

1 SENATE BILL 293

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING A CORPORATE INCOME TAX CREDIT
12 FOR NEW BUSINESSES; PROVIDING LIMITS AND QUALIFICATIONS;
13 PROVIDING FOR POST-PERFORMANCE ASSESSMENT OF PERFORMANCE OF THE
14 QUALIFYING ACTIVITIES REQUIRED FOR APPROVAL OF THE TAX CREDIT.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of the Corporate Income and
18 Franchise Tax Act is enacted to read:

19 "[NEW MATERIAL] NEW COMMERCIAL ACTIVITY CORPORATE INCOME
20 TAX CREDIT.--

21 A. A taxpayer that files a New Mexico corporate
22 income tax return for a taxable year beginning on or after
23 January 1, 2014 but before January 1, 2021 that is a new
24 business that creates economic-based jobs in New Mexico may
25 claim, and the department may allow, a tax credit against the

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1 taxpayer's corporate income tax liability of thirty-five
2 percent of the excess above taxes paid to New Mexico in the
3 base year pursuant to the Corporate Income and Franchise Tax
4 Act and the Gross Receipts and Compensating Tax Act. The
5 credit provided in this section may be referred to as the "new
6 commercial activity corporate income tax credit". The
7 department shall allow a new commercial activity corporate
8 income tax credit for a taxpayer that is issued a certificate
9 of eligibility by the economic development department.

10 B. The purposes of the new commercial activity
11 corporate income tax credit are to:

12 (1) encourage corporations to start up in or
13 relocate to New Mexico and invest significant amounts of
14 capital in the state to start up or relocate;

15 (2) increase the number of economic-based jobs
16 available to New Mexico residents in New Mexico; and

17 (3) generate new state revenue from
18 construction, employment and business activity developed in New
19 Mexico.

20 C. The new commercial activity corporate income tax
21 credit may be claimed for seven consecutive years beginning with
22 the first taxable year in which the taxpayer is eligible to claim
23 the credit.

24 D. A taxpayer may claim and be allowed by the
25 department a maximum aggregate amount of new commercial activity

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1 corporate income tax credits for the seven-year period for which
2 the taxpayer is able to claim new commercial activity corporate
3 income tax credits not to exceed thirty-five percent of the
4 increase in state revenue above the first base year for which the
5 taxpayer has claimed a new commercial activity corporate income
6 tax credit.

7 E. Prior to January 1, 2014, the taxation and revenue
8 department and the economic development department shall each
9 adopt rules to implement the provisions of this section for which
10 each department is responsible.

11 F. For all applications for new commercial activity
12 corporate income tax credits received by the department on or
13 after January 1, 2013, a taxpayer shall not be eligible for a
14 credit pursuant to this section if the economic-based job the new
15 business creates was:

16 (1) created within one hundred eighty days of a
17 business merger, acquisition, association, affiliation,
18 disposition or other change in organization or management
19 affecting the new business; and

20 (2) performed by:

21 (a) the person who performed the job, or
22 its functional equivalent, prior to the business merger,
23 acquisition, association, affiliation, disposition or other
24 change in organization or management; or

25 (b) another person replacing the person

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1 who performed the job, or its functional equivalent, prior to the
2 business merger, acquisition, association, affiliation,
3 disposition or other change in organization or management.

4 G. For all applications for new commercial activity
5 corporate income tax credits received by the department on or
6 after January 1, 2013, a taxpayer shall not be eligible for a
7 credit pursuant to this section if the economic-based job created
8 is due to a new business entering into a contract or becoming a
9 subcontractor to a contract with a governmental entity that
10 replaces one or more entities performing functionally equivalent
11 services for the governmental entity unless the job is a new
12 economic-based job that was not being performed by an employee of
13 the replaced entity.

14 H. A corporation claiming a new commercial activity
15 corporate income tax credit shall apply to the economic
16 development department for a certificate of eligibility that
17 states that the taxpayer qualifies for a new commercial activity
18 corporate income tax credit on a form and in a manner authorized
19 by the economic development department.

20 I. A certificate of eligibility is valid for only the
21 taxpayer that is found eligible by the economic development
22 department to receive a new commercial activity corporate income
23 tax credit and may not be transferred to another taxpayer.

24 J. The economic development department shall provide
25 a certificate of eligibility to each taxpayer that has applied

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1 for and been found to qualify to receive a new commercial
2 activity corporate income tax credit. The economic development
3 department shall maintain records of the certificates of
4 eligibility issued pursuant to this section.

5 K. To be eligible to receive a new commercial
6 activity corporate income tax credit, a taxpayer shall provide
7 the economic development department with:

8 (1) evidence of expenditures to establish a new
9 business located in New Mexico;

10 (2) evidence that the business created at least
11 one hundred economic-based jobs in the base year;

12 (3) evidence of one full year of operation in
13 New Mexico, including evidence of paying at least one hundred
14 eligible employees within the taxable year for which the credit
15 is to be claimed;

16 (4) evidence of payment of taxes by the business
17 to the state of New Mexico in the taxable year pursuant to the
18 Corporate Income and Franchise Tax Act and the Gross Receipts and
19 Compensating Tax Act;

20 (5) evidence that the business is located and
21 operational in New Mexico at the time the credit is claimed; and

22 (6) statements signed by the taxpayer
23 authorizing the economic development department and the taxation
24 and revenue department to reveal to the legislature and its
25 agencies information from the taxpayer's tax returns needed to

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1 evaluate the effectiveness of the new commercial activity
2 corporate income tax credit in fulfilling its purposes.

3 L. To claim the new commercial activity corporate
4 income tax credit, a taxpayer shall submit with the taxpayer's
5 New Mexico corporate income tax return a certificate of
6 eligibility issued pursuant to this section, individually
7 identifiable and displaying the date on which the certificate of
8 eligibility is issued. The certificate of eligibility shall
9 state the:

10 (1) details that make the taxpayer eligible to
11 receive the new commercial activity corporate income tax credit;

12 (2) number of eligible employees employed by the
13 taxpayer in the base year;

14 (3) total wages paid by the taxpayer in the base
15 year to employees of the new business for which the credit is
16 being claimed; and

17 (4) amount of the taxpayer's investment to
18 create or relocate the taxpayer's business.

19 M. The department shall provide a credit claim form
20 on which a taxpayer may claim a new commercial activity corporate
21 income tax credit. A credit claim form shall accompany a return
22 filed pursuant to the Corporate Income and Franchise Tax Act in
23 which the taxpayer is applying for a new commercial activity
24 corporate income tax credit. The department shall determine the
25 amount of new commercial activity corporate income tax credit

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1 that is allowed the taxpayer for the taxable year by determining
2 the amount of taxes paid by the taxpayer in the base year
3 pursuant to the Corporate Income and Franchise Tax Act and the
4 Gross Receipts and Compensating Tax Act.

5 N. The amount of the new commercial activity
6 corporate income tax credit shall be determined by subtracting
7 the tax liability of the taxpayer paid for the base year from the
8 tax liability of the taxpayer for the taxable year for which the
9 taxpayer is claiming the new commercial activity corporate income
10 tax credit and multiplying the difference by thirty-five percent.
11 If the difference is zero or a negative number, then the tax
12 credit for that year shall be zero.

13 O. Any amount of the new commercial activity
14 corporate income tax credit that the taxpayer is approved to
15 claim that exceeds the tax liability of the taxpayer for the
16 taxable year, up to the maximum allowable aggregate credit, shall
17 be refunded to the taxpayer.

18 P. A taxpayer claiming the new commercial activity
19 corporate income tax credit pursuant to this section is
20 ineligible for a high-wage jobs tax credit or a rural job tax
21 credit.

22 Q. The department shall compile an annual report that
23 includes the following information regarding the last fiscal
24 year:

25 (1) the number of taxpayers approved by the

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1 department to receive a new commercial activity corporate income
2 tax credit;

3 (2) the aggregate amount of new commercial
4 activity corporate income tax credits allowed in the fiscal year;

5 (3) the number of economic-based jobs created in
6 the fiscal year by taxpayers claiming the new commercial activity
7 corporate income tax credit;

8 (4) the increase in wages paid by taxpayers
9 claiming the new commercial activity corporate income tax credit
10 in the fiscal year; and

11 (5) any other information that the department,
12 the legislative finance committee or the revenue stabilization
13 and tax policy committee deems necessary to evaluate the
14 effectiveness of the new commercial activity corporate income tax
15 credit in fulfilling the purposes of this section. Beginning in
16 2016, the department shall present to the revenue stabilization
17 and tax policy committee an analysis of whether the new
18 commercial activity corporate income tax credit is fulfilling the
19 purposes for which it was created. Recommendations for amending
20 or repealing the new commercial activity corporate income tax
21 based on the analysis shall be included in the report.

22 R. As used in this section:

23 (1) "average wage" means the annual average wage
24 amount by county as stated on the web site of the bureau of
25 business and economic research at the university of New Mexico as

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1 the average annual covered wages by major sector and county found
2 in the economic data tables for the most recent year published
3 for the county in which a taxpayer has established a new
4 business;

5 (2) "base year" means the calendar year
6 immediately prior to the fiscal year in which the new commercial
7 activity corporate income tax credit is being claimed;

8 (3) "benefits" means all remuneration for work
9 performed that is provided to an employee in whole or in part by
10 the employer, other than wages, including insurance programs;
11 health care; medical, dental and vision plans; life insurance;
12 employer contributions to pensions, such as a 401(k); and
13 employer-provided services, such as child care, offered by an
14 employer to the employee. "Benefits" does not include the
15 employer's share of payroll taxes, social security or medicare
16 contributions, federal or state unemployment insurance
17 contributions or workers' compensation insurance;

18 (4) "business" means a for-profit corporation
19 that is required to pay corporate and franchise taxes pursuant to
20 the Corporate Income and Franchise Tax Act;

21 (5) "corporate tax liability" means a taxpayer's
22 corporate income tax liability pursuant to the Corporate Income
23 and Franchise Tax Act;

24 (6) "economic-based job" means a job created by
25 a new business on or after July 1, 2013 that is occupied for at

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1 least forty-eight consecutive weeks of a qualifying period by an
2 eligible employee;

3 (7) "eligible employee" means an individual who
4 is a resident of New Mexico for purposes of the Income Tax Act,
5 is employed by the taxpayer claiming a new commercial activity
6 corporate income tax credit and is paid a wage in the qualifying
7 period that is at least one hundred percent of the average wage
8 in the county in which the employee is employed. "Eligible
9 employee" does not include an individual who:

10 (a) bears any of the relationships
11 described in Paragraphs (1) through (8) of 26 U.S.C. Section
12 152(a) to: 1) the employer; 2) if the employer is a corporation,
13 to an individual who owns, directly or indirectly, more than
14 fifty percent in value of the outstanding stock of the
15 corporation; or 3) if the employer is an entity other than a
16 corporation, to an individual who owns, directly or indirectly,
17 more than fifty percent of the capital and profits interest in
18 the entity;

19 (b) if the employer is an estate or trust,
20 is a grantor, beneficiary or fiduciary of the estate or trust or
21 is an individual who bears any of the relationships described in
22 Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a
23 grantor, beneficiary or fiduciary of the estate or trust;

24 (c) is a dependent, as that term is
25 described in 26 U.S.C. Section 152(a)(9), of: 1) the employer;

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1 2) if the taxpayer is a corporation, of an individual who owns,
2 directly or indirectly, more than fifty percent in value of the
3 outstanding stock of the corporation; 3) if the employer is an
4 entity other than a corporation, of an individual who owns,
5 directly or indirectly, more than fifty percent of the capital
6 and profits interest in the entity; or 4) if the employer is an
7 estate or trust, of a grantor, beneficiary or fiduciary of the
8 estate or trust; or

9 (d) is working or has worked as an
10 employee or as an independent contractor for an entity that
11 directly or indirectly owns stock in a corporation of the
12 eligible employer or other interest of the eligible employer that
13 represents fifty percent or more of the total voting power of
14 that entity or has a value equal to fifty percent or more of the
15 capital and profits interest in the entity;

16 (8) "new business" means a corporation:

17 (a) that operates a business in New Mexico
18 that owns or leases real property as a physical address for the
19 business in New Mexico and employs personnel at that physical
20 address;

21 (b) that is required to pay tax pursuant
22 to the Corporate Income and Franchise Tax Act and the Gross
23 Receipts and Compensating Tax Act;

24 (c) that began business operations on or
25 after July 1, 2013; and

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(d) in which the taxpayer has invested over twenty-five million dollars (\$25,000,000);

(9) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in an economic-based job; and

(10) "wages" means all remuneration in cash and the cash value of remuneration paid in any other form for services performed by an employee for an employer; "wages" includes the value of benefits."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.