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SENATE BILL 4

44TH LEGISLATURE - STATE OF NEW MEXICO - 2ND SPECIAL SESSION, 2000

INTRODUCED BY

Roman M. Maes III

AN ACT

RELATING TO TAXATION; ENACTING THE TECHNOLOGY JOBS TAX CREDIT
ACT FOR CERTAIN RESEARCH, DEVELOPMENT AND EXPERIMENTATION
INVESTMENTS.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Technology Jobs Tax Credit Act".

Section 2. PURPOSE OF ACT.--It is the purpose of the
Technology Jobs Tax Credit Act to provide a favorable tax
climate for technology-based businesses engaging in research,
development and experimentation and to promote increased
employment and higher wages in those fields in New Mexico.

Section 3. DEFINITIONS.--As used in the Technology Jobs
Tax Credit Act:

A. "affiliate" means a person who directly or
indirectly owns or controls, is owned or controlled by or is
under common ownership or control with another person through

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1 ownership of voting securities or other ownership interests
2 representing a majority of the total voting power of the
3 entity;

4 B. "annual payroll expense" means the wages paid
5 or payable by the taxpayer for the one-year period ending on
6 the day the taxpayer applies for an additional credit
7 pursuant to the Technology Jobs Tax Credit Act;

8 C. "base payroll expense" means the wages paid or
9 payable by the taxpayer for the one-year period ending on the
10 day one year prior to the day the taxpayer applies for an
11 additional credit pursuant to the Technology Jobs Tax Credit
12 Act, adjusted for any increase in the consumer price index
13 for the United States for all items as published by the
14 United States department of labor since that day;

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

19 E. "facility" means a factory, mill, plant,
20 refinery, warehouse, dairy, feedlot, building or complex of
21 buildings located within the state, including the land on
22 which the facility is located and all machinery, equipment
23 and other real and tangible personal property located at or
24 within the facility and used in connection with the operation
25 of the facility;

F. "qualified expenditure" means an expenditure or
an allocated portion of an expenditure by a taxpayer in

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1 connection with qualified research at a qualified facility,
2 including expenditures for depletable land and rent paid or
3 incurred for land, improvements, the allowable amount paid or
4 incurred to operate or maintain a facility, buildings,
5 equipment, computer software, computer software upgrades,
6 consultants and contractors performing work in New Mexico,
7 payroll, technical books and manuals and test materials, but
8 not including any expenditure on property that is owned by a
9 municipality or county in connection with an industrial
10 revenue bond project, property for which the taxpayer has
11 received any credit pursuant to the Capital Equipment Tax
12 Credit Act or the Investment Credit Act, property that was
13 owned by the taxpayer or an affiliate before the effective
14 date of the Technology Jobs Tax Credit Act or research and
15 development expenditures reimbursed by a person who is not an
16 affiliate of the taxpayer. If an expenditure is an
17 allocation of an expenditure, the cost accounting methodology
18 used for the allocation of the expenditure shall be the same
19 cost accounting methodology used by the taxpayer in its other
20 business activities;

21 G. "qualified facility" means a facility in New
22 Mexico at which qualified research is conducted other than a
23 facility operated by a taxpayer for the United States or any
24 agency, department or instrumentality thereof;

25 H. "qualified research" means research:

(1) that is undertaken for the purpose of
discovering information:

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1 (a) that is technological in nature;

2 and

3 (b) the application of which is
4 intended to be useful in the development of a new or improved
5 business component of the taxpayer; and

6 (2) substantially all of the activities of
7 which constitute elements of a process of experimentation
8 related to a new or improved function, performance,
9 reliability or quality, but not related to style, taste or
10 cosmetic or seasonal design factors;

11 I. "rural area" means any area of the state other
12 than a class A county, a class B county that has a net
13 taxable value for rate-setting purposes for any property tax
14 year of more than three billion dollars (\$3,000,000,000), the
15 municipality of Rio Rancho and the area within three miles of
16 the exterior boundaries of a class A county;

17 J. "taxpayer" means any of the following persons,
18 other than a federal, state or other governmental unit or
19 subdivision or an agency, department, institution or
20 instrumentality thereof:

21 (1) a person liable for payment of any tax;

22 (2) a person responsible for withholding and
23 payment or collection and payment of any tax;

24 (3) a person to whom an assessment has been
25 made if the assessment remains unabated or the assessed
amount has not been paid; or

(4) for purposes of the additional credit

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1 against the taxpayer's income tax pursuant to the Technology
2 Jobs Tax Credit Act and to the extent of their respective
3 interest in that entity, the shareholders, members, partners
4 or other owners of:

5 (a) a small business corporation that
6 has elected to be treated as an S corporation for federal
7 income tax purposes; or

8 (b) an entity treated as a partnership
9 or disregarded entity for federal income tax purposes; and

10 K. "wages" means remuneration in cash or other
11 form for services performed by an employee for an employer.

12 Section 4. ADMINISTRATION OF ACT.--The department shall
13 administer the Technology Jobs Tax Credit Act pursuant to the
14 Tax Administration Act.

15 Section 5. BASIC CREDIT--ADDITIONAL CREDIT--AMOUNTS--
16 CLAIMANT.--

17 A. The basic credit provided for in the Technology
18 Jobs Tax Credit Act is an amount equal to three percent of
19 the amount of qualified expenditures made by a taxpayer
20 conducting qualified research at a qualified facility.

21 B. The additional credit provided for in the
22 Technology Jobs Tax Credit Act is an amount equal to three
23 percent of the amount of qualified expenditures made by a
24 taxpayer conducting qualified research at a qualified
25 facility.

Section 6. ELIGIBILITY REQUIREMENTS.--

A. A taxpayer conducting qualified research at a

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1 qualified facility and making qualified expenditures is
2 eligible to claim the basic credit pursuant to the Technology
3 Jobs Tax Credit Act.

4 B. A taxpayer conducting qualified research at a
5 qualified facility and making qualified expenditures is
6 eligible to claim the additional credit pursuant to the
7 Technology Jobs Tax Credit Act if:

8 (1) the taxpayer increases the taxpayer's
9 annual payroll expense at the qualified facility by at least
10 seventy-five thousand dollars (\$75,000) over the base payroll
11 expense of the taxpayer;

12 (2) the increase in Paragraph (1) of this
13 subsection has not previously been used to meet the
14 requirements of this subsection; and

15 (3) there is at least a seventy-five
16 thousand dollar (\$75,000) increase in the taxpayer's annual
17 payroll expense for every one million dollars (\$1,000,000) in
18 qualified expenditures claimed by the taxpayer in a taxable
19 year in the same claim.

20 Section 7. QUALIFIED EXPENDITURES.--The amount of a
21 taxpayer's qualified expenditure is the purchase price for
22 the relevant property or service.

23 Section 8. RURAL AREAS.--The amount of the basic and
24 additional credit for which a taxpayer is otherwise eligible
25 shall be doubled if the qualified expenditures were incurred
with respect to a qualified facility in a rural area.

Section 9. CLAIMING THE CREDIT FOR CERTAIN TAXES.--

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1 A. A taxpayer may apply for approval of a credit
2 within one year following the end of the calendar year in
3 which the qualified expenditure was made.

4 B. A taxpayer having applied for and been granted
5 approval for a basic credit by the department pursuant to the
6 Technology Jobs Tax Credit Act may claim the amount of the
7 approved basic credit against the taxpayer's compensating
8 tax, gross receipts tax or withholding tax due to the state
9 of New Mexico; provided that no taxpayer may claim an amount
10 of approved basic credit for any reporting period that
11 exceeds the sum of the taxpayer's gross receipts tax,
12 compensating tax and withholding tax due for that reporting
13 period.

14 C. A taxpayer who has applied for and been granted
15 approval for an additional credit by the department pursuant
16 to the Technology Jobs Tax Credit Act may claim the amount of
17 the approved additional credit against the taxpayer's income
18 tax or corporate income tax due the state of New Mexico;
19 provided that:

20 (1) no taxpayer may claim an amount of
21 approved additional credit for any reporting period that
22 exceeds the amount of the taxpayer's income tax or corporate
23 income tax due for that reporting period; and

24 (2) a husband and wife who file separate
25 returns for a taxable year in which they could have filed a
joint return may each claim only one-half of the additional
credit that would have been allowed them on a joint return.

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1 D. Any amount of approved basic credit not claimed
2 against the taxpayer's gross receipts tax, compensating tax
3 or withholding tax due and any amount of approved additional
4 credit not claimed against the taxpayer's income tax or
5 corporate income tax due for a reporting period may be
6 claimed in subsequent reporting periods; provided that a
7 husband and wife who file separate returns for a taxable year
8 in which they could have filed a joint return may each claim
9 only one-half of the additional credit that would have been
10 allowed them on a joint return.

11 Section 10. CREDIT CLAIM FORMS.--The department shall
12 provide credit claim forms. A credit claim shall accompany
13 any return in which the taxpayer wishes to apply for an
14 approved basic or additional credit, and the claim shall
15 specify the amount and type of credit intended to apply to
16 each return.

17 Section 11. RECAPTURE.--If the taxpayer or a successor
18 in business of the taxpayer ceases operations in New Mexico
19 for at least one hundred eighty consecutive days within a
20 two-year period after the taxpayer has claimed a basic credit
21 or an additional credit at a facility with respect to which
22 the taxpayer has claimed the basic credit or the additional
23 credit, the department shall grant no further basic credit or
24 additional credit to the taxpayer with respect to that
25 facility. In addition, any amount of approved basic credit
not claimed against the taxpayer's gross receipts tax,
compensating tax or withholding tax and any amount of

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1 approved additional credit not claimed against the taxpayer's
2 income tax or corporate income tax shall be extinguished, and
3 within thirty days after the one hundred eightieth day of the
4 cessation of operations, the taxpayer shall pay the amount of
5 any gross receipts tax, compensating tax or withholding tax
6 for which an approved basic credit was taken and any income
7 tax or corporate income tax against which an approved
8 additional credit was taken. For purposes of this section,
9 a taxpayer shall not be deemed to have ceased operations
10 during reasonable periods for maintenance or retooling or for
11 the repair or replacement of facilities damaged or destroyed
12 or during the continuance of labor disputes.

13 Section 12. DEPARTMENT REPORT.--In October 2003 and
14 each year thereafter, the department shall report to the
15 legislative finance committee and the revenue stabilization
16 and tax policy committee on the fiscal and economic impacts
17 of the Technology Jobs Tax Credit Act using the most recently
18 available data for the two prior fiscal years. The report
19 shall include the number of taxpayers who have received basic
20 credits or additional credits under the Technology Jobs Tax
21 Credit Act, the amounts of the basic credits and additional
22 credits, the geographic locations of the qualified facilities
23 and the payroll increases of taxpayers related to additional
24 credits, subject to the confidentiality provisions of Section
25 7-1-8 NMSA 1978.