SENATE BILL 311

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

INTRODUCED BY

John M. Sapien

AN ACT

RELATING TO TAXATION; PROVIDING A CORPORATE INCOME TAX CREDIT FOR GROSS RECEIPTS OR COMPENSATING TAXES PAID ON TANGIBLE PERSONAL PROPERTY INCORPORATED INTO OR CONSUMED IN THE PROCESS OF MANUFACTURING A PRODUCT.

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] CREDIT--MANUFACTURING CONSUMPTION.--

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2012, and that has paid gross receipts or compensating tax on the purchase of tangible personal property consumed in the taxpayer's manufacturing process during the taxable year, may claim and the department may allow a tax credit against the taxpayer's corporate income tax liability equal to the gross receipts tax, local option gross receipts taxes and compensating tax paid on consumables used in the manufacturing process during the taxable year. The tax credit provided in this section may be referred to as the "manufacturing consumption tax credit".

B. The purpose of the manufacturing consumption tax credit is to provide manufacturers in the state with an incentive that decreases the cost of production and promotes longevity, increased employment, retention and expansion of manufacturing businesses.

C. The department shall adopt rules to implement the manufacturing consumption tax credit.

D. To be eligible to claim a manufacturing consumption tax credit, a taxpayer shall invest in capital equipment or facilities construction or renovation in New Mexico on or after January 1, 2012 and prior to January 1, 2021 and be approved by the department. The department may find a taxpayer eligible to claim a manufacturing consumption tax credit for the following terms based on the following amounts of investment:

(1) four consecutive years if the taxpayer invests at least two hundred million dollars ($200,000,000);

(2) three consecutive years if the taxpayer invests at least one hundred million dollars ($100,000,000) but

less than two hundred million dollars ($200,000,000);

(3) two consecutive years if the taxpayer invests at least fifty million dollars ($50,000,000) but less than one hundred million dollars ($100,000,000); and

(4) one year if the taxpayer invests at least ten million dollars ($10,000,000) but less than fifty million dollars ($50,000,000).

E. Once the department identifies the amount of investment on which the term of the manufacturing consumption tax credit shall be based and the term is set, no claim for an additional credit during any taxable year in the term shall be allowed until the term has expired and a new claim is allowed.

F. That amount of a manufacturing consumption tax credit allowed by the department that exceeds the corporate income tax liability of the taxpayer for the taxable year may be carried forward for four years; provided that the taxable years in which the carryforward is applied are not during the term of an allowed manufacturing consumption tax credit.

G. A taxpayer claiming the manufacturing consumption tax credit shall not also claim other credits for the same investment pursuant to the Corporate Income and Franchise Tax Act, the Gross Receipts and Compensating Tax Act or the Investment Credit Act or for credits that may be taken against the taxpayer's modified combined tax liability.

H. The department shall compile an annual report that includes the number of taxpayers approved by the department to receive a manufacturing consumption tax credit and the total allowed amount of manufacturing consumption tax credits. Notwithstanding any other section of law to the contrary, the department may reveal the number of taxpayers allowed to receive the manufacturing consumption tax credit, the amount of each credit approved and any other information required by the legislature or the department to aid in evaluating the impact of the manufacturing consumption tax credit.

I. Acceptance by a taxpayer of a manufacturing consumption tax credit pursuant to this section is authorization by the taxpayer receiving the credit for the department to reveal information to the legislature necessary to analyze the effectiveness of the manufacturing consumption tax credit. The information may not be revealed to the public except as aggregated data.

J. As used in this section:

(1) "capital equipment" means equipment that is a depreciable asset pursuant to Section 179 of the Internal Revenue Code;

(2) "consumables" means tangible personal property:

(a) that is consumed in a manufacturing process, including electricity, tools, equipment, fuels, manufacturing aids, manufacturing supplies, chemicals, gases, spare parts, repair parts, software, dies, jigs and other tangibles used to manufacture a product; and

(b) the purchase of which is subject to gross receipts tax or compensating tax that is not deductible pursuant to the Gross Receipts and Compensating Tax Act;

(3) "consumed" means incorporated into, destroyed or transformed in the process of manufacturing a product;

(4) "facility construction or renovation" means construction of a new facility specifically to house a manufacturing business activity or expansion or significant remodeling of an existing facility for manufacturing;

(5) "manufacture" means to combine or process components or materials, including recyclable materials, to increase the value of the component or material for sale in the ordinary course of business, including genetic testing and production, but does not include:

(a) construction;

(b) farming;

(c) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act;

or

(d) processing of natural resources, including hydrocarbons;

(6) "manufacturer" means a business that manufactures a product at a site in New Mexico; and

(7) "modified combined tax liability" means the total liability of the taxpayer for the reporting period for the gross receipts tax imposed pursuant to Section 7-9-4 NMSA 1978, the compensating tax imposed pursuant to Section 7-9-7 NMSA 1978 and the withholding tax imposed on wages pursuant to Section 7-3-3 NMSA 1978, notwithstanding any distribution or transfer pursuant to the Tax Administration Act with respect to net receipts from those liabilities, minus the amount of a credit or deduction other than the manufacturing consumption tax credit applied against those taxes; provided that "modified combined tax liability" excludes any liability resulting from a local option gross receipts tax."

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2012 but prior to January 1, 2021.

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