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SENATE BILL 15

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

INTRODUCED BY

Timothy M. Keller and David L. Doyle

AN ACT

RELATING TO TAXATION; ADDING A CREDIT FOR CAPITAL INVESTMENTS TO THE INVESTMENT CREDIT ACT; PROVIDING FOR REPAYMENT OF THE CREDIT AFTER FIVE YEARS.

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

SECTION 1. Section 7-9A-2 NMSA 1978 (being Laws 1979, Chapter 347, Section 2, as amended) is amended to read:

"7-9A-2. PURPOSE OF ACT.--It is the purpose of the Investment Credit Act to provide a favorable tax climate for ~~[manufacturing]~~ businesses to make capital investments and invest in manufacturing equipment and to promote increased employment in New Mexico."

SECTION 2. Section 7-9A-3 NMSA 1978 (being Laws 1979, Chapter 347, Section 3, as amended) is amended to read:

"7-9A-3. DEFINITIONS.--As used in the Investment Credit

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1 Act:

2 A. "business" means a partnership, limited
3 partnership, limited liability company, S corporation,
4 professional corporation or sole proprietorship that carries on
5 a trade or business in New Mexico;

6 B. "capital investment" means the purchase of a
7 fixed asset, such as machinery, land or a building, located in
8 New Mexico that is essential to increase the volume of products
9 or services produced by a business with an expectation that
10 revenue be generated as a direct result of the fixed asset;

11 [~~A-~~] C. "department" means the taxation and revenue
12 department, the secretary of taxation and revenue or any
13 employee of the department exercising authority lawfully
14 delegated to that employee by the secretary;

15 [~~B-~~] D. "equipment" means an essential machine,
16 mechanism or tool, or a component or fitting thereof, used
17 directly and exclusively in a manufacturing operation and
18 subject to depreciation for purposes of the Internal Revenue
19 Code by the taxpayer carrying on the manufacturing operation.
20 "Equipment" does not include any vehicle that leaves the site
21 of the manufacturing operation for purposes of transporting
22 persons or property or any property for which the taxpayer
23 claims the credit pursuant to Section 7-9-79 NMSA 1978;

24 [~~E-~~] E. "manufacturing" means combining or
25 processing components or materials, including recyclable

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1 materials, to increase their value for sale in the ordinary
2 course of business, including genetic testing and production,
3 but not including:

4 (1) construction;

5 (2) farming;

6 (3) power generation, except for electricity
7 generation at a facility other than one for which both location
8 approval and a certificate of convenience and necessity are
9 required prior to commencing construction or operation of the
10 facility, pursuant to the Public Utility Act [~~and the Electric~~
11 ~~Utility Industry Restructuring Act of 1999~~]; or

12 (4) processing natural resources, including
13 hydrocarbons;

14 [~~D-~~] F. "manufacturing operation" means a plant,
15 including a genetic testing and production facility, employing
16 personnel to perform production tasks, in conjunction with
17 equipment not previously existing at the site, to produce
18 goods;

19 [~~E-~~] G. "recyclable materials" means materials that
20 would otherwise become solid waste if not recycled and that can
21 be collected, separated or processed and placed in use in the
22 form of raw materials or products; and

23 [~~F-~~] H. "taxpayer" means a person liable for
24 payment of any tax, a person responsible for withholding and
25 payment over or for collection and payment over of any tax or a

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1 person to whom an assessment has been made, if the assessment
2 remains unabated or the amount thereof has not been paid."

3 SECTION 3. Section 7-9A-5 NMSA 1978 (being Laws 1979,
4 Chapter 347, Section 5, as amended by Laws 1991, Chapter 159,
5 Section 4 and also by Laws 1991, Chapter 162, Section 4) is
6 amended to read:

7 "7-9A-5. INVESTMENT CREDIT--AMOUNT--CLAIMANT.--The
8 investment credit provided for in the Investment Credit Act
9 is an amount equal to the percent of the compensating tax
10 rate provided for in the Gross Receipts and Compensating Tax
11 Act applied to the value of the capital investment or
12 qualified equipment and may be claimed by the taxpayer
13 carrying on a business or a manufacturing operation in New
14 Mexico."

15 SECTION 4. Section 7-9A-7.1 NMSA 1978 (being Laws 1983,
16 Chapter 206, Section 6, as amended) is amended to read:

17 "7-9A-7.1. EMPLOYMENT REQUIREMENTS.--

18 A. Prior to July 1, 2020, to be eligible to claim
19 a credit pursuant to the Investment Credit Act, the taxpayer
20 shall employ the equivalent of one full-time employee who has
21 not been counted to meet this employment requirement for any
22 prior claim in addition to the number of full-time employees
23 employed on the day one year prior to the day on which the
24 taxpayer applies for the credit for every:

25 (1) five hundred thousand dollars

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1 (\$500,000), or portion of that amount, in value of capital
2 investment or qualified equipment claimed by the taxpayer in
3 a taxable year in the same claim, up to a value of thirty
4 million dollars (\$30,000,000); and

5 (2) one million dollars (\$1,000,000), or
6 portion of that amount, in value of capital investment
7 or qualified equipment over thirty million dollars
8 (\$30,000,000) claimed by the taxpayer in a taxable year in
9 the same claim.

10 B. After June 30, 2020, for every one hundred
11 thousand dollars (\$100,000) in value of capital investment or
12 qualified equipment claimed by a taxpayer in a taxable year,
13 the taxpayer shall employ the equivalent of one full-time
14 employee in addition to the number of full-time employees
15 employed on the day one year prior to the day on which the
16 taxpayer applies for credit.

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

25 SECTION 5. Section 7-9A-8 NMSA 1978 (being Laws 1979,

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1 Chapter 347, Section 8, as amended) is amended to read:

2 "7-9A-8. CLAIMING THE CREDIT FOR CERTAIN TAXES.--

3 A. A taxpayer shall apply for approval for a
4 credit within one year following the end of the calendar year
5 in which the capital investment is purchased or qualified
6 equipment for the manufacturing operation is purchased or
7 introduced into New Mexico.

8 B. A taxpayer having applied for and been granted
9 approval for a credit by the department pursuant to the
10 Investment Credit Act may claim an amount of available credit
11 against the taxpayer's compensating tax, gross receipts tax
12 or withholding tax due to the state of New Mexico; provided
13 that no taxpayer may claim, except as provided in Subsection
14 C of this section, an amount of available credit for any
15 reporting period that exceeds eighty-five percent of the sum
16 of the taxpayer's gross receipts tax, compensating tax and
17 withholding tax due for that reporting period. Any amount of
18 available credit not claimed against the taxpayer's gross
19 receipts tax, compensating tax or withholding tax due for a
20 reporting period may be claimed in subsequent reporting
21 periods. The credit that is granted approval for a capital
22 investment that is not qualified equipment may be carried
23 forward for up to five years.

24 C. A taxpayer may apply by September 30 of the
25 current calendar year for a refund of the unclaimed balance

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1 of the available credit up to a maximum of two hundred fifty
2 thousand dollars (\$250,000) if on January 1 of the current
3 calendar year:

4 (1) the taxpayer's available credit is less
5 than five hundred thousand dollars (\$500,000); and

6 (2) the sum of the taxpayer's gross receipts
7 tax, compensating tax and withholding tax due for the
8 previous calendar year was less than thirty-five percent of
9 the taxpayer's available credit but more than ten thousand
10 dollars (\$10,000)."

11 SECTION 6. Section 7-9A-9 NMSA 1978 (being Laws 1979,
12 Chapter 347, Section 9, as amended by Laws 1991, Chapter 159,
13 Section 7 and also by Laws 1991, Chapter 162, Section 7) is
14 amended to read:

15 "7-9A-9. CREDIT CLAIM FORMS--REPORTING REQUIREMENTS--

16 A. The department shall provide credit claim
17 forms. A credit claim shall accompany any return to which
18 the taxpayer wishes to apply an approved credit, and the
19 claim shall specify the amount of credit intended to apply to
20 each return.

21 B. The taxation and revenue department in
22 conjunction with the economic development department shall
23 compile an annual report that includes the number of
24 taxpayers that claim a credit provided for in the Investment
25 Credit Act, the amount of credit for each taxpayer, the value

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1 and purchase price of capital investment and qualified
2 equipment, the date of purchase or introduction for capital
3 investment and qualified equipment, the date the debt on the
4 capital investment upon which a credit is predicated is paid
5 in full, the number of jobs created as a result of a credit
6 and the number of taxpayers approved to receive a credit.
7 The taxpayer shall provide the taxation and revenue
8 department and the economic development department with the
9 necessary information to compile the report. Notwithstanding
10 any other section of law to the contrary, the taxation and
11 revenue department and the economic development department
12 may disclose the number of credits claimed and approved, the
13 amount of credit each taxpayer received, the amount or value
14 of capital investment and qualified equipment purchased or
15 introduced into the state by a taxpayer, the number of jobs
16 created by a taxpayer and any other information required by
17 the legislature or the taxation and revenue department to aid
18 in evaluating the effectiveness of the credits provided for
19 in the Investment Credit Act."

20 SECTION 7. A new section of the Investment Credit Act
21 is enacted to read:

22 "[NEW MATERIAL] VALUE OF CAPITAL INVESTMENT.--The value
23 of capital investment shall be the purchase price; provided
24 that after June 30, 2020 no taxpayer shall for any taxable
25 year claim a value of capital investment greater than two

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1 million dollars (\$2,000,000)."

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

4 "[NEW MATERIAL] REPAYMENT--CAPITAL INVESTMENT.--The
5 department shall track the amount of each credit claimed and
6 granted for a capital investment that is not qualified
7 equipment and that is purchased on or after July 1, 2012 by
8 the taxpayer and the date on which the taxpayer shall repay
9 that credit. The department shall inform the taxpayer of the
10 amount the taxpayer shall pay each reporting period in order
11 to repay the credit claimed and granted. The taxpayer shall
12 commence to make equal payments each reporting period in
13 order to repay the full credit amount claimed within five
14 years from the date on which:

15 A. the total credit amount is applied or
16 refunded; or

17 B. the debt on the capital investment upon which
18 the credit is predicated is paid in full."

19 SECTION 9. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2012.