

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 331

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
CREATING THE NEW REVENUE INCOME TAX CREDIT AND THE NEW REVENUE  
CORPORATE INCOME TAX CREDIT; INCREASING THE WORKING FAMILIES  
TAX CREDIT; REPEALING THE CAPITAL GAINS DEDUCTION FROM NET  
INCOME; TRANSFERRING A PORTION OF THE SAVINGS FROM THE REPEAL  
OF THE CAPITAL GAINS DEDUCTION TO THE LOTTERY TUITION FUND FOR  
FIVE YEARS; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the Tax Administration Act is  
enacted to read:

"[NEW MATERIAL] DISTRIBUTION--LOTTERY TUITION FUND.--Until  
June 30, 2019, a distribution pursuant to Section 7-1-6.1 NMSA  
1978 shall be made to the lottery tuition fund in an amount  
equal to three million dollars (\$3,000,000)."

.196781.1

underscored material = new  
[bracketed material] = delete

1           SECTION 2. A new section of the Income Tax Act is enacted  
2 to read:

3           "[NEW MATERIAL] NEW REVENUE INCOME TAX CREDIT.--

4           A. A taxpayer who is not a dependent of another  
5 individual and who creates new jobs or makes a capital  
6 investment in the state may apply for, and the department may  
7 allow, a credit of fifty percent of new revenue created by the  
8 taxpayer against the taxpayer's tax liability imposed pursuant  
9 to the Income Tax Act. The credit provided in this section may  
10 be referred to as the "new revenue income tax credit".

11           B. The purposes of the new revenue income tax  
12 credit are to:

13                   (1) encourage businesses that would not do so  
14 without the new revenue income tax credit to relocate or expand  
15 their operations in New Mexico;

16                   (2) encourage businesses to create well-paid  
17 jobs and make capital investments in New Mexico;

18                   (3) generate new revenue for the state; and

19                   (4) strengthen and diversify the state's  
20 economy.

21           C. The new revenue income tax credit may be claimed  
22 and allowed in an amount equal to fifty percent of new revenue  
23 created by a taxpayer in the taxable year in which a taxpayer's  
24 qualifying period closes.

25           D. That portion of a new revenue income tax credit

1 approved by the department that exceeds a taxpayer's income tax  
2 liability in the taxable year in which the credit is claimed  
3 shall be refunded to the taxpayer.

4 E. To be eligible for a new revenue income tax  
5 credit, a taxpayer shall:

6 (1) have created a minimum number of new jobs  
7 in a qualifying period in which a new revenue income tax credit  
8 is claimed, as follows:

9 (a) at least five jobs if the jobs are  
10 performed or based in a municipality with a population of less  
11 than sixty thousand according to the most recent federal  
12 decennial census, or in an unincorporated area that is not  
13 within ten miles of the external boundaries of a municipality  
14 with a population of sixty thousand or more, of a county other  
15 than a class H county; or

16 (b) at least ten jobs if the jobs are  
17 performed or based in or within ten miles of the external  
18 boundaries of a municipality with a population of sixty  
19 thousand or more according to the most recent federal decennial  
20 census or in a class H county; or

21 (2) have made a minimum amount of capital  
22 investment in a qualifying period in which a new revenue income  
23 tax credit is being claimed, as follows:

24 (a) at least two million five hundred  
25 thousand dollars (\$2,500,000) if the capital investment is made

.196781.1

1 in a municipality with a population of less than sixty thousand  
2 according to the most recent federal decennial census, or in an  
3 unincorporated area that is not within ten miles of the  
4 external boundaries of a municipality with a population of  
5 sixty thousand or more, of a county other than a class H  
6 county; or

7 (b) at least five million dollars  
8 (\$5,000,000) if the capital investment is made in or within ten  
9 miles of the external boundaries of a municipality with a  
10 population of sixty thousand or more according to the most  
11 recent federal decennial census or in a class H county.

12 F. A taxpayer shall not be eligible for a credit  
13 pursuant to Paragraph (1) of Subsection E of this section  
14 unless the taxpayer's total number of employees on the last day  
15 of a qualifying period at the location at which the new jobs  
16 are performed or based is at least:

17 (1) five more than the number on the last day  
18 of the prior taxable year if the taxpayer claims a credit  
19 pursuant to Subparagraph (a) of Paragraph (1) of Subsection E  
20 of this section; and

21 (2) ten more than the number on the last day  
22 of the prior taxable year if the taxpayer claims a credit  
23 pursuant to Subparagraph (b) of Paragraph (1) of Subsection E  
24 of this section.

25 G. A taxpayer who provides retail sales of goods or

1 services is eligible for the new revenue income tax credit only  
2 if the taxpayer made fifty percent or more of the taxpayer's  
3 sales or services produced in New Mexico to persons outside New  
4 Mexico during the applicable qualifying period.

5 H. A job shall not be considered a new job pursuant  
6 to this section if:

7 (1) the job is created due to a business  
8 merger or acquisition or other change in business organization;

9 (2) the eligible employee was terminated from  
10 employment in New Mexico by another employer involved in the  
11 business merger or acquisition or other change in business  
12 organization with the taxpayer; and

13 (3) the job is performed by:

14 (a) the person who performed the job or  
15 its functional equivalent prior to the business merger or  
16 acquisition or other change in business organization; or

17 (b) a person replacing the person who  
18 performed the job or its functional equivalent prior to a  
19 business merger or acquisition or other change in business  
20 organization.

21 I. Notwithstanding the provisions of Subsection H  
22 of this section, a new job that was created by another employer  
23 and for which an application for the new revenue income tax  
24 credit was received and is under review by the department prior  
25 to the time of the business merger or acquisition or other

.196781.1

1 change in business organization shall remain eligible for the  
2 new revenue income tax credit. The new employer that results  
3 from a business merger or acquisition or other change in  
4 business organization may only claim the new revenue income tax  
5 credit for the qualifying period for which the new job is  
6 otherwise eligible.

7 J. A job shall not be considered a new job pursuant  
8 to this section if the job is created due to a taxpayer  
9 entering into a contract or becoming a subcontractor to a  
10 contract with a governmental entity that replaces one or more  
11 entities performing functionally equivalent services for the  
12 governmental entity unless the job is one that was not being  
13 performed by an employee of the replaced entity.

14 K. A taxpayer seeking a new revenue income tax  
15 credit shall submit the following information to the economic  
16 development department and the taxation and revenue department:

17 (1) if the taxpayer is seeking a credit based  
18 on requirements pursuant to Paragraph (1) of Subsection E of  
19 this section:

20 (a) the amount of wages paid to each  
21 eligible employee in a new job during a qualifying period;

22 (b) the number of weeks the position was  
23 occupied during the qualifying period;

24 (c) whether the job meets the criteria  
25 described in Subparagraph (a), (b) or (c) of Paragraph (7) of

.196781.1

1 Subsection U of this section; and

2 (d) the total number of new jobs created  
3 by the taxpayer at the job location as measured on the day  
4 prior to the qualifying period and on the last day of the  
5 qualifying period; and

6 (2) if the taxpayer is seeking a credit based  
7 on requirements pursuant to Paragraph (2) of Subsection E of  
8 this section:

9 (a) the amount of capital investment in  
10 the qualifying period for which the new revenue income tax  
11 credit is being claimed; and

12 (b) the county in which the capital  
13 investment was made.

14 L. To claim a new revenue income tax credit, a  
15 taxpayer shall apply for approval to the department after the  
16 close of a taxpayer's qualifying period, but not later than  
17 twelve months following the end of the calendar year in which  
18 the taxpayer's qualifying period closes. The application shall  
19 be on forms and in a manner required by the department.

20 M. Within ten years of becoming eligible to claim a  
21 new revenue income tax credit, a taxpayer may claim the credit  
22 for an additional qualifying period for:

23 (1) every five new jobs that are created in  
24 addition to the minimum required pursuant to Subparagraph (a)  
25 of Paragraph (1) of Subsection E of this section, up to a

.196781.1

1 maximum of ten qualifying periods; and

2 (2) every ten new jobs that are created in  
3 addition to the minimum required pursuant to Subparagraph (b)  
4 of Paragraph (1) of Subsection E of this section, up to a  
5 maximum of ten qualifying periods.

6 N. If an eligible employee who was hired to fill a  
7 new job is terminated by the taxpayer within five years of  
8 being hired to fill the new job, the terminated employee's  
9 position is not filled within ninety days by an eligible  
10 employee and the taxpayer's eligibility for the new revenue  
11 income tax credit was based on meeting the requirements of  
12 Paragraph (1) of Subsection E of this section, the taxpayer  
13 shall remit to the department an amount of the new revenue  
14 income tax credit taken by the taxpayer for each terminated  
15 employee. The amount of credit remitted for the terminated  
16 employee shall be calculated as the percentage that the total  
17 terminated employee's job bears to the total number of new jobs  
18 created during the qualifying period in which the terminated  
19 employee was hired, multiplied by the new revenue income tax  
20 credit claimed for that qualifying period.

21 O. If a taxpayer or a successor in business of the  
22 taxpayer ceases operations in New Mexico for at least one  
23 hundred eighty consecutive days within a two-year period after  
24 the taxpayer has claimed a new revenue income tax credit at a  
25 facility with respect to which the taxpayer has claimed the

.196781.1

1 credit, the department shall grant no further credit to the  
2 taxpayer with respect to that facility. In addition, any  
3 amount of credit not claimed against the taxpayer's income tax  
4 liability shall be extinguished, and within thirty days after  
5 the one hundred eightieth day of the cessation of operations,  
6 the taxpayer shall pay the amount of any income tax against  
7 which an approved credit was taken. For purposes of this  
8 section, a taxpayer shall not be deemed to have ceased  
9 operations during reasonable periods for maintenance or  
10 retooling or for the repair or replacement of facilities  
11 damaged or destroyed or during the continuance of labor  
12 disputes.

13 P. A husband and wife filing separate returns for a  
14 taxable year for which they could have filed a joint return may  
15 each claim only one-half of the new revenue income tax credit  
16 that would have been claimed on a joint return.

17 Q. A taxpayer may be allocated the right to claim a  
18 new revenue income tax credit in proportion to the taxpayer's  
19 ownership interest if the taxpayer owns an interest in a  
20 business entity that is taxed for federal income tax purposes  
21 as a partnership and that business entity has met all of the  
22 requirements to be eligible for the credit. The total credit  
23 claimed by all members of the partnership or limited liability  
24 company shall not exceed the allowable credit pursuant to this  
25 section.

.196781.1

1           R. A taxpayer allowed a credit pursuant to this  
2 section shall report the amount of the credit to the department  
3 in a manner required by the department.

4           S. The economic development department and the  
5 taxation and revenue department shall compile an annual report  
6 on the new revenue income tax credit that shall include the  
7 information submitted pursuant to Subsection K of this section,  
8 the number of taxpayers approved by the taxation and revenue  
9 department to receive the credit, the aggregate amount of  
10 credits approved and any other information necessary to  
11 evaluate the effectiveness of the credit. Beginning in 2020  
12 and every five years thereafter that the credit is in effect,  
13 the economic development department and the taxation and  
14 revenue department shall compile and present the annual reports  
15 to the revenue stabilization and tax policy committee and the  
16 legislative finance committee with an analysis of the  
17 effectiveness and cost of the credit and whether the credit is  
18 performing the purposes for which it was created.

19           T. The department shall promulgate rules to  
20 implement the provisions of this section.

21           U. As used in this section:

22                 (1) "benefits" means all remuneration for work  
23 performed that is provided to an employee in whole or in part  
24 by the employer, other than wages, including insurance  
25 programs, health care, medical, dental and vision plans, life

1 insurance, employer contributions to pensions, such as a  
2 401(k), and employer-provided services, such as child care,  
3 offered by an employer to the employee. "Benefits" does not  
4 include the employer's share of payroll taxes, social security  
5 or medicare contributions, federal or state unemployment  
6 insurance contributions or workers' compensation;

7 (2) "capital investment" means capital  
8 investment in equipment, land, buildings or infrastructure, any  
9 of which is necessary to support new or expanding business  
10 activity;

11 (3) "economic base job" means employment with  
12 an employer engaged primarily in creating goods and services  
13 that are exported out of state;

14 (4) "eligible employee" means an individual  
15 who is employed in New Mexico and who is a resident of New  
16 Mexico; "eligible employee" does not include an individual who:

17 (a) bears any of the relationships  
18 described in Subsection (a) of Section 152 of the Internal  
19 Revenue Code to the employer or, if the employer is a  
20 corporation, to an individual who owns, directly or indirectly,  
21 more than fifty percent in value of the outstanding stock of  
22 the corporation or, if the employer is an entity other than a  
23 corporation, to an individual who owns, directly or indirectly,  
24 more than fifty percent of the capital and profits interest in  
25 the entity;

.196781.1

1 (b) if the employer is an estate or  
2 trust, is a grantor, beneficiary or fiduciary of the estate or  
3 trust or is an individual who bears any of the relationships  
4 described in Subsection (a) of Section 152 of the Internal  
5 Revenue Code to a grantor, beneficiary or fiduciary of the  
6 estate or trust; or

7 (c) is working or has worked as an  
8 employee or as an independent contractor for an entity that,  
9 directly or indirectly, owns stock in a corporation of the  
10 eligible employer or other interest of the eligible employer  
11 that represents fifty percent or more of the total voting power  
12 of that entity or has a value equal to fifty percent or more of  
13 the capital and profits interest in the entity;

14 (5) "equipment" means an essential machine,  
15 mechanism or tool, or a component or fitting thereof, used  
16 directly and exclusively in a manufacturing operation and  
17 subject to depreciation for purposes of the Internal Revenue  
18 Code by the taxpayer carrying on the manufacturing operation.  
19 "Equipment" does not include any vehicle that leaves the site  
20 of the manufacturing operation for purposes of transporting  
21 persons or property or any property for which the taxpayer  
22 claims the credit pursuant to Section 7-9-79 NMSA 1978;

23 (6) "modified combined tax liability" means  
24 the total liability for the qualifying period for the gross  
25 receipts tax imposed by Section 7-9-4 NMSA 1978, the

.196781.1

1 compensating tax imposed pursuant to Section 7-9-7 NMSA 1978  
2 and the withholding tax imposed on wages pursuant to Section  
3 7-3-3 NMSA 1978. "Modified combined tax liability" excludes  
4 any liability with respect to local option gross receipts  
5 taxes;

6 (7) "new job" means a job created in New  
7 Mexico by a taxpayer that is occupied for at least forty-eight  
8 weeks of a qualifying period by an eligible employee who is  
9 paid wages calculated for the qualifying period to be at least:

10 (a) one hundred twenty-five percent of  
11 the annual average wage for the county, as determined by the  
12 bureau of business and economic research at the university of  
13 New Mexico, if the job is not an economic base job and is  
14 performed or based in or within ten miles of the external  
15 boundaries of a municipality with a population of sixty  
16 thousand or more according to the most recent federal decennial  
17 census or in a class H county;

18 (b) one hundred fifteen percent of the  
19 annual average wage for the county, as determined by the bureau  
20 of business and economic research at the university of New  
21 Mexico, if the job is an economic base job and is performed or  
22 based in or within ten miles of the external boundaries of a  
23 municipality with a population of sixty thousand or more  
24 according to the most recent federal decennial census or in a  
25 class H county; or

.196781.1

1 (c) one hundred percent of the annual  
2 average wage for the county, as determined by the bureau of  
3 business and economic research at the university of New Mexico,  
4 if the job is performed or based in a municipality with a  
5 population of less than sixty thousand according to the most  
6 recent federal decennial census or in the unincorporated area,  
7 that is not within ten miles of the external boundaries of a  
8 municipality with a population of sixty thousand or more, of a  
9 county other than a class H county;

10 (8) "new revenue" means the difference between  
11 the following sums, provided that the difference results in a  
12 positive amount:

13 (a) the sum of the amount of a  
14 taxpayer's modified combined tax liability, less the amount of  
15 any credit claimed against the modified combined tax liability,  
16 and tax liability pursuant to the Income Tax Act, minus the  
17 amount of any income tax credit or deduction other than the new  
18 revenue income tax credit, in a taxpayer's taxable year; and

19 (b) the sum of the amount of a  
20 taxpayer's modified combined tax liability, less the amount of  
21 any credit claimed against the modified combined tax liability,  
22 and tax liability pursuant to the Income Tax Act, minus the  
23 amount of any income tax credit or deduction other than the new  
24 revenue income tax credit, in the taxable year immediately  
25 prior to the taxpayer's taxable year;

.196781.1

1 (9) "qualifying period" means the taxable year  
 2 in which an eligible employee begins working in a new job or  
 3 the taxable year in which a capital investment is made; and

4 (10) "wages" means all compensation paid by a  
 5 taxpayer to an eligible employee through the taxpayer's payroll  
 6 system, including those wages that the employee elects to defer  
 7 or redirect or the employee's contribution to a 401(k) or  
 8 cafeteria plan program, but "wages" does not include benefits  
 9 or the employer's share of payroll taxes."

10 SECTION 3. Section 7-2-18.15 NMSA 1978 (being Laws 2007,  
 11 Chapter 45, Section 9, as amended) is amended to read:

12 "7-2-18.15. WORKING FAMILIES TAX CREDIT.--

13 A. A resident who files an individual New Mexico  
 14 income tax return may claim a credit in an amount equal to  
 15 [~~ten~~] seventeen percent of the federal income tax credit for  
 16 which that individual is eligible for the same taxable year  
 17 pursuant to Section 32 of the Internal Revenue Code. The  
 18 credit provided in this section may be referred to as the  
 19 "working families tax credit".

20 B. The working families tax credit may be deducted  
 21 from the income tax liability of an individual who claims the  
 22 credit and qualifies for the credit pursuant to this section.  
 23 If the credit exceeds the individual's income tax liability for  
 24 the taxable year, the excess shall be refunded to the  
 25 individual."

.196781.1

1           SECTION 4. A new section of the Corporate Income and  
2 Franchise Tax Act is enacted to read:

3           "[NEW MATERIAL] NEW REVENUE CORPORATE INCOME TAX CREDIT.--

4           A. A taxpayer that creates new jobs or makes a  
5 capital investment in the state may apply for, and the  
6 department may allow, a credit of fifty percent of new revenue  
7 created by the taxpayer against the taxpayer's tax liability  
8 imposed pursuant to the Corporate Income and Franchise Tax Act.  
9 The credit provided in this section may be referred to as the  
10 "new revenue corporate income tax credit".

11           B. The purposes of the new revenue corporate income  
12 tax credit are to:

13                   (1) encourage businesses that would not do so  
14 without the new revenue corporate income tax credit to relocate  
15 or expand their operations in New Mexico;

16                   (2) encourage businesses to create well-paid  
17 jobs and make capital investments in New Mexico;

18                   (3) generate new revenue for the state; and

19                   (4) strengthen and diversify the state's  
20 economy.

21           C. The new revenue corporate income tax credit may  
22 be claimed and allowed in an amount equal to fifty percent of  
23 new revenue created by a taxpayer in the taxable year in which  
24 a taxpayer's qualifying period closes.

25           D. That portion of a new revenue corporate income

.196781.1

1 tax credit approved by the department that exceeds a taxpayer's  
2 corporate income tax liability in the taxable year in which the  
3 credit is claimed shall be refunded to the taxpayer.

4 E. To be eligible for a new revenue corporate  
5 income tax credit, a taxpayer shall:

6 (1) have created a minimum number of new jobs  
7 in a qualifying period in which a new revenue corporate income  
8 tax credit is claimed, as follows:

9 (a) at least five jobs if the jobs are  
10 performed or based in a municipality with a population of less  
11 than sixty thousand according to the most recent federal  
12 decennial census, or in an unincorporated area that is not  
13 within ten miles of the external boundaries of a municipality  
14 with a population of sixty thousand or more, of a county other  
15 than a class H county; or

16 (b) at least ten jobs if the jobs are  
17 performed or based in or within ten miles of the external  
18 boundaries of a municipality with a population of sixty  
19 thousand or more according to the most recent federal decennial  
20 census or in a class H county; or

21 (2) have made a minimum amount of capital  
22 investment in a qualifying period in which a new revenue  
23 corporate income tax credit is being claimed, as follows:

24 (a) at least two million five hundred  
25 thousand dollars (\$2,500,000) if the capital investment is made

.196781.1

1 in a municipality with a population of less than sixty thousand  
2 according to the most recent federal decennial census, or in an  
3 unincorporated area that is not within ten miles of the  
4 external boundaries of a municipality with a population of  
5 sixty thousand or more, of a county other than a class H  
6 county; or

7 (b) at least five million dollars  
8 (\$5,000,000) if the capital investment is made in or within ten  
9 miles of the external boundaries of a municipality with a  
10 population of sixty thousand or more according to the most  
11 recent federal decennial census or in a class H county.

12 F. A taxpayer shall not be eligible for a credit  
13 pursuant to Paragraph (1) of Subsection E of this section  
14 unless the taxpayer's total number of employees on the last day  
15 of a qualifying period at the location at which the new jobs  
16 are performed or based is at least:

17 (1) five more than the number on the last day  
18 of the prior taxable year if the taxpayer claims a credit  
19 pursuant to Subparagraph (a) of Paragraph (1) of Subsection E  
20 of this section; and

21 (2) ten more than the number on the last day  
22 of the prior taxable year if the taxpayer claims a credit  
23 pursuant to Subparagraph (b) of Paragraph (1) of Subsection E  
24 of this section.

25 G. A taxpayer that provides retail sales of goods

1 or services is eligible for the new revenue corporate income  
2 tax credit only if the taxpayer made fifty percent or more of  
3 its sales or services produced in New Mexico to persons outside  
4 New Mexico during the applicable qualifying period.

5 H. A job shall not be considered a new job pursuant  
6 to this section if:

7 (1) the job is created due to a business  
8 merger or acquisition or other change in business organization;

9 (2) the eligible employee was terminated from  
10 employment in New Mexico by another employer involved in the  
11 business merger or acquisition or other change in business  
12 organization with the taxpayer; and

13 (3) the job is performed by:

14 (a) the person who performed the job or  
15 its functional equivalent prior to the business merger or  
16 acquisition or other change in business organization; or

17 (b) a person replacing the person who  
18 performed the job or its functional equivalent prior to a  
19 business merger or acquisition or other change in business  
20 organization.

21 I. Notwithstanding the provisions of Subsection H  
22 of this section, a new job that was created by another employer  
23 and for which an application for the new revenue corporate  
24 income tax credit was received and is under review by the  
25 department prior to the time of the business merger or

.196781.1

1 acquisition or other change in business organization shall  
2 remain eligible for the new revenue corporate income tax  
3 credit. The new employer that results from a business merger  
4 or acquisition or other change in business organization may  
5 only claim the new revenue corporate income tax credit for the  
6 qualifying period for which the new job is otherwise eligible.

7 J. A job shall not be considered a new job pursuant  
8 to this section if the job is created due to a taxpayer  
9 entering into a contract or becoming a subcontractor to a  
10 contract with a governmental entity that replaces one or more  
11 entities performing functionally equivalent services for the  
12 governmental entity unless the job is one that was not being  
13 performed by an employee of the replaced entity.

14 K. A taxpayer seeking a new revenue corporate  
15 income tax credit shall submit the following information to the  
16 economic development department and the taxation and revenue  
17 department:

18 (1) if the taxpayer is seeking a credit based  
19 on requirements pursuant to Paragraph (1) of Subsection E of  
20 this section:

21 (a) the amount of wages paid to each  
22 eligible employee in a new job during a qualifying period;

23 (b) the number of weeks the position was  
24 occupied during the qualifying period;

25 (c) whether the job meets the criteria

1 described in Subparagraph (a), (b) or (c) of Paragraph (7) of  
2 Subsection S of this section; and

3 (d) the total number of new jobs created  
4 by the taxpayer at the job location as measured on the day  
5 prior to the qualifying period and on the last day of the  
6 qualifying period; and

7 (2) if the taxpayer is seeking a credit based  
8 on requirements pursuant to Paragraph (2) of Subsection E of  
9 this section:

10 (a) the amount of capital investment in  
11 the qualifying period for which the new revenue corporate  
12 income tax credit is being claimed; and

13 (b) the county in which the capital  
14 investment was made.

15 L. To claim a new revenue corporate income tax  
16 credit, a taxpayer shall apply for approval to the department  
17 after the close of a taxpayer's qualifying period, but not  
18 later than twelve months following the end of the calendar year  
19 in which the taxpayer's qualifying period closes. The  
20 application shall be on forms and in a manner required by the  
21 department.

22 M. Within ten years of becoming eligible to claim a  
23 new revenue corporate income tax credit, a taxpayer may claim  
24 the credit for an additional qualifying period for:

25 (1) every five new jobs that are created in

.196781.1

1 addition to the minimum required pursuant to Subparagraph (a)  
2 of Paragraph (1) of Subsection E of this section, up to a  
3 maximum of ten qualifying periods; and

4 (2) every ten new jobs that are created in  
5 addition to the minimum required pursuant to Subparagraph (b)  
6 of Paragraph (1) of Subsection E of this section, up to a  
7 maximum of ten qualifying periods.

8 N. If an eligible employee who was hired to fill a  
9 new job is terminated by the taxpayer within five years of  
10 being hired to fill the new job, the terminated employee's  
11 position is not filled within ninety days by an eligible  
12 employee and the taxpayer's eligibility for the new revenue  
13 corporate income tax credit was based on meeting the  
14 requirements of Paragraph (1) of Subsection E of this section,  
15 the taxpayer shall remit to the department an amount of the new  
16 revenue corporate income tax credit taken by the taxpayer for  
17 each terminated employee. The amount of credit remitted for  
18 the terminated employee shall be calculated as the percentage  
19 that the total terminated employee's job bears to the total  
20 number of new jobs created during the qualifying period in  
21 which the terminated employee was hired, multiplied by the new  
22 revenue corporate income tax credit claimed for that qualifying  
23 period.

24 O. If a taxpayer or a successor in business of the  
25 taxpayer ceases operations in New Mexico for at least one

1 hundred eighty consecutive days within a two-year period after  
2 the taxpayer has claimed a new revenue corporate income tax  
3 credit at a facility with respect to which the taxpayer has  
4 claimed the credit, the department shall grant no further  
5 credit to the taxpayer with respect to that facility. In  
6 addition, any amount of credit not claimed against the  
7 taxpayer's income tax liability shall be extinguished, and  
8 within thirty days after the one hundred eightieth day of the  
9 cessation of operations, the taxpayer shall pay the amount of  
10 any corporate income tax against which an approved credit was  
11 taken. For purposes of this section, a taxpayer shall not be  
12 deemed to have ceased operations during reasonable periods for  
13 maintenance or retooling or for the repair or replacement of  
14 facilities damaged or destroyed or during the continuance of  
15 labor disputes.

16 P. A taxpayer allowed a credit pursuant to this  
17 section shall report the amount of the credit to the department  
18 in a manner required by the department.

19 Q. The economic development department and the  
20 taxation and revenue department shall compile an annual report  
21 on the new revenue corporate income tax credit that shall  
22 include the information submitted pursuant to Subsection K of  
23 this section, the number of taxpayers approved by the taxation  
24 and revenue department to receive the credit, the aggregate  
25 amount of credits approved and any other information necessary

.196781.1

1 to evaluate the effectiveness of the credit. Beginning in 2020  
2 and every five years thereafter that the credit is in effect,  
3 the economic development department and the taxation and  
4 revenue department shall compile and present the annual reports  
5 to the revenue stabilization and tax policy committee and the  
6 legislative finance committee with an analysis of the  
7 effectiveness and cost of the credit and whether the credit is  
8 performing the purposes for which it was created.

9 R. The department shall promulgate rules to  
10 implement the provisions of this section.

11 S. As used in this section:

12 (1) "benefits" means all remuneration for work  
13 performed that is provided to an employee in whole or in part  
14 by the employer, other than wages, including insurance  
15 programs, health care, medical, dental and vision plans, life  
16 insurance, employer contributions to pensions, such as a  
17 401(k), and employer-provided services, such as child care,  
18 offered by an employer to the employee. "Benefits" does not  
19 include the employer's share of payroll taxes, social security  
20 or medicare contributions, federal or state unemployment  
21 insurance contributions or workers' compensation;

22 (2) "capital investment" means capital  
23 investment in equipment, land, buildings or infrastructure, any  
24 of which is necessary to support new or expanding business  
25 activity;

.196781.1

1 (3) "economic base job" means employment with  
2 an employer engaged primarily in creating goods and services  
3 that are exported out of state;

4 (4) "eligible employee" means an individual  
5 who is employed in New Mexico and who is a resident of New  
6 Mexico; "eligible employee" does not include an individual who:

7 (a) bears any of the relationships  
8 described in Subsection (a) of Section 152 of the Internal  
9 Revenue Code to the employer or, if the employer is a  
10 corporation, to an individual who owns, directly or indirectly,  
11 more than fifty percent in value of the outstanding stock of  
12 the corporation or, if the employer is an entity other than a  
13 corporation, to an individual who owns, directly or indirectly,  
14 more than fifty percent of the capital and profits interest in  
15 the entity;

16 (b) if the employer is an estate or  
17 trust, is a grantor, beneficiary or fiduciary of the estate or  
18 trust or is an individual who bears any of the relationships  
19 described in Subsection (a) of Section 152 of the Internal  
20 Revenue Code to a grantor, beneficiary or fiduciary of the  
21 estate or trust; or

22 (c) is working or has worked as an  
23 employee or as an independent contractor for an entity that,  
24 directly or indirectly, owns stock in a corporation of the  
25 eligible employer or other interest of the eligible employer

.196781.1

1 that represents fifty percent or more of the total voting power  
2 of that entity or has a value equal to fifty percent or more of  
3 the capital and profits interest in the entity;

4 (5) "equipment" means an essential machine,  
5 mechanism or tool, or a component or fitting thereof, used  
6 directly and exclusively in a manufacturing operation and  
7 subject to depreciation for purposes of the Internal Revenue  
8 Code by the taxpayer carrying on the manufacturing operation.  
9 "Equipment" does not include any vehicle that leaves the site  
10 of the manufacturing operation for purposes of transporting  
11 persons or property or any property for which the taxpayer  
12 claims the credit pursuant to Section 7-9-79 NMSA 1978;

13 (6) "modified combined tax liability" means  
14 the total liability for the qualifying period for the gross  
15 receipts tax imposed by Section 7-9-4 NMSA 1978, the  
16 compensating tax imposed pursuant to Section 7-9-7 NMSA 1978  
17 and the withholding tax imposed on wages pursuant to Section  
18 7-3-3 NMSA 1978. "Modified combined tax liability" excludes  
19 any liability with respect to local option gross receipts  
20 taxes;

21 (7) "new job" means a job created in New  
22 Mexico by a taxpayer that is occupied for at least forty-eight  
23 weeks of a qualifying period by an eligible employee who is  
24 paid wages calculated for the qualifying period to be at least:

25 (a) one hundred twenty-five percent of

1 the annual average wage for the county, as determined by the  
2 bureau of business and economic research at the university of  
3 New Mexico, if the job is not an economic base job and is  
4 performed or based in or within ten miles of the external  
5 boundaries of a municipality with a population of sixty  
6 thousand or more according to the most recent federal decennial  
7 census or in a class H county;

8 (b) one hundred fifteen percent of the  
9 annual average wage for the county, as determined by the bureau  
10 of business and economic research at the university of New  
11 Mexico, if the job is an economic base job and is performed or  
12 based in or within ten miles of the external boundaries of a  
13 municipality with a population of sixty thousand or more  
14 according to the most recent federal decennial census or in a  
15 class H county; or

16 (c) one hundred percent of the annual  
17 average wage for the county, as determined by the bureau of  
18 business and economic research at the university of New Mexico,  
19 if the job is performed or based in a municipality with a  
20 population of less than sixty thousand according to the most  
21 recent federal decennial census or in the unincorporated area,  
22 that is not within ten miles of the external boundaries of a  
23 municipality with a population of sixty thousand or more, of a  
24 county other than a class H county;

25 (8) "new revenue" means the difference between

.196781.1

1 the following sums, provided that the difference results in a  
2 positive amount:

3 (a) the sum of the amount of a  
4 taxpayer's modified combined tax liability, less the amount of  
5 any credit claimed against the modified combined tax liability,  
6 and tax liability pursuant to the Corporate Income and  
7 Franchise Tax Act, minus the amount of any corporate income tax  
8 credit or deduction other than the new revenue corporate income  
9 tax credit, in a taxpayer's taxable year; and

10 (b) the sum of the amount of a  
11 taxpayer's modified combined tax liability, less the amount of  
12 any credit claimed against the modified combined tax liability,  
13 and tax liability pursuant to the Corporate Income and  
14 Franchise Tax Act, minus the amount of any income tax credit or  
15 deduction other than the new revenue corporate income tax  
16 credit, in the taxable year immediately prior to the taxpayer's  
17 taxable year;

18 (9) "qualifying period" means the taxable year  
19 in which an eligible employee begins working in a new job or  
20 the taxable year in which a capital investment is made; and

21 (10) "wages" means all compensation paid by a  
22 taxpayer to an eligible employee through the taxpayer's payroll  
23 system, including those wages that the employee elects to defer  
24 or redirect or the employee's contribution to a 401(k) or  
25 cafeteria plan program, but "wages" does not include benefits

.196781.1

1 or the employer's share of payroll taxes."

2 SECTION 5. DELAYED REPEAL.--Section 7-2-34 NMSA 1978  
3 (being Laws 1999, Chapter 205, Section 1, as amended) is  
4 repealed effective January 1, 2015.

5 SECTION 6. APPLICABILITY.--The provisions of this act  
6 apply to taxable years beginning on or after January 1, 2015.

7 - 29 -

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

underscoring material = new  
~~[bracketed material]~~ = delete