SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 331

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CREATING THE NEW REVENUE INCOME TAX CREDIT AND THE NEW REVENUE CORPORATE INCOME TAX CREDIT; INCREASING THE WORKING FAMILIES TAX CREDIT; REPEALING THE CAPITAL GAINS DEDUCTION FROM NET INCOME; TRANSFERRING A PORTION OF THE SAVINGS FROM THE REPEAL OF THE CAPITAL GAINS DEDUCTION TO THE LOTTERY TUITION FUND FOR FIVE YEARS; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--LOTTERY TUITION FUND.--Until June 30, 2019, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the lottery tuition fund in an amount equal to three million dollars ($3,000,000)."

SECTION 2. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] NEW REVENUE INCOME TAX CREDIT.--

A. A taxpayer who is not a dependent of another individual and who creates new jobs or makes a capital investment in the state may apply for, and the department may allow, a credit of fifty percent of new revenue created by the taxpayer against the taxpayer's tax liability imposed pursuant to the Income Tax Act. The credit provided in this section may be referred to as the "new revenue income tax credit".

B. The purposes of the new revenue income tax credit are to:

(1) encourage businesses that would not do so without the new revenue income tax credit to relocate or expand their operations in New Mexico;

(2) encourage businesses to create well-paid jobs and make capital investments in New Mexico;

(3) generate new revenue for the state; and

(4) strengthen and diversify the state's economy.

C. The new revenue income tax credit may be claimed and allowed in an amount equal to fifty percent of new revenue created by a taxpayer in the taxable year in which a taxpayer's qualifying period closes.

D. That portion of a new revenue income tax credit approved by the department that exceeds a taxpayer's income tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

E. To be eligible for a new revenue income tax credit, a taxpayer shall:

(1) have created a minimum number of new jobs in a qualifying period in which a new revenue income tax credit is claimed, as follows:

(a) at least five jobs if the jobs are performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census, or in an unincorporated area that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county; or

(b) at least ten jobs if the jobs are performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; or

(2) have made a minimum amount of capital investment in a qualifying period in which a new revenue income tax credit is being claimed, as follows:

(a) at least two million five hundred thousand dollars ($2,500,000) if the capital investment is made in a municipality with a population of less than sixty thousand according to the most recent federal decennial census, or in an unincorporated area that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county; or

(b) at least five million dollars ($5,000,000) if the capital investment is made in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county.

F. A taxpayer shall not be eligible for a credit pursuant to Paragraph (1) of Subsection E of this section unless the taxpayer's total number of employees on the last day of a qualifying period at the location at which the new jobs are performed or based is at least:

(1) five more than the number on the last day of the prior taxable year if the taxpayer claims a credit pursuant to Subparagraph (a) of Paragraph (1) of Subsection E of this section; and

(2) ten more than the number on the last day of the prior taxable year if the taxpayer claims a credit pursuant to Subparagraph (b) of Paragraph (1) of Subsection E of this section.

G. A taxpayer who provides retail sales of goods or

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services is eligible for the new revenue income tax credit only if the taxpayer made fifty percent or more of the taxpayer's sales or services produced in New Mexico to persons outside New Mexico during the applicable qualifying period.

H. A job shall not be considered a new job pursuant to this section if:

(1) the job is created due to a business merger or acquisition or other change in business organization;

(2) the eligible employee was terminated from employment in New Mexico by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and

(3) the job is performed by:

(a) the person who performed the job or its functional equivalent prior to the business merger or acquisition or other change in business organization; or

(b) a person replacing the person who performed the job or its functional equivalent prior to a business merger or acquisition or other change in business organization.

I. Notwithstanding the provisions of Subsection H of this section, a new job that was created by another employer and for which an application for the new revenue income tax credit was received and is under review by the department prior to the time of the business merger or acquisition or other change in business organization shall remain eligible for the new revenue income tax credit. The new employer that results from a business merger or acquisition or other change in business organization may only claim the new revenue income tax credit for the qualifying period for which the new job is otherwise eligible.

J. A job shall not be considered a new job pursuant to this section if the job is created due to a taxpayer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is one that was not being performed by an employee of the replaced entity.

K. A taxpayer seeking a new revenue income tax credit shall submit the following information to the economic development department and the taxation and revenue department:

(1) if the taxpayer is seeking a credit based on requirements pursuant to Paragraph (1) of Subsection E of this section:

(a) the amount of wages paid to each eligible employee in a new job during a qualifying period;

(b) the number of weeks the position was occupied during the qualifying period;

(c) whether the job meets the criteria described in Subparagraph (a), (b) or (c) of Paragraph (7) of

Subsection U of this section; and

(d) the total number of new jobs created by the taxpayer at the job location as measured on the day prior to the qualifying period and on the last day of the qualifying period; and

(2) if the taxpayer is seeking a credit based on requirements pursuant to Paragraph (2) of Subsection E of this section:

(a) the amount of capital investment in the qualifying period for which the new revenue income tax credit is being claimed; and

(b) the county in which the capital investment was made.

L. To claim a new revenue income tax credit, a taxpayer shall apply for approval to the department after the close of a taxpayer's qualifying period, but not later than twelve months following the end of the calendar year in which the taxpayer's qualifying period closes. The application shall be on forms and in a manner required by the department.

M. Within ten years of becoming eligible to claim a new revenue income tax credit, a taxpayer may claim the credit for an additional qualifying period for:

(1) every five new jobs that are created in addition to the minimum required pursuant to Subparagraph (a) of Paragraph (1) of Subsection E of this section, up to a

maximum of ten qualifying periods; and

(2) every ten new jobs that are created in addition to the minimum required pursuant to Subparagraph (b) of Paragraph (1) of Subsection E of this section, up to a maximum of ten qualifying periods.

N. If an eligible employee who was hired to fill a new job is terminated by the taxpayer within five years of being hired to fill the new job, the terminated employee's position is not filled within ninety days by an eligible employee and the taxpayer's eligibility for the new revenue income tax credit was based on meeting the requirements of Paragraph (1) of Subsection E of this section, the taxpayer shall remit to the department an amount of the new revenue income tax credit taken by the taxpayer for each terminated employee. The amount of credit remitted for the terminated employee shall be calculated as the percentage that the total terminated employee's job bears to the total number of new jobs created during the qualifying period in which the terminated employee was hired, multiplied by the new revenue income tax credit claimed for that qualifying period.

O. If a taxpayer or a successor in business of the taxpayer ceases operations in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed a new revenue income tax credit at a facility with respect to which the taxpayer has claimed the credit, the department shall grant no further credit to the taxpayer with respect to that facility. In addition, any amount of credit not claimed against the taxpayer's income tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of the cessation of operations, the taxpayer shall pay the amount of any income tax against which an approved credit was taken. For purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling or for the repair or replacement of facilities damaged or destroyed or during the continuance of labor disputes.

P. A husband and wife filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the new revenue income tax credit that would have been claimed on a joint return.

Q. A taxpayer may be allocated the right to claim a new revenue income tax credit in proportion to the taxpayer's ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership and that business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit pursuant to this section.

R. A taxpayer allowed a credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

S. The economic development department and the taxation and revenue department shall compile an annual report on the new revenue income tax credit that shall include the information submitted pursuant to Subsection K of this section, the number of taxpayers approved by the taxation and revenue department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. Beginning in 2020 and every five years thereafter that the credit is in effect, the economic development department and the taxation and revenue department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the credit and whether the credit is performing the purposes for which it was created.

T. The department shall promulgate rules to implement the provisions of this section.

U. As used in this section:

(1) "benefits" means all remuneration for work performed that is provided to an employee in whole or in part by the employer, other than wages, including insurance programs, health care, medical, dental and vision plans, life

insurance, employer contributions to pensions, such as a 401(k), and employer-provided services, such as child care, offered by an employer to the employee. "Benefits" does not include the employer's share of payroll taxes, social security or medicare contributions, federal or state unemployment insurance contributions or workers' compensation;

(2) "capital investment" means capital investment in equipment, land, buildings or infrastructure, any of which is necessary to support new or expanding business activity;

(3) "economic base job" means employment with an employer engaged primarily in creating goods and services that are exported out of state;

(4) "eligible employee" means an individual who is employed in New Mexico and who is a resident of New Mexico; "eligible employee" does not include an individual who:

(a) bears any of the relationships described in Subsection (a) of Section 152 of the Internal Revenue Code to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Subsection (a) of Section 152 of the Internal Revenue Code to a grantor, beneficiary or fiduciary of the estate or trust; or

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

(5) "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

(6) "modified combined tax liability" means the total liability for the qualifying period for the gross receipts tax imposed by 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. "Modified combined tax liability" excludes any liability with respect to local option gross receipts taxes;

(7) "new job" means a job created in New Mexico by a taxpayer that is occupied for at least forty-eight weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least:

(a) one hundred twenty-five percent of the annual average wage for the county, as determined by the bureau of business and economic research at the university of New Mexico, if the job is not an economic base job and is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county;

(b) one hundred fifteen percent of the annual average wage for the county, as determined by the bureau of business and economic research at the university of New Mexico, if the job is an economic base job and is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; or

(c) one hundred percent of the annual average wage for the county, as determined by the bureau of business and economic research at the university of New Mexico, if the job is performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in the unincorporated area, that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county;

(8) "new revenue" means the difference between the following sums, provided that the difference results in a positive amount:

(a) the sum of the amount of a taxpayer's modified combined tax liability, less the amount of any credit claimed against the modified combined tax liability, and tax liability pursuant to the Income Tax Act, minus the amount of any income tax credit or deduction other than the new revenue income tax credit, in a taxpayer's taxable year; and

(b) the sum of the amount of a taxpayer's modified combined tax liability, less the amount of any credit claimed against the modified combined tax liability, and tax liability pursuant to the Income Tax Act, minus the amount of any income tax credit or deduction other than the new revenue income tax credit, in the taxable year immediately prior to the taxpayer's taxable year;

(9) "qualifying period" means the taxable year in which an eligible employee begins working in a new job or the taxable year in which a capital investment is made; and

(10) "wages" means all compensation paid by a taxpayer to an eligible employee through the taxpayer's payroll system, including those wages that the employee elects to defer or redirect or the employee's contribution to a 401(k) or cafeteria plan program, but "wages" does not include benefits or the employer's share of payroll taxes."

SECTION 3. Section 7-2-18.15 NMSA 1978 (being Laws 2007, Chapter 45, Section 9, as amended) is amended to read:

"7-2-18.15. WORKING FAMILIES TAX CREDIT.--

A. A resident who files an individual New Mexico income tax return may claim a credit in an amount equal to [~~ten~~] seventeen percent of the federal income tax credit for which that individual is eligible for the same taxable year pursuant to Section 32 of the Internal Revenue Code. The credit provided in this section may be referred to as the "working families tax credit".

B. The working families tax credit may be deducted from the income tax liability of an individual who claims the credit and qualifies for the credit pursuant to this section. If the credit exceeds the individual's income tax liability for the taxable year, the excess shall be refunded to the individual."

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SECTION 4. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] NEW REVENUE CORPORATE INCOME TAX CREDIT.--

A. A taxpayer that creates new jobs or makes a capital investment in the state may apply for, and the department may allow, a credit of fifty percent of new revenue created by the taxpayer against the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act. The credit provided in this section may be referred to as the "new revenue corporate income tax credit".

B. The purposes of the new revenue corporate income tax credit are to:

(1) encourage businesses that would not do so without the new revenue corporate income tax credit to relocate or expand their operations in New Mexico;

(2) encourage businesses to create well-paid jobs and make capital investments in New Mexico;

(3) generate new revenue for the state; and

(4) strengthen and diversify the state's economy.

C. The new revenue corporate income tax credit may be claimed and allowed in an amount equal to fifty percent of new revenue created by a taxpayer in the taxable year in which a taxpayer's qualifying period closes.

D. That portion of a new revenue corporate income

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tax credit approved by the department that exceeds a taxpayer's corporate income tax liability in the taxable year in which the credit is claimed shall be refunded to the taxpayer.

E. To be eligible for a new revenue corporate income tax credit, a taxpayer shall:

(1) have created a minimum number of new jobs in a qualifying period in which a new revenue corporate income tax credit is claimed, as follows:

(a) at least five jobs if the jobs are performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census, or in an unincorporated area that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county; or

(b) at least ten jobs if the jobs are performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; or

(2) have made a minimum amount of capital investment in a qualifying period in which a new revenue corporate income tax credit is being claimed, as follows:

(a) at least two million five hundred thousand dollars ($2,500,000) if the capital investment is made in a municipality with a population of less than sixty thousand according to the most recent federal decennial census, or in an unincorporated area that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county; or

(b) at least five million dollars ($5,000,000) if the capital investment is made in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county.

F. A taxpayer shall not be eligible for a credit pursuant to Paragraph (1) of Subsection E of this section unless the taxpayer's total number of employees on the last day of a qualifying period at the location at which the new jobs are performed or based is at least:

(1) five more than the number on the last day of the prior taxable year if the taxpayer claims a credit pursuant to Subparagraph (a) of Paragraph (1) of Subsection E of this section; and

(2) ten more than the number on the last day of the prior taxable year if the taxpayer claims a credit pursuant to Subparagraph (b) of Paragraph (1) of Subsection E of this section.

G. A taxpayer that provides retail sales of goods or services is eligible for the new revenue corporate income tax credit only if the taxpayer made fifty percent or more of its sales or services produced in New Mexico to persons outside New Mexico during the applicable qualifying period.

H. A job shall not be considered a new job pursuant to this section if:

(1) the job is created due to a business merger or acquisition or other change in business organization;

(2) the eligible employee was terminated from employment in New Mexico by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and

(3) the job is performed by:

(a) the person who performed the job or its functional equivalent prior to the business merger or acquisition or other change in business organization; or

(b) a person replacing the person who performed the job or its functional equivalent prior to a business merger or acquisition or other change in business organization.

I. Notwithstanding the provisions of Subsection H of this section, a new job that was created by another employer and for which an application for the new revenue corporate income tax credit was received and is under review by the department prior to the time of the business merger or acquisition or other change in business organization shall remain eligible for the new revenue corporate income tax credit. The new employer that results from a business merger or acquisition or other change in business organization may only claim the new revenue corporate income tax credit for the qualifying period for which the new job is otherwise eligible.

J. A job shall not be considered a new job pursuant to this section if the job is created due to a taxpayer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is one that was not being performed by an employee of the replaced entity.

K. A taxpayer seeking a new revenue corporate income tax credit shall submit the following information to the economic development department and the taxation and revenue department:

(1) if the taxpayer is seeking a credit based on requirements pursuant to Paragraph (1) of Subsection E of this section:

(a) the amount of wages paid to each eligible employee in a new job during a qualifying period;

(b) the number of weeks the position was occupied during the qualifying period;

(c) whether the job meets the criteria

described in Subparagraph (a), (b) or (c) of Paragraph (7) of Subsection S of this section; and

(d) the total number of new jobs created by the taxpayer at the job location as measured on the day prior to the qualifying period and on the last day of the qualifying period; and

(2) if the taxpayer is seeking a credit based on requirements pursuant to Paragraph (2) of Subsection E of this section:

(a) the amount of capital investment in the qualifying period for which the new revenue corporate income tax credit is being claimed; and

(b) the county in which the capital investment was made.

L. To claim a new revenue corporate income tax credit, a taxpayer shall apply for approval to the department after the close of a taxpayer's qualifying period, but not later than twelve months following the end of the calendar year in which the taxpayer's qualifying period closes. The application shall be on forms and in a manner required by the department.

M. Within ten years of becoming eligible to claim a new revenue corporate income tax credit, a taxpayer may claim the credit for an additional qualifying period for:

(1) every five new jobs that are created in

addition to the minimum required pursuant to Subparagraph (a) of Paragraph (1) of Subsection E of this section, up to a maximum of ten qualifying periods; and

(2) every ten new jobs that are created in addition to the minimum required pursuant to Subparagraph (b) of Paragraph (1) of Subsection E of this section, up to a maximum of ten qualifying periods.

N. If an eligible employee who was hired to fill a new job is terminated by the taxpayer within five years of being hired to fill the new job, the terminated employee's position is not filled within ninety days by an eligible employee and the taxpayer's eligibility for the new revenue corporate income tax credit was based on meeting the requirements of Paragraph (1) of Subsection E of this section, the taxpayer shall remit to the department an amount of the new revenue corporate income tax credit taken by the taxpayer for each terminated employee. The amount of credit remitted for the terminated employee shall be calculated as the percentage that the total terminated employee's job bears to the total number of new jobs created during the qualifying period in which the terminated employee was hired, multiplied by the new revenue corporate income tax credit claimed for that qualifying period.

O. If a taxpayer or a successor in business of the taxpayer ceases operations in New Mexico for at least one hundred eighty consecutive days within a two-year period after the taxpayer has claimed a new revenue corporate income tax credit at a facility with respect to which the taxpayer has claimed the credit, the department shall grant no further credit to the taxpayer with respect to that facility. In addition, any amount of credit not claimed against the taxpayer's income tax liability shall be extinguished, and within thirty days after the one hundred eightieth day of the cessation of operations, the taxpayer shall pay the amount of any corporate income tax against which an approved credit was taken. For purposes of this section, a taxpayer shall not be deemed to have ceased operations during reasonable periods for maintenance or retooling or for the repair or replacement of facilities damaged or destroyed or during the continuance of labor disputes.

P. A taxpayer allowed a credit pursuant to this section shall report the amount of the credit to the department in a manner required by the department.

Q. The economic development department and the taxation and revenue department shall compile an annual report on the new revenue corporate income tax credit that shall include the information submitted pursuant to Subsection K of this section, the number of taxpayers approved by the taxation and revenue department to receive the credit, the aggregate amount of credits approved and any other information necessary to evaluate the effectiveness of the credit. Beginning in 2020 and every five years thereafter that the credit is in effect, the economic development department and the taxation and revenue department shall compile and present the annual reports to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the credit and whether the credit is performing the purposes for which it was created.

R. The department shall promulgate rules to implement the provisions of this section.

S. As used in this section:

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

(2) "capital investment" means capital investment in equipment, land, buildings or infrastructure, any of which is necessary to support new or expanding business activity;

(3) "economic base job" means employment with an employer engaged primarily in creating goods and services that are exported out of state;

(4) "eligible employee" means an individual who is employed in New Mexico and who is a resident of New Mexico; "eligible employee" does not include an individual who:

(a) bears any of the relationships described in Subsection (a) of Section 152 of the Internal Revenue Code to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Subsection (a) of Section 152 of the Internal Revenue Code to a grantor, beneficiary or fiduciary of the estate or trust; or

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

(5) "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

(6) "modified combined tax liability" means the total liability for the qualifying period for the gross receipts tax imposed by 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. "Modified combined tax liability" excludes any liability with respect to local option gross receipts taxes;

(7) "new job" means a job created in New Mexico by a taxpayer that is occupied for at least forty-eight weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least:

(a) one hundred twenty-five percent of

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the annual average wage for the county, as determined by the bureau of business and economic research at the university of New Mexico, if the job is not an economic base job and is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county;

(b) one hundred fifteen percent of the annual average wage for the county, as determined by the bureau of business and economic research at the university of New Mexico, if the job is an economic base job and is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; or

(c) one hundred percent of the annual average wage for the county, as determined by the bureau of business and economic research at the university of New Mexico, if the job is performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in the unincorporated area, that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county;

(8) "new revenue" means the difference between

the following sums, provided that the difference results in a positive amount:

(a) the sum of the amount of a taxpayer's modified combined tax liability, less the amount of any credit claimed against the modified combined tax liability, and tax liability pursuant to the Corporate Income and Franchise Tax Act, minus the amount of any corporate income tax credit or deduction other than the new revenue corporate income tax credit, in a taxpayer's taxable year; and

(b) the sum of the amount of a taxpayer's modified combined tax liability, less the amount of any credit claimed against the modified combined tax liability, and tax liability pursuant to the Corporate Income and Franchise Tax Act, minus the amount of any income tax credit or deduction other than the new revenue corporate income tax credit, in the taxable year immediately prior to the taxpayer's taxable year;

(9) "qualifying period" means the taxable year in which an eligible employee begins working in a new job or the taxable year in which a capital investment is made; and

(10) "wages" means all compensation paid by a taxpayer to an eligible employee through the taxpayer's payroll system, including those wages that the employee elects to defer or redirect or the employee's contribution to a 401(k) or cafeteria plan program, but "wages" does not include benefits

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or the employer's share of payroll taxes."

SECTION 5. DELAYED REPEAL.--Section 7-2-34 NMSA 1978 (being Laws 1999, Chapter 205, Section 1, as amended) is repealed effective January 1, 2015.

SECTION 6. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2015.

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