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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; CREATING THE NEW COMMERCIAL ACTIVITY CORPORATE INCOME TAX CREDIT; REQUIRING AN INCREMENTAL INCREASE IN EMPLOYMENT TO QUALIFY FOR THE TAX CREDIT; PROVIDING LIMITS AND QUALIFICATIONS; PROVIDING FOR POST-PERFORMANCE ASSESSMENT OF PERFORMANCE OF A TAXPAYER SEEKING A TAX CREDIT.

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 NEW COMMERCIAL ACTIVITY CORPORATE INCOME TAX CREDIT.--

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2014 but before January 1, 2024 that is a new business or an expanded business that creates additional

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1 economic-based jobs in New Mexico may claim, and the department
2 may allow, a tax credit against the taxpayer's corporate income
3 tax liability of fifty percent of the excess above taxes paid
4 to New Mexico in the base year pursuant to the Corporate Income
5 and Franchise Tax Act and the Gross Receipts and Compensating
6 Tax Act. The credit provided in this section may be referred
7 to as the "new commercial activity corporate income tax
8 credit". The department shall allow a new commercial activity
9 corporate income tax credit for a taxpayer that is issued a
10 certificate of eligibility by the economic development
11 department.

12 B. The purposes of the new commercial activity
13 corporate income tax credit are to:

14 (1) encourage corporations to start up in or
15 expand in New Mexico and invest significant amounts of capital
16 in the state to start up, relocate or expand;

17 (2) increase the number of economic-based jobs
18 available to New Mexico residents in New Mexico; and

19 (3) generate new state revenue from
20 construction, employment and business activity developed in New
21 Mexico.

22 C. The new commercial activity corporate income tax
23 credit may be claimed for ten consecutive years beginning with
24 the first taxable year in which the taxpayer is eligible to claim
25 that credit.

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1 D. The department shall recapture the entire amount
2 of new commercial activity corporate income tax credits allowed a
3 taxpayer if the taxpayer fails to remain in business for at least
4 five consecutive years from the first taxable year in which the
5 taxpayer is allowed the credit.

6 E. A taxpayer may be allowed by the department a
7 maximum aggregate amount of new commercial activity corporate
8 income tax credits for the ten-year period for which the taxpayer
9 is able to claim the credits not to exceed thirty percent of the
10 increase in state revenue above the first base year for which the
11 taxpayer has claimed a new commercial activity corporate income
12 tax credit.

13 F. Prior to January 1, 2014, the taxation and revenue
14 department and the economic development department shall each
15 adopt rules to implement the provisions of this section for which
16 that department is responsible.

17 G. A corporation claiming a new commercial activity
18 corporate income tax credit shall apply to the economic
19 development department for a certificate of eligibility that
20 states that the taxpayer qualifies for the credit on a form and
21 in a manner authorized by the economic development department.

22 H. A certificate of eligibility is valid for only the
23 taxpayer that is found eligible by the economic development
24 department to receive a new commercial activity corporate income
25 tax credit and may not be transferred to another taxpayer.

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1 I. The economic development department shall provide
2 a certificate of eligibility to each taxpayer that has applied
3 for and been found to qualify to receive a new commercial
4 activity corporate income tax credit. The economic development
5 department shall maintain records of the certificates of
6 eligibility issued pursuant to this section.

7 J. To be eligible to receive a new commercial
8 activity corporate income tax credit, a taxpayer shall provide
9 the economic development department with:

10 (1) evidence of expenditures to establish a new
11 business located in New Mexico or the expenditures for an
12 expanded business within the immediately preceding four years but
13 not before July 1, 2013;

14 (2) evidence of one full year of operation in
15 New Mexico using the capital improvements that are reported to
16 the economic development department to support the taxpayer's
17 eligibility for the credit, including evidence of paying eligible
18 employees within the taxable year for which the credit is to be
19 claimed;

20 (3) evidence of payment of taxes by the business
21 to the state of New Mexico in the taxable year pursuant to the
22 Corporate Income and Franchise Tax Act and the Gross Receipts and
23 Compensating Tax Act;

24 (4) evidence that the business has capital,
25 credit or income potential necessary to continue operation for at

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1 least a five-year period from the first taxable year in which the
2 taxpayer applies to the economic development department for a
3 certificate of eligibility; and

4 (5) statements signed by the taxpayer:

5 (a) authorizing the economic development
6 department and the taxation and revenue department to reveal to
7 the legislature and its agencies information from the taxpayer's
8 tax returns needed to evaluate the effectiveness of the credit in
9 fulfilling its purposes; and

10 (b) creating a first priority lien, in
11 favor of the state, on the assets and property of the taxpayer
12 equal to the aggregate amount of the credits allowed the taxpayer
13 by the department and claimed pursuant to this section if the
14 taxpayer ceases operation within the five consecutive years
15 following the first taxable year for which the taxpayer was
16 allowed a new commercial activity corporate income tax credit.

17 K. To claim the new commercial activity corporate
18 income tax credit, a taxpayer shall submit with the taxpayer's
19 New Mexico corporate income tax return a certificate of
20 eligibility issued by the economic development department
21 pursuant to this section, individually identifiable and
22 displaying the date on which the certificate of eligibility is
23 issued. The certificate of eligibility shall state:

24 (1) the details that make the taxpayer eligible
25 to receive the credit;

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1 (2) the number of eligible employees employed by
2 the taxpayer in the base year;

3 (3) the total wages paid by the taxpayer in the
4 base year to employees of the business for which the credit is
5 being claimed; and

6 (4) the amount of the taxpayer's investment to
7 create, relocate or expand the taxpayer's business.

8 L. The taxation and revenue department shall provide
9 a credit claim form on which a taxpayer may claim a new
10 commercial activity corporate income tax credit. A credit claim
11 form shall accompany a return filed pursuant to the Corporate
12 Income and Franchise Tax Act in which the taxpayer is applying
13 for the credit. The taxation and revenue department shall
14 determine the amount of the credit that is allowed the taxpayer
15 for the taxable year.

16 M. The amount of the new commercial activity
17 corporate income tax credit shall be determined by subtracting
18 the tax liability of the taxpayer paid for the base year from the
19 tax liability of the taxpayer for the taxable year for which the
20 taxpayer is claiming the credit and multiplying the difference by
21 fifty percent. If the difference is zero or a negative number,
22 the credit for that year shall be zero.

23 N. Any amount of the new commercial activity
24 corporate income tax credit that the taxpayer is approved to
25 claim that exceeds the tax liability of the taxpayer for the

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1 taxable year, up to the maximum allowable aggregate credit, shall
2 be refunded to the taxpayer.

3 O. A taxpayer claiming the new commercial activity
4 corporate income tax credit pursuant to this section is
5 ineligible for a high-wage jobs tax credit or a rural jobs tax
6 credit.

7 P. The department shall compile an annual report
8 pertaining to the new commercial activity corporate income tax
9 credit that includes the following information regarding the last
10 fiscal year:

11 (1) the number of taxpayers approved by the
12 department to receive the credit;

13 (2) the aggregate amount of the credits allowed
14 in the fiscal year;

15 (3) the number of economic-based jobs created in
16 the fiscal year by taxpayers claiming the credit;

17 (4) the increase in wages paid by taxpayers
18 claiming the credit in the fiscal year;

19 (5) the number of taxpayers whose businesses
20 have failed to complete the five-year operational period;

21 (6) the amount of revenue that the state has
22 been able to recapture from businesses that did not complete the
23 five-year operational period; and

24 (7) any other information that the department,
25 the legislative finance committee or the revenue stabilization

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1 and tax policy committee deems necessary to evaluate the
2 effectiveness of the credit in fulfilling its purposes.
3 Beginning in 2016, the department shall present to the revenue
4 stabilization and tax policy committee an analysis of whether the
5 credit is fulfilling the purposes for which it was created.
6 Recommendations for amending or repealing the credit based on the
7 analysis shall be included in the report.

8 Q. As used in this section:

9 (1) "average wage" means the annual average wage
10 amount by county as stated on the web site of the bureau of
11 business and economic research at the university of New Mexico as
12 the average annual covered wages by major sector and county found
13 in the economic data tables for the most recent year published
14 for the county in which a taxpayer has established a new business
15 or expanded a business;

16 (2) "base year" means the fiscal year
17 immediately prior to the fiscal year in which the new commercial
18 activity corporate income tax credit is being claimed;

19 (3) "business" means a for-profit corporation
20 that is required to pay corporate and franchise taxes pursuant to
21 the Corporate Income and Franchise Tax Act;

22 (4) "corporate tax liability" means a taxpayer's
23 corporate tax liability pursuant to the Corporate Income and
24 Franchise Tax Act;

25 (5) "economic-based job" means a job that is

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1 occupied for at least forty-eight consecutive weeks by an
2 eligible employee;

3 (6) "eligible employee" means an individual who
4 is a resident of New Mexico for purposes of the Income Tax Act,
5 is employed by the taxpayer claiming a new commercial activity
6 corporate income tax credit and is paid a wage in the qualifying
7 period that is at least one hundred percent of the average wage
8 in the county in which the employee is employed;

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

14 (a) is located in New Mexico;

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

18 (c) was in operation on or before July 1,
19 2007 or at least five years prior to the taxable year in which
20 the new commercial activity corporate income tax credit is first
21 claimed but began capital improvements within the two years prior
22 to the date on which the taxpayer first seeks a certificate of
23 eligibility pursuant to this section;

24 (8) "five-year operational period" means the
25 five-year period beginning with the taxable year in which a

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1 taxpayer is issued a certificate of eligibility;

2 (9) "new business" means a corporation:

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

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

10 (c) that began business operations on or
11 after July 1, 2013; and

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

14 (10) "qualifying period" means the period of
15 twelve months beginning on the day an eligible employee begins
16 working in an economic-based job; and

17 (11) "wages" means all remuneration in cash and
18 the cash value of remuneration paid in any other form for
19 services performed by an employee for an employer; "wages"
20 includes the value of benefits."

21 **SECTION 2. APPLICABILITY.**--The provisions of this act apply
22 to taxable years beginning on or after January 1, 2014.

23 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
24 provisions of this act is January 1, 2014.