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SENATE BILL 47

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

INTRODUCED BY

Timothy M. Keller and Zachary J. Cook

AN ACT

RELATING TO TAXATION; PROVIDING A CORPORATE INCOME TAX REBATE FOR NEW OR RE-EQUIPPED BUSINESSES; REQUIRING INVESTMENT IN FACILITIES OR EQUIPMENT TO QUALIFY FOR THE NEW BUSINESS POST-PERFORMANCE TAX REBATE; PROVIDING LIMITS AND QUALIFICATIONS; PROVIDING FOR PAYMENT OF THE REBATE AFTER FULL PAYMENT OF TAXES; PROVIDING POST-PERFORMANCE ASSESSMENT OF THE QUALIFYING ACTIVITIES REQUIRED FOR APPROVAL OF THE TAX REBATE.

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

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

"[NEW MATERIAL] NEW BUSINESS POST-PERFORMANCE TAX REBATE.--

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after

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1 January 1, 2015 but before January 1, 2022 that is a new  
2 business that constructs and equips a new business or upgrades  
3 equipment or facilities for an existing business in New Mexico  
4 may claim, and the department may allow, a tax rebate of the  
5 taxpayer's corporate income tax liability of up to twenty-five  
6 percent of the taxes paid to New Mexico pursuant to the  
7 Corporate Income and Franchise Tax Act in the taxable year.  
8 The rebate provided in this section may be referred to as the  
9 "new business post-performance tax rebate". The department  
10 shall allow a new business post-performance tax rebate for a  
11 taxpayer that is issued a certificate of eligibility by the  
12 economic development department.

13 B. The purposes of the new business post-  
14 performance tax rebate are to:

15 (1) encourage corporations to begin a new  
16 business or relocate to New Mexico and invest significant  
17 amounts of capital in the state;

18 (2) encourage corporations to invest in  
19 upgrading equipment of an existing business in New Mexico; and

20 (3) generate new state revenue from  
21 construction, employment, improved production capacity and  
22 business activity in New Mexico.

23 C. The new business post-performance tax rebate may  
24 be claimed for seven consecutive years beginning with the first  
25 taxable year in which the taxpayer is eligible to claim the

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1 rebate.

2 D. The taxation and revenue department and the  
3 economic development department shall each adopt rules to  
4 implement the provisions of this section for which that  
5 department is responsible.

6 E. A corporation claiming a new business post-  
7 performance tax rebate shall apply to the economic development  
8 department for a certificate of eligibility that states that the  
9 taxpayer qualifies for the rebate on a form and in a manner  
10 authorized by the economic development department.

11 F. A certificate of eligibility is valid for only a  
12 taxpayer that is found eligible by the economic development  
13 department to receive a new business post-performance tax rebate  
14 and shall not be transferred to another taxpayer.

15 G. The economic development department shall provide  
16 a certificate of eligibility to each taxpayer that has applied  
17 for and been found to qualify to receive a new business post-  
18 performance tax rebate. The economic development department  
19 shall maintain records of the certificates of eligibility issued  
20 pursuant to this section.

21 H. To be eligible to receive a new business post-  
22 performance tax rebate, a taxpayer shall provide the economic  
23 development department with:

24 (1) evidence of expenditures of no less than one  
25 million dollars (\$1,000,000) to establish a new business located

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1 in New Mexico or no less than two hundred fifty thousand dollars  
2 (\$250,000) invested in new equipment to improve the productivity  
3 of the existing business in New Mexico;

4 (2) evidence of one full year of operation in  
5 New Mexico;

6 (3) evidence of payment of all tax liabilities  
7 of the business due to the state of New Mexico in the taxable  
8 year; and

9 (4) statements signed by the taxpayer  
10 authorizing the economic development department and the taxation  
11 and revenue department to reveal to the legislature and its  
12 agencies, only for purposes of evaluating the effectiveness of  
13 the new business post-performance tax rebate and not for public  
14 dissemination except as aggregate values, information from the  
15 taxpayer's tax returns or submitted reports needed to evaluate  
16 the effectiveness of the new business post-performance tax rebate  
17 in fulfilling its purposes.

18 I. To claim the new business post-performance tax  
19 rebate, a taxpayer shall submit with the taxpayer's New Mexico  
20 corporate income tax return a certificate of eligibility issued  
21 pursuant to this section, individually identifiable and  
22 displaying the date on which the certificate of eligibility is  
23 issued. The certificate of eligibility shall state:

24 (1) the details that make the taxpayer eligible  
25 to receive the new business post-performance tax rebate;

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1 (2) the number of employees employed by the  
2 taxpayer in the taxable year;

3 (3) the total, average and median wages paid by  
4 the taxpayer in the taxable year to employees of the business for  
5 which the rebate is being claimed; and

6 (4) the amount of the taxpayer's investment to  
7 begin or relocate the taxpayer's business or to upgrade equipment  
8 of an existing business.

9 J. The department shall provide a rebate claim form  
10 on which a taxpayer may claim a new business post-performance tax  
11 rebate. A rebate claim form shall accompany a return filed  
12 pursuant to the Corporate Income and Franchise Tax Act in which  
13 the taxpayer is applying for a new business post-performance tax  
14 rebate. The department shall determine the amount of the new  
15 business post-performance tax rebate that is allowed the taxpayer  
16 for the taxable year by determining the amount of corporate  
17 income taxes paid by the taxpayer in the taxable year pursuant to  
18 the Corporate Income and Franchise Tax Act and applying a tax  
19 rate of twenty-five percent to the amount paid. The rebate shall  
20 be made within sixty days following the date on which the  
21 taxpayer files the return.

22 K. The department shall compile an annual report on  
23 the new business post-performance tax rebate that shall include  
24 the number of taxpayers approved by the department to receive the  
25 rebate, the aggregate amount of rebates approved and any other

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1 information necessary to evaluate the effectiveness of the  
2 rebate. Beginning in 2019 and every five years thereafter that  
3 the rebate is in effect, the department shall compile and present  
4 the annual reports to the revenue stabilization and tax policy  
5 committee and the legislative finance committee along with an  
6 analysis of the effectiveness and cost of the rebate and whether  
7 the rebate is performing the purpose for which it was created.

8 L. As used in this section:

9 (1) "business" means a for-profit corporation  
10 that is required to pay corporate income and franchise taxes  
11 pursuant to the Corporate Income and Franchise Tax Act;

12 (2) "new business" means a corporation that:

13 (a) operates a business in New Mexico that  
14 owns or leases real property as a physical address for the  
15 business in New Mexico and employs personnel at that physical  
16 address;

17 (b) is required to pay tax pursuant to the  
18 Corporate Income and Franchise Tax Act; and

19 (c) began business operations on or after  
20 July 1, 2014; and

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

25 SECTION 2. APPLICABILITY.--The provisions of this act apply

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1 to:

2 A. taxable years beginning on or after January 1,  
3 2015 and not after December 31, 2022; and

4 B. businesses relocating to or beginning operation in  
5 New Mexico, or beginning to upgrade or existing businesses that  
6 begin to re-equip or renovate facilities on or after January 1,  
7 2015.

8 SECTION 3. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is January 1, 2015.