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SENATE BILL 575

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Howie Morales

AN ACT

RELATING TO TAXATION; PROVIDING A CREDIT AGAINST MODIFIED
COMBINED TAX LIABILITIES FOR THE COMPENSATING TAX LIABILITY
RESULTING FROM INVESTMENT IN CHILE PRODUCTION AND PROCESSING
EQUIPMENT IN NEW MEXICO; ENACTING THE CHILE INDUSTRY
MODERNIZATION INVESTMENT CREDIT ACT.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Chile Industry Modernization Investment Credit Act".

SECTION 2. PURPOSE.--The purpose of the Chile Industry
Modernization Investment Credit Act is to provide an incentive
for chile producers and chile processors to modernize equipment
and facilities used in the production and processing of chile
in New Mexico and enable the industry to compete more
successfully in the world chile market.

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1 **SECTION 3. DEFINITIONS.**--As used in the Chile Industry
2 Modernization Investment Credit Act:

3 A. "chile" means any variety of the pepper capsicum
4 annum;

5 B. "chile processing ratio" means a percentage
6 calculated by one of the following methods to determine if a
7 facility qualifies as a processing facility for purposes of the
8 chile investment credit:

9 (1) the number of hours the facility processed
10 chile in the twelve-month period prior to the month in which
11 the chile investment credit was first claimed by the taxpayer
12 divided by the total number of hours the facility was in use
13 for all commodities processed in the facility during that
14 twelve-month period;

15 (2) the gross receipts from chile processing
16 in the twelve-month period prior to the month in which the
17 chile investment credit was first claimed by the taxpayer
18 divided by the total gross receipts generated in that twelve-
19 month period by all processing activities occurring in the
20 facility; or

21 (3) the number of square feet dedicated
22 exclusively to processing chile in the twelve-month period
23 prior to the month in which the chile investment credit was
24 first claimed by the taxpayer divided by the total number of
25 square feet in the facility used for processing all commodities

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1 processed in the facility;

2 C. "chile processor" means a person who processes
3 chile in a processing facility in which the chile processing
4 ratio is thirty-three percent and who derived at least thirty-
5 three percent of the person's gross receipts from products
6 derived from producing or processing chile in the twelve-month
7 period preceding the month in which the person first claimed a
8 chile investment credit;

9 D. "chile producer" means a person who produces
10 chile, who derived at least thirty-three percent of the
11 person's gross receipts from producing chile in the twelve-
12 month period preceding the month in which the person first
13 claimed a chile investment credit and who produces chile on at
14 least fifteen percent of the land controlled by the person for
15 purposes of cultivation and crop production;

16 E. "department" means the taxation and revenue
17 department, the secretary of taxation and revenue or any
18 employee of the department exercising authority lawfully
19 delegated to the employee by the secretary;

20 F. "equipment" means an essential machine,
21 mechanism or tool, or a component or fitting of an essential
22 machine, mechanism or tool, used directly in the production or
23 processing of chile in New Mexico and subject to depreciation
24 for purposes of the Internal Revenue Code of 1986 by the
25 taxpayer carrying on the chile production or processing

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1 operation; "equipment" does not include a vehicle that leaves
2 the site of the chile producer or processing facility for the
3 purpose of transporting persons or property, including
4 equipment for which the chile investment credit is being
5 claimed;

6 G. "investment" means the purchase of equipment;

7 H. "modified combined tax liability" means the
8 total liability of the taxpayer for the reporting period for
9 the gross receipts tax imposed pursuant to Section 7-9-4 NMSA
10 1978, the compensating tax imposed pursuant to Section 7-9-7
11 NMSA 1978 and the withholding tax imposed on wages pursuant to
12 Section 7-3-3 NMSA 1978, notwithstanding any distribution or
13 transfer pursuant to the Tax Administration Act with respect to
14 net receipts from those liabilities. "Modified combined tax
15 liability" excludes any liability resulting from a local option
16 gross receipts tax;

17 I. "process" means to prepare chile for sale,
18 including to clean, sort or otherwise prepare fresh chile for
19 market or for use by a processor; to combine chile with other
20 ingredients to increase the value of or preserve the chile; to
21 dry, roast, grind, cook, dice, freeze or refrigerate chile; or
22 to package chile or chile products;

23 J. "processing facility" means a building or other
24 enclosed or open location in which chile is processed and that
25 has a chile processing ratio of at least thirty-three percent;

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1 K. "produce" means to grow a crop, including to
2 prepare for planting, and to plant, grow and harvest a crop;
3 and

4 L. "taxpayer" means a person liable for payment of
5 gross receipts tax, compensating tax or withholding tax who is
6 a chile producer or a chile processor.

7 **SECTION 4. CHILE INVESTMENT CREDIT--AMOUNT.--**The tax
8 credit provided in the Chile Industry Modernization Investment
9 Credit Act may be referred to as the "chile investment credit".
10 The chile investment credit shall be in an amount equal to the
11 amount of gross receipts tax paid or compensating tax paid on
12 the value of equipment purchased by the taxpayer to produce or
13 process chile in New Mexico.

14 **SECTION 5. SUBMITTING A CLAIM--LIMITS.--**

15 A. A taxpayer applying for a chile investment
16 credit shall submit a claim for the credit in the manner and
17 form required by the department.

18 B. The department may allow the taxpayer's chile
19 investment credit claim if:

20 (1) the taxpayer is a chile producer or chile
21 processor;

22 (2) the taxpayer has purchased equipment for
23 production or processing of chile; and

24 (3) the claim is filed within one year
25 following the end of the calendar year in which the taxpayer

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1 makes an investment in production or processing equipment.

2 C. The maximum chile investment credit in any
3 calendar year that may be approved by the department for a
4 taxpayer shall not exceed one hundred thousand dollars
5 (\$100,000).

6 D. A taxpayer approved by the department to claim a
7 chile investment credit may claim the amount approved by the
8 department against the taxpayer's modified combined tax
9 liability due; provided that a taxpayer shall not claim an
10 amount exceeding eighty-five percent of the taxpayer's modified
11 combined tax liability for the reporting period in which the
12 claim is made.

13 E. The balance of a chile investment credit
14 remaining that exceeds eighty-five percent of the taxpayer's
15 modified combined tax liability in any reporting period in
16 which the chile investment credit is claimed may be carried
17 forward and claimed against the taxpayer's available modified
18 combined tax liability in subsequent reporting periods until
19 the amount of credit allowed is exhausted.

20 SECTION 6. ADMINISTRATION.--The Chile Industry
21 Modernization Investment Credit Act shall be administered
22 pursuant to the Tax Administration Act. The department shall
23 develop and publish as necessary any forms or procedures needed
24 to process a chile investment credit.

25 SECTION 7. LEGISLATIVE OVERSIGHT.--The department shall

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1 present a report to the revenue stabilization and tax policy
2 committee annually by October 30 detailing the amount of the
3 chile investment credit approved in the previous fiscal year.
4 The revenue stabilization and tax policy committee shall review
5 the effectiveness of the chile investment credit every four
6 years beginning in 2014.

7 SECTION 8. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2011.

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