HOUSE BILL 322

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

INTRODUCED BY

David L. Doyle

AN ACT

RELATING TO TAXATION; ENACTING A NEW SECTION OF THE CORPORATE INCOME AND FRANCHISE TAX ACT; CREATING THE HIGH IMPACT INVESTMENT TAX CREDIT; DECLARING AN EMERGENCY.

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] HIGH IMPACT INVESTMENT TAX CREDIT.--

A. A taxpayer that makes a capital investment for a high impact economic development project and creates net new qualified jobs pursuant to this section is eligible for a credit against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act in an amount equal to five thousand dollars ($5,000) for each net new qualified job created by the taxpayer. The tax credit provided by this section may be referred to as the "high impact investment tax credit".

B. The purposes of the high impact investment tax credit are to:

(1) increase the number of permanent, full-time and well-paid jobs in the state;

(2) increase large, capital intensive corporate investment in the state; and

(3) encourage companies to locate and expand regional, national or international headquarters in the state.

C. A taxpayer may claim the high impact investment tax credit provided in this section for:

(1) twenty years if, within six years from the date the taxpayer enters into a legally binding commitment or contract for a high impact economic development project in:

(a) an urban area, the taxpayer makes a capital investment that exceeds one billion dollars ($1,000,000,000) and creates at least one thousand net new qualified jobs; or

(b) a rural area, the taxpayer makes a capital investment that exceeds five hundred million dollars ($500,000,000) and creates at least five hundred net new qualified jobs;

(2) ten years if, within four years from the date the taxpayer enters into a legally binding commitment or

contract for a high impact economic development project in:

(a) an urban area, the taxpayer makes a capital investment that exceeds two hundred fifty million dollars ($250,000,000) and creates at least five hundred net new qualified jobs; or

(b) a rural area, the taxpayer makes a capital investment that exceeds one hundred twenty-five million dollars ($125,000,000) and creates at least two hundred fifty net new qualified jobs;

(3) five years if, within four years from the date the taxpayer enters into a legally binding commitment or contract for a high impact economic development project in:

(a) an urban area, the taxpayer makes a capital investment that exceeds one hundred million dollars ($100,000,000) and creates at least two hundred fifty net new qualified jobs; or

(b) a rural area, the taxpayer makes a capital investment that exceeds fifty million dollars ($50,000,000) and creates at least one hundred twenty-five net new qualified jobs; or

(4) seven years if, within four years from the date the taxpayer enters into a legally binding commitment or contract for a high impact economic development project that is a headquarters in:

(a) an urban area, the taxpayer makes a

capital investment that exceeds ten million dollars ($10,000,000) and creates at least one hundred net new qualified jobs that pay at least one hundred twenty-five percent of the average wage for the county in which the headquarters will be located; or

(b) a rural area, the taxpayer makes a capital investment that exceeds five million dollars ($5,000,000) and creates at least fifty net new qualified jobs that pay at least one hundred ten percent of the average wage for the county in which the headquarters will be located.

D. For each high impact economic development project a taxpayer leases, purchases or constructs, the period of time a taxpayer may receive a high impact investment tax credit pursuant to this section shall not exceed twenty years.

E. If the number of net new qualified jobs a taxpayer created is reduced to a number below the number the taxpayer used to qualify for the high impact investment tax credit, the amount of credit shall be reduced by the following amounts for each taxable year in which the credit is claimed and the number of net new qualified jobs remains below the number used to qualify for the credit:

(1) ten percent if the number of net new qualified jobs is reduced by more than ten percent but not more than twenty percent;

(2) twenty percent if the number of net new

qualified jobs is reduced by more than twenty percent but not more than thirty percent;

(3) thirty percent if the number of net new qualified jobs is reduced by more than thirty percent but not more than forty percent; and

(4) one hundred percent if the number of net new qualified jobs is reduced more than forty percent.

F. That amount of a high impact investment tax credit allowed by the department that exceeds a taxpayer's corporate income tax liability in the taxable year in which the credit is claimed shall not be transferred, refunded or carried forward; provided, however, that the excess amount may be deducted from the taxpayer's monthly modified combined tax liability, the amount of which shall be identified in a manner as required by the department.

G. A taxpayer claiming the high impact investment tax credit pursuant to this section is ineligible, within the same time period, to claim the high-wage jobs tax credit, the technology jobs tax credit, the rural job tax credit or the film production tax credit.

H. The department shall adopt rules establishing procedures to implement the high impact investment tax credit and to determine the eligibility of a taxpayer to claim a high impact investment tax credit pursuant to this section.

I. The department shall compile an annual report for the revenue stabilization and tax policy committee and the legislative finance committee that sets forth the number of taxpayers approved to receive the high impact investment tax credit, the aggregate amount of credits approved, the average and median amounts of credits approved and the aggregate amounts of deductions from monthly modified combined tax liability. The department shall advise the revenue stabilization and tax policy committee and the legislative finance committee at least every three years beginning in 2016 whether the high impact investment tax credit is performing the purposes for which it was created.

J. Acceptance of the high impact investment tax credit is authorization to the department to reveal, in the aggregate, the amount of high impact investment tax credits claimed by taxpayers and other information from taxpayers' tax reports as needed to report fully as required by this section to the revenue stabilization and tax policy committee and the legislative finance committee.

K. As used in this section:

(1) "average wage" means the average weekly wage amount in the first quarter of the most recent year of the quarterly census of employment and wages, published by the workforce solutions department, in which a taxpayer makes a capital investment for a high impact economic development project and creates net new qualified jobs;

(2) "capital investment" means an investment in land, buildings, equipment and improvements, including a taxpayer's portion of the cost of public infrastructure needed to serve a high impact economic development project;

(3) "headquarters" means a facility that houses the international, national or regional headquarters of a taxpayer in which headquarters staff employees are located and employed to perform headquarters-related functions and services. For purposes of this paragraph, "regional" means a geographic area that includes the state of New Mexico;

(4) "headquarters-related functions and services" means those functions involving administrative, finance, planning, research and development, marketing, personnel, legal, computer or telecommunications services performed by headquarters staff employees on an international, national or regional basis. "Headquarters-related functions and services" does not include functions involving manufacturing, processing, warehousing, distribution, wholesaling or operating a call or service center;

(5) "headquarters staff employee" means an executive employee, an administrative employee or a professional employee who performs headquarters-related functions and services. For purposes of this paragraph:

(a) "administrative employee" means a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations;

(b) "executive employee" means a full-time employee who is primarily engaged in the management of all or part of the headquarters; and

(c) "professional employee" means a full-time employee whose primary duty is requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study;

(6) "high impact economic development project" means the lease, purchase or construction of a:

(a) facility for the manufacturing, processing or assembling of agricultural or manufactured products for which fifty percent or more of a taxpayer's revenues from the qualified New Mexico operation are from out of state;

(b) facility for storing, warehousing, distributing or selling products of agriculture, mining or industry, but does not include facilities designed for the sale of goods or commodities at retail or distribution to the public of electricity, gas, water, telephone or other services commonly classified as public utilities for which fifty percent or more of the taxpayer's revenues from the qualified New Mexico operation are from out of state; or

(c) headquarters;

(7) "modified combined tax liability" means the total liability of the taxpayer for the reporting period for the gross receipts tax imposed pursuant to Section 7-9-4 NMSA 1978, the compensating tax imposed pursuant to Section 7-9-7 NMSA 1978 and the withholding tax imposed on wages pursuant to Section 7-3-3 NMSA 1978, notwithstanding any distribution or transfer pursuant to the Tax Administration Act with respect to net receipts from those liabilities, minus the amount of a credit or deduction other than the high impact investment tax credit applied against those taxes; provided that "modified combined tax liability" excludes any liability resulting from a local option gross receipts tax;

(8) "net new qualified job" means a job position:

(a) that is newly created in this state and, for at least ninety days prior to being filled by the taxpayer, did not exist in this state as a job position of the taxpayer or of another related business entity;

(b) that is permanent, rather than seasonal or part time, and is occupied for at least forty-eight of fifty-two weeks by an employee who works at least thirty-two hours per week; and

(c) in which the taxpayer offers benefits, including health insurance coverage in compliance with the New Mexico Insurance Code or a comparable health benefit plan;

(9) "rural area" means an area in the state that is not an urban area; and

(10) "urban area" means an area within the boundary of a municipality with a population greater than forty-five thousand according to the most recent federal decennial census or an area within a class A county with a population greater than five hundred thousand according to the most recent federal decennial census."

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2013.

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2013.

SECTION 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.