

SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; EXPANDING THE INVESTMENT TAX CREDIT;  
PROVIDING FOR REPAYMENT OF THE CREDIT AFTER FIVE YEARS.

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

SECTION 1. Section 7-9A-2 NMSA 1978 (being Laws 1979,  
Chapter 347, Section 2, as amended) is amended to read:

"7-9A-2. PURPOSE OF ACT.--It is the purpose of the  
Investment Credit Act to provide a favorable tax climate for  
~~[manufacturing]~~ certain businesses to make capital investments  
and invest in manufacturing equipment and to promote increased  
employment in New Mexico."

SECTION 2. Section 7-9A-3 NMSA 1978 (being Laws 1979,  
Chapter 347, Section 3, as amended) is amended to read:

"7-9A-3. DEFINITIONS.--As used in the Investment Credit  
Act:

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underscored material = new  
[bracketed material] = delete

1           A. "capital investment" means the purchase of a  
2           fixed asset, such as machinery, land or a building located in  
3           New Mexico that is essential to increase the volume of products  
4           or services produced by a business, with an expectation that  
5           revenue is generated as a direct result of the fixed asset;

6           ~~[A.]~~ B. "department" means the taxation and revenue  
7           department, the secretary of taxation and revenue or any  
8           employee of the department exercising authority lawfully  
9           delegated to that employee by the secretary;

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

19           D. "legacy contractor" means a construction  
20           business that has been licensed in this state for ten  
21           consecutive years;

22           ~~[E.]~~ E. "manufacturing" means combining or  
23           processing components or materials, including recyclable  
24           materials, to increase their value for sale in the ordinary  
25           course of business, including genetic testing and production,

1 but not including:

2 (1) construction;

3 (2) farming;

4 (3) power generation, except for electricity  
5 generation at a facility other than one for which both location  
6 approval and a certificate of convenience and necessity are  
7 required prior to commencing construction or operation of the  
8 facility, pursuant to the Public Utility Act [~~and the Electric~~  
9 ~~Utility Industry Restructuring Act of 1999~~]; or

10 (4) processing natural resources, including  
11 hydrocarbons;

12 [~~D.~~] F. "manufacturing operation" means a plant,  
13 including a genetic testing and production facility, employing  
14 personnel to perform production tasks, in conjunction with  
15 equipment not previously existing at the site, to produce  
16 goods;

17 G. "new business" means a person that did not exist  
18 as a business in any form and that has been in existence for  
19 less than three years;

20 H. "new contractor" means a construction business  
21 that did not exist as a business in any form and that has been  
22 in existence for less than five years;

23 [~~E.~~] I. "recyclable materials" means materials that  
24 would otherwise become solid waste if not recycled and that can  
25 be collected, separated or processed and placed in use in the

1 form of raw materials or products; ~~[and]~~

2 J. "relocated business" means a business that moved  
3 eighty percent of its total domestic personnel from another  
4 state to New Mexico in the past five years; and

5 ~~[F.]~~ K. "taxpayer" means a person liable for  
6 payment of any tax, a person responsible for withholding and  
7 payment over or for collection and payment over of any tax or a  
8 person to whom an assessment has been made, if the assessment  
9 remains unabated or the amount thereof has not been paid."

10 SECTION 3. Section 7-9A-5 NMSA 1978 (being Laws 1979,  
11 Chapter 347, Section 5, as amended by Laws 1991, Chapter 159,  
12 Section 4 and also by Laws 1991, Chapter 162, Section 4) is  
13 amended to read:

14 "7-9A-5. INVESTMENT CREDIT--AMOUNT--CLAIMANT.--The  
15 investment credit provided for in the Investment Credit Act  
16 is an amount equal to the percent of the compensating tax  
17 rate provided for in the Gross Receipts and Compensating Tax  
18 Act applied to the value of the capital investment or  
19 qualified equipment and may be claimed by the taxpayer  
20 carrying on a new business or a manufacturing operation or  
21 that is a new contractor, legacy contractor or relocated  
22 business in New Mexico."

23 SECTION 4. Section 7-9A-7.1 NMSA 1978 (being Laws 1983,  
24 Chapter 206, Section 6, as amended) is amended to read:

25 "7-9A-7.1. EMPLOYMENT REQUIREMENTS.--

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1           A. Prior to July 1, 2020, to be eligible to claim  
2 a credit pursuant to the Investment Credit Act, the taxpayer  
3 shall employ the equivalent of one full-time employee who has  
4 not been counted to meet this employment requirement for any  
5 prior claim in addition to the number of full-time employees  
6 employed on the day one year prior to the day on which the  
7 taxpayer applies for the credit for every:

8                   (1) five hundred thousand dollars  
9 (\$500,000), or portion of that amount, in value of capital  
10 investment or qualified equipment claimed by the taxpayer in  
11 a taxable year in the same claim, up to a value of thirty  
12 million dollars (\$30,000,000); and

13                   (2) one million dollars (\$1,000,000), or  
14 portion of that amount, in value of capital investment  
15 or qualified equipment over thirty million dollars  
16 (\$30,000,000) claimed by the taxpayer in a taxable year in  
17 the same claim.

18           B. After June 30, 2020, for every one hundred  
19 thousand dollars (\$100,000) in value of capital investment or  
20 qualified equipment claimed by a taxpayer in a taxable year,  
21 the taxpayer shall employ the equivalent of one full-time  
22 employee in addition to the number of full-time employees  
23 employed on the day one year prior to the day on which the  
24 taxpayer applies for credit.

25           C. The department may require evidence showing

1 compliance with this section. The department may find that  
2 an additional employee meets the requirements of this  
3 section, although employed earlier than one year prior to the  
4 day on which the taxpayer applies for the credit, if the  
5 employee was only being trained prior to that date or the  
6 employee's employment was necessitated by the use of the  
7 qualified equipment or capital investment purchase."

8 SECTION 5. Section 7-9A-8 NMSA 1978 (being Laws 1979,  
9 Chapter 347, Section 8, as amended) is amended to read:

10 "7-9A-8. CLAIMING THE CREDIT FOR CERTAIN TAXES.--

11 A. A taxpayer shall apply for approval for a  
12 credit within one year following the end of the calendar year  
13 in which the capital investment is purchased or qualified  
14 equipment for the manufacturing operation is purchased or  
15 introduced into New Mexico.

16 B. A taxpayer having applied for and been granted  
17 approval for a credit by the department pursuant to the  
18 Investment Credit Act may claim an amount of available credit  
19 against the taxpayer's compensating tax, gross receipts tax  
20 or withholding tax due to the state of New Mexico; provided  
21 that no taxpayer may claim, except as provided in Subsection  
22 C of this section, an amount of available credit for any  
23 reporting period that exceeds eighty-five percent of the sum  
24 of the taxpayer's gross receipts tax, compensating tax and  
25 withholding tax due for that reporting period. Any amount of

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1 available credit not claimed against the taxpayer's gross  
2 receipts tax, compensating tax or withholding tax due for a  
3 reporting period may be claimed in subsequent reporting  
4 periods. The credit that is granted approval for a capital  
5 investment that is not qualified equipment may be carried  
6 forward for up to five years.

7 C. A taxpayer may apply by September 30 of the  
8 current calendar year for a refund of the unclaimed balance  
9 of the available credit up to a maximum of two hundred fifty  
10 thousand dollars (\$250,000) if on January 1 of the current  
11 calendar year:

12 (1) the taxpayer's available credit is less  
13 than five hundred thousand dollars (\$500,000); and

14 (2) the sum of the taxpayer's gross receipts  
15 tax, compensating tax and withholding tax due for the  
16 previous calendar year was less than thirty-five percent of  
17 the taxpayer's available credit but more than ten thousand  
18 dollars (\$10,000)."

19 SECTION 6. A new section of the Investment Credit Act  
20 is enacted to read:

21 "[NEW MATERIAL] VALUE OF CAPITAL INVESTMENT.--The value  
22 of capital investment shall be the purchase price; provided  
23 that no taxpayer shall for any taxable year claim a value of  
24 capital investment greater than two million dollars  
25 (\$2,000,000)."

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[bracketed material] = delete

1           SECTION 7. A new section of the Investment Credit Act  
2 is enacted to read:

3           "[NEW MATERIAL] REPAYMENT--CAPITAL INVESTMENT.--A  
4 taxpayer who claims and is granted a credit for a capital  
5 investment that is not qualified equipment and that is  
6 purchased on or after January 1, 2013 shall repay the amount  
7 of credit claimed and granted within five years of the date  
8 on which the total credit amount is applied or refunded. The  
9 taxpayer shall commence to make equal payments each reporting  
10 period in order to repay the full credit amount claimed  
11 within five years. The department shall track the amount of  
12 credit a taxpayer claimed and was granted and the date on  
13 which the taxpayer shall repay that credit. The department  
14 shall inform the taxpayer of the amount the taxpayer shall  
15 pay each reporting period in order to repay the credit  
16 claimed and granted within five years."

17           SECTION 8. APPLICABILITY.--The provisions of this act  
18 apply to taxable years beginning on or after January 1, 2013.

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