic-  
10 based job; and

11 (7) "wages" means [~~wages as defined in~~  
12 ~~Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(e)] all  
13 compensation paid by an eligible employer to an eligible  
14 employee through the employer's payroll system, including those  
15 wages that the employee elects to defer or redirect or the  
16 employee's contribution to a 401(k) or cafeteria plan program,  
17 but "wages" does not include benefits or the employer's share  
18 of payroll taxes."~~

19 SECTION 4. APPLICABILITY.--The provisions of:

20 A. Section 1 of this act apply to taxable years  
21 beginning on or after January 1, 2014;

22 B. Section 2 of this act apply to gross receipts  
23 received on or after July 1, 2013; and

24 C. Section 3 of this act apply to credit claims  
25 received on or after the effective date of Section 3 of this

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1 act and to reporting periods beginning on or after that date.

2 SECTION 5. EFFECTIVE DATE.--The effective date of the  
3 provisions of:

4 A. Section 1 of this act is January 1, 2014; and

5 B. Section 2 of this act is July 1, 2013.

6 SECTION 6. EMERGENCY.--It is necessary for the public  
7 peace, health and safety that this act take effect immediately.