F I S C A L   I M P A C T   R E P O R T

SPONSOR Keller **ORIGINAL DATE** 01/30/12 **LAST UPDATED** **HB**

SHORT TITLE New Business Corporate Income Tax Credit **SB** 68

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**		
(20,000.0)	(30,000.0)	(35,000.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		46.0	40.0	86.0	Recurring	Taxation and Revenue Department

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

SB-68 amends the Corporate Income and Franchise Tax Act to provide a “new commercial activity corporate income tax credit” beginning January 1, 2013 through January 1, 2023. The credit equals 50% of the difference between the taxpayer's corporate income tax liability for the current year and the taxpayer's corporate income tax liability for its base year. The tax credit is for eligible new or expanded businesses defined as follows:

1) "new business" means a corporation:

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

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

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

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

2) "expanded business" means a business to which capital improvements have been made to business facilities
or capital equipment that enable the business to increase its output and hire at least five additional full-time employees; provided that the expanded business:

(a) is located in New Mexico;

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

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

Effective Date: July 1, 2012

FISCAL IMPLICATIONS

FY12 was assumed to be the base year for the purpose of estimating. Since the requirements for an existing or expanded business to qualify for this credit are not significant, it is assumed that thirty percent of the revenue difference between each fiscal year and the base year is used towards this credit.

ADMINISTRATIVE IMPLICATIONS

TRD will have to create eligibility and claim processes, utilizing at least two new forms. Coordination is required between the Economic Development Department and the Taxation and Revenue Department. Regulations will be needed, as well as taxpayer and Department employee education. The forms will be extensive due to the level of detail that is needed for reporting purposes. The estimated development costs of forms, instructions and publication changes are $6,000. The process will be manually intensive and would require an additional FTE at a cost of $40,000.

TECHNICAL ISSUES

TRD notes a plethora of technical issues/drafting errors. In Subsection D (page 3, line 4), “income tax credits allowed” should be changed to “income tax credits claimed”.

In Subsection J(3) (starting on page 3, line 25), is the taxpayer required to show evidence of payment of both CIT and gross receipts/compensating taxes?

In Subsection M (starting on page 6, line 25), the amount of new commercial activity corporate income tax credit is a function of the “tax liability” of the taxpayer for the base years etc., but there is no clear definition of what is meant by the taxpayer’s tax liability.

There are potential confidentiality issues with the requirement to disclosure tax returns to "the legislature and its agencies" as this requirement is extremely broad.

In Subsection J (5)(b) (page 5, lines 16-23) may conflict with other statutes creating liens for secured creditors. It is questionable whether this is enforceable. This credit will be difficult to implement as written. If the lien is filed, it might prevent the taxpayer from borrowing more money and might even result in having an existing loan called.

Page 2, lines 1-12, expanded business implies that an existing corporation may create a new division or reorganize the entity to qualify for the credit, which can mean job elimination as well as job creation. Page 10 states that the expanded business needs to hire at least 5 additional employees, however, when a business does "expand", depending on how the expansion occurs, there is the risk of other jobs being cut or eliminated. It would be better to state that they have to increase current employment by the minimum of five additional employees, which really is not very significant.

Page 2, lines 15-18, a dollar amount should be included instead of encouraging a corporation to "invest significant amounts of capital".

Also, the job creation requirement (5 new jobs) for an existing business seems too low compared to the $25 million investment requirement for a new business. The employment requirement could be modeled along the lines of the existing investment credit, which requires one job to be created for every $500,000 of investment up to a value of $30 million dollars. If this test were used for this credit, the job requirement would increase from 5 employees to 50.

OTHER SUBSTANTIVE ISSUES

Does the bill meet the Legislative Finance Committee tax policy principles?

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate

This bill may violate the LFC tax policy principle of adequacy. According to the LFC General Fund Recurring Appropriation Outlook for FY14 and FY15 the December 2011 forecasted revenues will be insufficient to cover growing recurring appropriations. Since currently forecasted revenues in FY14 and FY16 may not be adequate to fund government services there is insufficient funds for additional tax cuts.

SS/lj:amm