F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 01/30/12
SPONSOR Eichenberg **LAST UPDATED** **HB**

SHORT TITLE Income Tax Credit for New Businesses **SB** 99

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	**FY13**	**FY14**		
	($6,700.0)	($10,000.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$46.0	$40.0	$86.0	Recurring	TRD

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

SUMMARY

Synopsis of Bill

This bill provides a new corporate income tax credit to new businesses. To qualify, a taxpayer must file a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2013 but before January 1, 2020, that is a new business. The business must create economic-based jobs in New Mexico, and eligibility must be certified by the Economic Development Department. The credit is to be taken against the taxpayer's corporate income tax liability of twenty-five percent of the excess above taxes paid to New Mexico in the base year pursuant to the Corporate Income and Franchise Tax Act and the Gross Receipts and Compensating Tax Act. The credit may be claimed for seven consecutive years, and any amount of the credit that the taxpayer is approved to claim that exceeds the tax liability of the taxpayer for the year shall be refunded to the taxpayer.

FISCAL IMPLICATIONS

TRD used FY12 as the base year for the purpose of estimating. Since the requirements for a new business to qualify for this credit are not significant, it is assumed that ten percent of the revenue difference between each fiscal year and the base year is used towards this credit.

ADMINISTRATIVE IMPLICATIONS

TRD will need to create eligibility and claim processes, utilizing at least two new forms. Coordination is required between EDD and TRD. Regulations will be needed, and taxpayer and Department employee education. The forms will be extensive due to the level of detail that is needed for reporting purposes. The estimated development costs of forms, instructions, and publication changes are $6,000. The process will be manually intensive and would require an additional FTE at a cost of $40,000

TECHNICAL ISSUES

TRD notes a plethora of drafting errors and technical problems. On page 8, lines 1 through 3, definition of “base year” is limited to fiscal year corporations and does not address calendar year. Page 4, lines 15 – 16, the verbiage “any other state tax for which the new business is liable” could be interpreted to be any other state besides New Mexico. It should be restated as follows, “any other tax administered under the New Mexico Tax Administration Act”.

If a taxpayer goes out of business or relocates outside New Mexico prior to the seven year period, does it still get to claim a refund from the state for unclaimed credits?

Pages 8 & 9, paragraph 7, the definition of “new business” seems rather open.

What does “benefits” include or exclude?

Page 2, line 4; page 5, line 23, and page 6, line 3 -Should the credit be based on taxes paid in the base year or DUE in the first year. What if the taxpayer did not pay tax, but owed tax?

Page 3, paragraph D. By using claimed in paragraph C, and allowed in paragraph D could have the unintended consequence of making these two periods of time calculated differently. Should they be the same? Would it be clearer to substitute claimed for allowed on page 3, line 7?
While the purpose of the bill is to stimulate the formation of economic-base jobs in the state, the definition of “economic base jobs” is particularly weak. Any new job that is not a term construction job would be considered an economic base job within the definition. The problem with this approach is that the State should not pay for a new job unless it conforms to fairly strict definition of economic base jobs, such as contained in the SB-101 of this session for High Wage Jobs Tax Credit.

A merger, acquisition or replacement of the management team of a federally-funded activity should not be “New Business” for the purpose of this credit. SB-101 of this session has some useful provisions to prevent abuse of the High Wage Jobs Tax Credit that could be adopted for this bill.

The refundability clause may violate the anti-donation clause in the State Constitution.

OTHER SUBSTANTIVE ISSUES

Does the bill meet the Legislative Finance Committee tax policy principles?

- **Adequacy**: Revenue should be adequate to fund needed government services.
- **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
- **Equity**: Different taxpayers should be treated fairly.
- **Simplicity**: Collection should be simple and easily understood.
- **Accountability**: Preferences should be easy to monitor and evaluate

This bill may violate the LFC tax policy principle of adequacy. According to the LFC General Fund Recurring Appropriation Outlook for FY14 and FY15 the December 2011 forecasted revenues will be insufficient to cover growing recurring appropriations. Since currently forecasted revenues in FY14 and FY16 may not be adequate to fund government services there is insufficient funds for additional tax cuts.

SS/svb