

AN ACT

RELATING TO TAXATION; EXTENDING THE LIFE OF CERTAIN INVESTMENT CREDIT PROVISIONS AND REQUIRING LEGISLATIVE REVIEW OF THE USE AND EFFECTIVENESS OF THE CREDIT; EXTENDING THE PERIOD FOR APPLICATION OF CERTAIN PROVISIONS FOR APPORTIONMENT OF BUSINESS INCOME FOR CORPORATE INCOME TAX PURPOSES BY TAXPAYERS WHOSE PRINCIPAL BUSINESS ACTIVITY IS MANUFACTURING; AMENDING, REPEALING AND ENACTING SECTIONS OF LAW AND OF THE NMSA 1978.

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

Section 1. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME. --

A. Except as provided in Subsection B of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. For taxable years beginning prior to January 1, 2011, each taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of

which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any provisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection A of this section for the taxable year unless:

(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or

(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year

beginning on or after January 1, 1991.

C. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

- (1) construction;
- (2) farming;
- (3) power generation; or
- (4) processing natural resources, including hydrocarbons. "

Section 2. A new section of the Investment Credit Act is enacted to read:

"LEGISLATIVE OVERSIGHT. -- The interim revenue stabilization and tax policy committee during the 2005 interim shall conduct a review of the use of the investment credit and the effectiveness of the credit in meeting the state's economic development and tax policy objectives. Following the study, the committee shall determine whether changes are necessary in the Investment Credit Act and report its findings and recommendations to the second session of the forty-seventh legislature. "

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

"7-9A-7. VALUE OF QUALIFIED EQUIPMENT. --

A. Prior to July 1, 2011, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

B. After June 30, 2011, the value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars (\$2,000,000). "

Section 4. Section 7-9A-7.1 NMSA 1978 (being Laws 1983, Chapter 206, Section 6, as amended by Laws 1991, Chapter 159, Section 6 and also by Laws 1991, Chapter 162, Section 6) is amended to read:

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

A. Prior to July 1, 2011, to be eligible to claim a credit pursuant to the Investment Credit Act, the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) two hundred fifty thousand dollars (\$250,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of two million dollars (\$2,000,000);

(2) five hundred thousand dollars (\$500,000), or portion of that amount, in value of qualified equipment over two million dollars (\$2,000,000) claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars (\$30,000,000); and

(3) one million dollars (\$1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars (\$30,000,000) claimed by the taxpayer in a taxable year in the same claim.

B. After June 30, 2011, for every one hundred thousand dollars (\$100,000) in value of qualified equipment claimed by a taxpayer in a taxable year, the taxpayer shall employ the equivalent of one full-time employee in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for credit.

C. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on which the taxpayer applies for the credit, if he

was only being trained prior to that date or his employment is necessitated by the use of the qualified equipment."

Section 5. Laws 1999, Chapter 36, Section 1 is amended to read:

"Section 1. Laws 1997, Chapter 62, Section 3 is amended to read:

"Section 3. Laws 1990, Chapter 3, Section 10, as amended by Laws 1992, Chapter 17, Section 1 and also by Laws 1992, Chapter 104, Section 1, is amended to read:

"Section 10. EFFECTIVE DATE. --The effective date of the provisions of Sections 1, 2, 4, 5, 7 and 9 of Laws 1990, Chapter 3 is January 1, 1991. """

Section 6. Laws 1999, Chapter 35, Section 4 is amended to read:

"Section 4. EFFECTIVE DATE. --The effective date of the provisions of Section 2 of this act is July 1, 1999."

Section 7. REPEAL. --

A. Laws 1990, Chapter 3, Sections 6 and 8 are repealed.

B. Laws 1999, Chapter 35, Sections 1 and 3 are repealed.

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