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**SENATE BILL 139**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Carlos R. Cisneros**

**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. To encourage investment and employment in this state by manufacturers who do not anticipate substantial sales revenue within this state]~~**

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

6           B. For taxable years beginning prior to January 1,  
7 2011, each taxpayer whose principal business activity is  
8 manufacturing may elect to have business income apportioned to  
9 this state by multiplying the income by a fraction, the  
10 numerator of which is the property factor plus the payroll  
11 factor plus twice the sales factor and the denominator of  
12 which is four. To elect the method of apportionment provided  
13 by this subsection, the taxpayer shall notify the department  
14 of the election, in writing, no later than the date on which  
15 the taxpayer files the return for the first taxable year to  
16 which the election will apply. The election will apply to  
17 that taxable year and to each taxable year thereafter until  
18 the taxpayer notifies the department, in writing, that the  
19 election is terminated, except that the taxpayer shall not  
20 terminate the election until the method of apportioning  
21 business income provided by this subsection has been used by  
22 the taxpayer for at least three consecutive taxable years,  
23 including a total of at least thirty-six calendar months.  
24 Notwithstanding any provisions of this subsection to the  
25 contrary, the taxpayer shall use the method of apportionment

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1 provided by Subsection ~~[B]~~ A of this section for the taxable  
2 year unless:

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

8 (2) the sum of the taxpayer's payroll factor  
9 and property factor for the taxable year exceeds the sum of  
10 the taxpayer's payroll factor and property factor for the  
11 taxpayer's base year. For purposes of this paragraph, "base  
12 year" means the taxpayer's first taxable year beginning on or  
13 after January 1, 1991.

14 ~~[B. each taxpayer whose principal business activity~~  
15 ~~is not manufacturing and each taxpayer whose principal~~  
16 ~~business activity is manufacturing but who has not made the~~  
17 ~~election provided in Subsection A of this section or has~~  
18 ~~terminated such an election in accordance with the provisions~~  
19 ~~of Subsection A of this section shall apportion business~~  
20 ~~income to this state by multiplying the income by a fraction,~~  
21 ~~the numerator of which is the property factor plus the payroll~~  
22 ~~factor plus the sales factor and the denominator of which is~~  
23 ~~three.]~~

24 C. For purposes of this section, "manufacturing"  
25 means combining or processing components or materials to

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1 increase their value for sale in the ordinary course of  
2 business, but does not include:

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

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

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

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

23 "7-9A-7. VALUE OF QUALIFIED EQUIPMENT. --

24 A. Prior to July 1, 2011, the value of qualified  
25 equipment shall be the adjusted basis established for the

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1 equipment under the applicable provisions of the Internal  
2 Revenue Code of 1986.

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

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

16 "7-9A-7.1. EMPLOYMENT REQUIREMENTS. --

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

24 (1) two hundred fifty thousand dollars  
25 (\$250,000), or portion of that amount, in value of qualified

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1 equipment claimed by the taxpayer in a taxable year in the  
2 same claim, up to a value of two million dollars (\$2,000,000);

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

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

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

18 [~~B.~~] C. The department may require evidence  
19 showing compliance with this section. The department may find  
20 that an additional employee meets the requirements of this  
21 section, although employed earlier than one year prior to the  
22 day on which the taxpayer applies for the credit, if he was  
23 only being trained prior to that date or his employment is  
24 necessitated by the use of the qualified equipment. "

25 Section 5. Laws 1999, Chapter 36, Section 1 is amended

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1 to read:

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

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

7 "Section 10. EFFECTIVE DATE. --

8 [A.] The effective date of the provisions of  
9 Sections 1, 2, 4, 5, 7 and 9 of Laws 1990, Chapter 3 is  
10 January 1, 1991.

11 ~~[B. The effective date of the provisions of~~  
12 ~~Sections 6 and 8 of Laws 1990, Chapter 3 is January 1,~~  
13 ~~2004.] ""~~

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

16 "Section 4. EFFECTIVE DATE. --

17 ~~[A. The effective date of the provisions of~~  
18 ~~Section 1 of this act is January 1, 2003.~~

19 B.] The effective date of the provisions of  
20 Section 2 of this act is July 1, 1999. "

21 Section 7. REPEAL. --

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

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

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