

1 SENATE BILL 236

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

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING A CORPORATE INCOME TAX CREDIT
12 FOR TANGIBLE PERSONAL PROPERTY PURCHASED TO BE INCORPORATED
13 INTO OR CONSUMED IN THE PROCESS OF MANUFACTURING A PRODUCT.

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

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

18 "[NEW MATERIAL] MANUFACTURING CONSUMPTION TAX CREDIT.--

19 A. A taxpayer that files a New Mexico corporate
20 income tax return for a taxable year beginning on or after
21 January 1, 2013, and that during the taxable year has purchased
22 tangible personal property to be consumed in the taxpayer's
23 manufacturing process, may claim and the department may allow a
24 tax credit against the taxpayer's corporate income tax
25 liability equal to six percent of the amount paid on

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1 consumables. The tax credit provided in this section may be
2 referred to as the "manufacturing consumption tax credit".

3 B. The purpose of the manufacturing consumption tax
4 credit is to provide manufacturers in the state with an
5 incentive that decreases the cost of production and promotes
6 longevity, increased employment, retention and expansion of
7 manufacturing businesses.

8 C. The department shall adopt rules to implement
9 the manufacturing consumption tax credit.

10 D. To be eligible to claim a manufacturing
11 consumption tax credit, a taxpayer shall invest in capital
12 equipment or facilities construction or renovation in New
13 Mexico on or after January 1, 2013 and prior to January 1,
14 2021. The taxpayer shall apply to the economic development
15 department for a certificate of eligibility for the
16 manufacturing consumption tax credit on a form developed and
17 provided by the economic development department. The
18 certificate of eligibility shall include the amount invested in
19 capital equipment or facilities construction or renovation by
20 the taxpayer and the term for which the taxpayer is eligible to
21 claim the manufacturing consumption tax credit. The economic
22 development department may find a taxpayer eligible to claim a
23 manufacturing consumption tax credit for the following terms
24 based on the following amounts of investment in a taxable year:

25 (1) four consecutive years if the taxpayer

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1 invests at least two hundred million dollars (\$200,000,000);

2 (2) three consecutive years if the taxpayer
3 invests at least one hundred million dollars (\$100,000,000) but
4 less than two hundred million dollars (\$200,000,000);

5 (3) two consecutive years if the taxpayer
6 invests at least fifty million dollars (\$50,000,000) but less
7 than one hundred million dollars (\$100,000,000); and

8 (4) one year if the taxpayer invests at least
9 ten million dollars (\$10,000,000) but less than fifty million
10 dollars (\$50,000,000).

11 E. To claim a manufacturing consumption tax credit,
12 a taxpayer shall submit to the taxation and revenue department
13 the certificate of eligibility provided to the taxpayer by the
14 economic development department. The taxpayer shall not claim
15 an additional manufacturing consumption tax credit during any
16 taxable year in the term until the term has expired and a new
17 claim is allowed.

18 F. That amount of a manufacturing consumption tax
19 credit allowed by the department that exceeds the corporate
20 income tax liability of the taxpayer for the taxable year may
21 be carried forward for four years; provided that the taxable
22 years in which the carryforward is applied are not during the
23 term of an allowed manufacturing consumption tax credit.

24 G. A taxpayer claiming the manufacturing
25 consumption tax credit shall not also claim other credits for

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1 the same investment pursuant to the Corporate Income and
2 Franchise Tax Act, the Gross Receipts and Compensating Tax Act
3 or the Investment Credit Act or for credits that may be taken
4 against the taxpayer's modified combined tax liability.

5 H. The department shall compile an annual report
6 that includes the number of taxpayers approved by the
7 department to receive a manufacturing consumption tax credit
8 and the total allowed amount of manufacturing consumption tax
9 credits. Notwithstanding any other section of law to the
10 contrary, the department may reveal the number of taxpayers
11 allowed to receive the manufacturing consumption tax credit,
12 the amount of each credit approved and any other information
13 required by the legislature or the department to aid in
14 evaluating the impact of the manufacturing consumption tax
15 credit.

16 I. Acceptance by a taxpayer of a manufacturing
17 consumption tax credit pursuant to this section is
18 authorization by the taxpayer receiving the credit for the
19 department to reveal information to the legislature necessary
20 to analyze the effectiveness of the manufacturing consumption
21 tax credit. The information may not be revealed to the public
22 except as aggregated data.

23 J. As used in this section:

24 (1) "capital equipment" means equipment that
25 is a depreciable asset pursuant to Section 179 of the Internal

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1 Revenue Code;

2 (2) "consumables" means tangible personal
3 property:

4 (a) that is consumed in a manufacturing
5 process, including electricity, equipment, fuels, manufacturing
6 aids, manufacturing supplies, chemicals, gases, spare parts,
7 repair parts, software and other tangibles used to manufacture
8 a product; and

9 (b) the purchase of which is subject to
10 gross receipts tax or compensating tax that is not deductible
11 pursuant to the Gross Receipts and Compensating Tax Act;

12 (3) "consumed" means incorporated into,
13 destroyed or transformed in the process of manufacturing a
14 product;

15 (4) "facility construction or renovation"
16 means construction of a new facility specifically to house a
17 manufacturing business activity or expansion or significant
18 remodeling of an existing facility for manufacturing;

19 (5) "manufacture" means to combine or process
20 components or materials, including recyclable materials, to
21 increase the value of the component or material for sale in the
22 ordinary course of business, including genetic testing and
23 production, but does not include:

24 (a) construction;

25 (b) farming;

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1 (c) power generation, except for
2 electricity generation at a facility other than one for which
3 both location approval and a certificate of convenience and
4 necessity are required prior to commencing construction or
5 operation of the facility, pursuant to the Public Utility Act;
6 or

7 (d) processing of natural resources,
8 including hydrocarbons;

9 (6) "manufacturer" means a business that
10 manufactures a product at a site in New Mexico; and

11 (7) "modified combined tax liability" means
12 the total liability of the taxpayer for the reporting period
13 for the gross receipts tax imposed pursuant to Section 7-9-4
14 NMSA 1978, the compensating tax imposed pursuant to Section
15 7-9-7 NMSA 1978 and the withholding tax imposed on wages
16 pursuant to Section 7-3-3 NMSA 1978, notwithstanding any
17 distribution or transfer pursuant to the Tax Administration Act
18 with respect to net receipts from those liabilities, minus the
19 amount of a credit or deduction other than the manufacturing
20 consumption tax credit applied against those taxes; provided
21 that "modified combined tax liability" excludes any liability
22 resulting from a local option gross receipts tax."

23 SECTION 2. APPLICABILITY.--The provisions of this act
24 apply to taxable years beginning on or after January 1, 2013.