

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 438

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

George K. Munoz and Ron Griggs

AN ACT

RELATING TO TAXATION; CREATING THE NEW JOBS AND INVESTMENT TAX
CREDIT.

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

SECTION 1. Section 7-1-2 NMSA 1978 (being Laws 1965,
Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act
applies to and governs:

A. the administration and enforcement of the
following taxes or tax acts as they now exist or may hereafter
be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Venture Capital Investment Act;
- (4) Gross Receipts and Compensating Tax Act

underscored material = new
[bracketed material] = delete

1 and any state gross receipts tax;
2 (5) Liquor Excise Tax Act;
3 (6) Local Liquor Excise Tax Act;
4 (7) any municipal local option gross receipts
5 tax;
6 (8) any county local option gross receipts
7 tax;
8 (9) Special Fuels Supplier Tax Act;
9 (10) Gasoline Tax Act;
10 (11) petroleum products loading fee, which fee
11 shall be considered a tax for the purpose of the Tax
12 Administration Act;
13 (12) Alternative Fuel Tax Act;
14 (13) Cigarette Tax Act;
15 (14) Estate Tax Act;
16 (15) Railroad Car Company Tax Act;
17 (16) Investment Credit Act, rural job tax
18 credit, Laboratory Partnership with Small Business Tax Credit
19 Act, Technology Jobs and Research and Development Tax Credit
20 Act, Film Production Tax Credit Act, Affordable Housing Tax
21 Credit Act, ~~and~~ high-wage jobs tax credit and new jobs and
22 investment tax credit;
23 (17) Corporate Income and Franchise Tax Act;
24 (18) Uniform Division of Income for Tax
25 Purposes Act;

.206978.2

underscored material = new
[bracketed material] = delete

- 1 (19) Multistate Tax Compact;
2 (20) Tobacco Products Tax Act; and
3 (21) the telecommunications relay service
4 surcharge imposed by Section 63-9F-11 NMSA 1978, which
5 surcharge shall be considered a tax for the purposes of the Tax
6 Administration Act;

7 B. the administration and enforcement of the
8 following taxes, surtaxes, advanced payments or tax acts as
9 they now exist or may hereafter be amended:

- 10 (1) Resources Excise Tax Act;
11 (2) Severance Tax Act;
12 (3) any severance surtax;
13 (4) Oil and Gas Severance Tax Act;
14 (5) Oil and Gas Conservation Tax Act;
15 (6) Oil and Gas Emergency School Tax Act;
16 (7) Oil and Gas Ad Valorem Production Tax Act;
17 (8) Natural Gas Processors Tax Act;
18 (9) Oil and Gas Production Equipment Ad
19 Valorem Tax Act;
20 (10) Copper Production Ad Valorem Tax Act;
21 (11) any advance payment required to be made
22 by any act specified in this subsection, which advance payment
23 shall be considered a tax for the purposes of the Tax
24 Administration Act;
25 (12) Enhanced Oil Recovery Act;

.206978.2

underscored material = new
~~[bracketed material] = delete~~

1 (13) Natural Gas and Crude Oil Production
2 Incentive Act; and

3 (14) intergovernmental production tax credit
4 and intergovernmental production equipment tax credit;

5 C. the administration and enforcement of the
6 following taxes, surcharges, fees or acts as they now exist or
7 may hereafter be amended:

8 (1) Weight Distance Tax Act;

9 (2) the workers' compensation fee authorized
10 by Section 52-5-19 NMSA 1978, which fee shall be considered a
11 tax for purposes of the Tax Administration Act;

12 (3) Uniform Unclaimed Property Act (1995);

13 (4) 911 emergency surcharge and the network
14 and database surcharge, which surcharges shall be considered
15 taxes for purposes of the Tax Administration Act;

16 (5) the solid waste assessment fee authorized
17 by the Solid Waste Act, which fee shall be considered a tax for
18 purposes of the Tax Administration Act;

19 (6) the water conservation fee imposed by
20 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
21 for the purposes of the Tax Administration Act; and

22 (7) the gaming tax imposed pursuant to the
23 Gaming Control Act; and

24 D. the administration and enforcement of all other
25 laws, with respect to which the department is charged with

.206978.2

underscoring material = new
~~[bracketed material] = delete~~

1 responsibilities pursuant to the Tax Administration Act, but
2 only to the extent that the other laws do not conflict with the
3 Tax Administration Act."

4 SECTION 2. A new Section 7-9G-3 NMSA 1978 is enacted to
5 read:

6 "7-9G-3. [NEW MATERIAL] NEW JOBS AND INVESTMENT TAX
7 CREDIT.--

8 A. Prior to January 1, 2038, a taxpayer that
9 creates and maintains new jobs and makes a capital investment
10 in the state may apply for, and the taxation and revenue
11 department may allow, a credit against the taxpayer's tax
12 liabilities imposed pursuant to the Income Tax Act and the
13 Corporate Income and Franchise Tax Act and certain liabilities
14 pursuant to the Gross Receipts and Compensating Tax Act. The
15 credit provided by this section may be referred to as the "new
16 jobs and investment tax credit".

17 B. The purpose of the new jobs and investment tax
18 credit is to encourage businesses to start, relocate or expand
19 their operations in New Mexico.

20 C. The amount of the tax credit provided by this
21 section shall equal the following percentages of a taxpayer's
22 tax liabilities pursuant to the Income Tax Act, the Corporate
23 Income and Franchise Tax Act and the Gross Receipts and
24 Compensating Tax Act, excluding any amount collected with
25 respect to local option gross receipts taxes; provided that the

.206978.2

underscoring material = new
~~[bracketed material]~~ = delete

1 taxpayer meets all the requirements of this section:

2 (1) one hundred percent for each of the first
3 ten years after receiving the certificate of eligibility
4 pursuant to Subsection J of this section; and

5 (2) each year thereafter, the percentage shall
6 be reduced by ten percent until the percentage equals zero
7 percent; provided that no amount of credit shall be allowed
8 after December 31, 2037.

9 D. To be eligible for the tax credit provided by
10 this section, a taxpayer shall, beginning January 1, 2017 and
11 prior to applying for a certificate of eligibility pursuant to
12 Subsection J of this section:

13 (1) create two hundred fifty new jobs; and

14 (2) make a capital investment in this state of
15 at least fifty million dollars (\$50,000,000).

16 E. To continue to be eligible for the tax credit
17 provided by this section, a taxpayer shall maintain two hundred
18 fifty new jobs in each reporting period. If an individual that
19 was hired to occupy a new job is no longer employed by the
20 eligible employer, the taxpayer shall replace the individual to
21 occupy the new job to remain eligible for the tax credit.

22 F. To claim the tax credit provided by this
23 section, a taxpayer shall apply for approval to the taxation
24 and revenue department after the close of the taxpayer's
25 reporting period, but not later than twelve months following

.206978.2

underscoring material = new
~~[bracketed material] = delete~~

1 the end of that reporting period. The application shall be
2 made on forms and in a manner required by the taxation and
3 revenue department and shall include information the taxation
4 and revenue department may require to determine the amount of
5 credit due to the taxpayer. The initial application shall
6 include a certificate of eligibility issued by the economic
7 development department pursuant to Subsection J of this
8 section. Subsequent applicants shall include evidence that the
9 taxpayer maintained two hundred fifty new jobs in the reporting
10 period for which the application applies.

11 G. A job shall not be considered a new job pursuant
12 to this section if:

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

15 (2) the person occupying the job was
16 terminated from employment in New Mexico by another employer
17 involved in the business merger or acquisition or other change
18 in business organization with the taxpayer; or

19 (3) the job is performed by:

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

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

.206978.2

underscoring material = new
~~[bracketed material] = delete~~

1 organization.

2 H. Notwithstanding the provisions of Subsection G
3 of this section, a job that was created by an employer and for
4 which an application for a tax credit was received and is under
5 review by the economic development department, and the business
6 subsequently goes through a merger or acquisition or other
7 change in business organization, the job may be considered a
8 new job if all other requirements of this section are met.

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

16 J. A taxpayer may apply for a certificate of
17 eligibility for the tax credit provided by this section from
18 the economic development department. If the economic
19 development department determines that a taxpayer has met the
20 requirements of this section, it shall issue a certificate of
21 eligibility to the taxpayer. An application for the
22 certificate shall include the following information and any
23 other information required by the economic development
24 department to determine if a taxpayer has met the requirements
25 of this section:

.206978.2

underscoring material = new
~~[bracketed material] = delete~~

1 (1) for each new job, the number of weeks the
2 individual occupied the position;

3 (2) the total number of new jobs created by
4 the taxpayer in New Mexico beginning January 1, 2017 and the
5 date of application for the certificate of eligibility; and

6 (3) evidence that, beginning January 1, 2017,
7 the taxpayer made a capital investment of at least fifty
8 million dollars (\$50,000,000) in this state.

9 K. A taxpayer allowed a credit pursuant to this
10 section shall report the amount of the credit to the taxation
11 and revenue department in a manner required by the department.

12 L. The taxation and revenue department shall
13 compile an annual report on the tax credit provided by this
14 section that shall include the number of taxpayers approved by
15 the department to receive the credit, the aggregate amount of
16 credits approved, the total number of new jobs created, the
17 total amount of capital investment made and any other
18 information necessary to evaluate the cost of the tax credit
19 and whether the tax credit is performing the purpose for which
20 it was created. Each year that the tax credit is in effect,
21 the taxation and revenue department shall present the annual
22 report to the revenue stabilization and tax policy committee
23 and the legislative finance committee.

24 M. As used in this section:

25 (1) "capital investment" means capital

underscoring material = new
~~[bracketed material] = delete~~

1 investment in equipment, land, buildings or infrastructure, any
2 of which is necessary to support new or expanding business
3 activity;

4 (2) "eligible employer" means an employer
5 that:

6 (a) sold and delivered more than fifty
7 percent of its goods produced in New Mexico or non-retail
8 services performed in New Mexico to persons outside New Mexico
9 for use or resale outside New Mexico; and

10 (b) is receiving or is eligible to
11 receive development training program assistance pursuant to
12 Section 21-19-7 NMSA 1978 during the applicable qualifying
13 period;

14 (3) "new job" means a job created in New
15 Mexico by an eligible employer that is occupied full-time for
16 at least forty-eight weeks in a year by an individual who is a
17 resident of New Mexico and who is not an individual who:

18 (a) bears any of the relationships
19 described in Subsection (a) of Section 152 of the federal
20 Internal Revenue Code of 1986 to the employer or, if the
21 employer is a corporation, to an individual who owns, directly
22 or indirectly, more than fifty percent in value of the
23 outstanding stock of the corporation or, if the employer is an
24 entity other than a corporation, to an individual who owns,
25 directly or indirectly, more than fifty percent of the capital

.206978.2

underscoring material = new
[bracketed material] = delete

1 and profits interest in the entity;

2 (b) if the employer is an estate or
3 trust, is a grantor, beneficiary or fiduciary of the estate or
4 trust or is an individual who bears any of the relationships
5 described in Subsection (a) of Section 152 of the federal
6 Internal Revenue Code of 1986 to a grantor, beneficiary or
7 fiduciary of the estate or trust; or

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

15 (4) "resident" means "resident" as that term
16 is used in the Income Tax Act."

17 SECTION 3. APPLICABILITY.--The provisions of this act
18 apply to taxable years beginning on or after January 1, 2017.