confidential and shall be used by the claimant agency only in pursuit of the collection of a debt under the provisions of the Tax Refund Intercept Program Act. Any employee or former employee of a claimant agency who unlawfully discloses any information obtained from the department is guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year or both and shall not be employed by the state for a period of five years after the date of conviction.

B. Notwithstanding other provisions of law prohibiting disclosure by the department of information from a taxpayer's return, the department may provide to a claimant agency any information deemed necessary by the department to accomplish the purposes of the Tax Refund Intercept Program Act.

History: Laws 1985, ch. 106, § 13; 1994, ch. 56, § 9.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "department" for "division" throughout the section and deleted "thereof" following "upon conviction" in the second sentence in Subsection A.

7-2C-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 47, § 9 repealed 7-2C-14 NMSA 1978, as enacted by Laws 1985, ch. 106, § 14, relating to administrative regulations, rulings, instructions and orders for purposes of the Tax Refund Intercept Program Act, effective June 18, 1999. For provisions of the former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

ARTICLE 2D
Venture Capital Investments

7-2D-1. Short title.

Chapter 7, Article 2D NMSA 1978 may be cited as the "Venture Capital Investment Act".

History: Laws 1993, ch. 313, § 1; 1995, ch. 89, § 1.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "Chapter 7, Article 2D NMSA 1978" for "This act".

7-2D-2. Definitions.

As used in the Venture Capital Investment Act:

A. "capital gain tax differential" equals either:

(1) an amount equal to fifty percent of the federal income tax paid by the taxpayer on qualified diversifying business net capital gains; or

(2) in the event that the taxpayer makes an election pursuant to Section 7-2D-13 NMSA 1978, and the taxpayer has not previously paid federal income tax on the qualified diversifying business net capital gain that accrued prior to that election, then an amount equal to fifty percent of the federal income tax paid by the taxpayer on the gain on the sale of that qualified diversifying business stock times the percentage derived by dividing the gain on such stock accruing since the election by the total gain on the stock accruing since its original acquisition without regard to the election;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended or renumbered;

D. "manufacturing business" means the manufacture of, and the business activities related to the manufacture of, all nondurable and durable goods;

E. "New Mexico income tax" means the tax imposed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978];

F. "qualified diversifying business net capital gain" means the net capital gain for the taxable year determined under the Internal Revenue Code by taking into account only gains or losses from sales or exchanges of qualified diversifying business stock with a holding period of more than five years at the time of the sale or exchange;

G. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

H. "taxpayer" means any individual subject to the tax imposed pursuant to the Income Tax Act; and

I. "testing period" means the five-year period a stock is held by a taxpayer, beginning with the first day of the taxpayer's holding period for the stock.

History: Laws 1993, ch. 313, § 2; 1995, ch. 89, § 2.

ANNOTATIONS

Cross references. — For the Internal Revenue Code, *see* 26 U.S.C. § 1.

The 1995 amendment, effective June 16, 1995, added Subsections A, D and F and redesignated the remaining subsections accordingly.

7-2D-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 89, § 11 repealed 7-2D-3 NMSA 1978, as enacted by Laws 1993, ch. 313, § 3, relating to the tax credit for federal income tax paid on a qualified diversifying business net capital gain, effective June 16, 1995. For provisions of the former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

7-2D-4. Additional definition; qualified diversifying business stock.

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business stock" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any stock in a corporation that is originally issued after June 30, 1994 but before July 1, 2001, if:

(1) on the date of issuance the corporation is a qualified diversifying business;

(2) except as otherwise provided in Subsection B of this section and in Sections 7-2D-9 and 7-2D-10 NMSA 1978, the stock is acquired by the taxpayer at its original issue, either:

(a) in exchange for money or other property, not including stock; or

(b) as compensation for services, other than services performed as an underwriter of such stock; and

(3) the corporation throughout the testing period is an active manufacturing business and a New Mexico business and at the end of the testing period is a successful business.

B. For purposes of Paragraph (2) of Subsection A of this section, stock shall not be treated as acquired by the taxpayer at its original issue if:

(1) it is issued directly or indirectly in redemption of, or otherwise in exchange for, stock that is not qualified diversifying business stock; or

(2) it is issued in an exchange described in Section 351 of the Internal Revenue Code in exchange for property other than qualified diversifying business stock

if, immediately after the exchange, both the issuer and transferee of the stock are members of the same controlled group of corporations as defined in Section 1563 of the Internal Revenue Code.

History: Laws 1993, ch. 313, § 4; 1995, ch. 89, § 3.

ANNOTATIONS

Cross references. — For Sections 351 and 1563 of the Internal Revenue Code, *see* 26 U.S.C. §§ 351 and 1563.

The 1995 amendment, effective June 16, 1995, in Subsection A, substituted "Section 7-2D-13 NMSA 1978" for "Section 13 of that act" in the introductory paragraph; substituted "Sections 7-2D-9 and 7-2D-10 NMSA 1978" for "Sections 9 and 10 of the Venture Capital Investment Act" in Paragraph (2); and rewrote former Paragraph (3) which formerly required that stock meet the requirements of Sections 6, 7 and 8 of the Venture Capital Investment Act throughout the testing period.

7-2D-5. Additional definition; qualified diversifying business.

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any domestic corporation that has its commercial domicile in New Mexico and with respect to which the aggregate amount of money, other property and services received by the corporation for stock, as a contribution to capital and as paid-in surplus, plus the accumulated earnings and profits of the corporation, does not exceed twenty-five million dollars ($25,000,000); provided:

(1) the aggregate amount shall be determined at the time of issuance and shall include amounts received in the issuance and all prior issuances; and

(2) in the case of stock issued in a calendar year after 1993, the aggregate amount shall not exceed an amount equal to twenty-five million dollars ($25,000,000) multiplied by the cost-of-living adjustment determined under Section 1 (f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

B. For the purpose of determining the aggregate amount in Subsection A of this section:

(1) the amount taken into account with respect to any property other than money shall be an amount equal to the adjusted basis of that property for determining capital gain:

(a) reduced to not below zero by any liability to which the property was subject or that was assumed by the corporation; and

(b) determined at the time the property was received by the corporation; and

(2) the amount taken into account with respect to stock issued for services shall be the value of those services.

History: Laws 1993, ch. 313, § 5; 1995, ch. 89, § 4.

ANNOTATIONS

Cross references. — For Section 1(f)(3) of the Internal Revenue Code, *see* 26 U.S.C. § 1(f)(3).

The 1995 amendment, effective June 16, 1995, substituted "Section 7-2D-13 NMSA 1978" for "Section 13 of that act" in the introductory paragraph of Subsection A; substituted "aggregate amount shall be determined" for "determination made under this subsection shall be made" and "and" for "but" in Paragraph A(1); inserted "aggregate" near the beginning of Paragraph A(2); substituted "determining the aggregate amount" for "making the determination" in the introductory paragraph of Subsection B; and made minor stylistic changes throughout the section.

7-2D-6. Additional definition; active manufacturing business.

A. Except as otherwise provided in this section, for the purposes of the Venture Capital Investment Act, "active manufacturing business" means a corporation that throughout the testing period:

(1) either:

(a) is engaged in the active conduct of a manufacturing business; and

(b) uses substantially all of its assets in the active conduct of a manufacturing trade or business; provided, rights to computer software that produce income described in Section 543(d) of the Internal Revenue Code and any assets that are held for investment and are to be used to finance future research and experimentation or working capital needs of the corporation shall be treated as assets used in the active conduct of a manufacturing business; or

(2) is engaged in any of the following activities, whether or not the corporation has any gross income from such activities at the time of the determination:

(a) start-up activities described in Section 195(c)(1)(A) of the Internal Revenue Code;

(b) activities resulting in the payment or incurring of expenditures that may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code; or

(c) activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code.

B. A corporation shall not be considered an active manufacturing business if at any time during the testing period:

(1) more than ten percent of the value of its assets in excess of liabilities consists of stock in other corporations that are not subsidiaries of that corporation; provided:

(a) for purposes of this section, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets and to conduct its ratable share of the subsidiary's activities; and

(b) a corporation shall be considered a subsidiary if the parent owns at least fifty percent of the combined voting power of all classes of stock entitled to vote or at least fifty percent in value of all outstanding stock of that corporation; or

(2) more than ten percent of the total value of its assets is real property that is not used in the active conduct of a manufacturing business. The ownership of, dealing in or renting of real property shall not be treated as the active conduct of a manufacturing business.

History: Laws 1993, ch. 313, § 6; 1995, ch. 89, § 5.

ANNOTATIONS

Cross references. — For Sections 41, 174, 195, and 543 of the Internal Revenue Code, *see* 26 U.S.C. §§ 41, 174, 195, and 543, respectively.

The 1995 amendment, effective June 16, 1995, rewrote the section heading which read "active manufacturing business requirement" and rewrote the section to such an extent that a detailed comparison would be impracticable.

7-2D-7. Additional definition; New Mexico business.

For the purposes of the Venture Capital Investment Act, "New Mexico business" means a corporation that throughout the testing period meets these conditions:

A. the corporation has its commercial domicile in New Mexico and all of its corporate directors who are also employees of the corporation are full-time residents of New Mexico;

B. at least two-thirds of all of the corporation's employees, at least two-thirds of its employees who perform research, development or design activities and at least two-

thirds of its employees who perform manufacturing activities are full-time residents of New Mexico;

C. the corporation maintains an employee stock purchase plan, incentive stock option plan or similar plan pursuant to which employees of the corporation have the opportunity to acquire equity ownership in the corporation; and

D. the corporation employs on a full-time basis an average of at least fifty full-time New Mexico residents.

History: Laws 1993, ch. 313, § 7; 1995, ch. 89, § 6.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote the section heading which read "New Mexico business requirement" and rewrote the introductory paragraph which read "A corporation meets the requirements pursuant to Paragraph (3) of Subsection A of Section 4 of the Venture Capital Investment Act if throughout the testing period".

7-2D-8. Additional definition; successful business.

For the purposes of the Venture Capital Investment Act, "successful business" means a corporation that, at the end of the taxpayer's holding period, has experienced a net increase in valuation of at least fifteen million dollars ($15,000,000); provided:

A. the increase in valuation shall be calculated by subtracting the valuation of the corporation at the time it was determined to be a qualified diversifying business from the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain;

B. the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain equals the per-share value of the money and property received by the taxpayer on the transfer multiplied by the outstanding shares of the corporation, as calculated using the number of shares that would be outstanding if all outstanding convertible securities were fully converted and all outstanding options and warrants were fully exercised; and

C. in the case of any stock issued in a calendar year after 1994, the net increase in valuation required shall be an amount equal to fifteen million dollars ($15,000,000) multiplied by the cost-of-living adjustment determined under Section 1(f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

History: Laws 1993, ch. 313, § 8; 1995, ch. 89, § 7.

ANNOTATIONS

Cross references. — For Section 1 of the Internal Revenue Code, *see* 26 U.S.C. § 1.

The 1995 amendment, effective June 16, 1995, rewrote the section heading which read "Business success requirement" and rewrote the section to such an extent that a detailed comparison would be impracticable.

7-2D-8.1. Repealed.

History: 1978 Comp., § 7-2D-8.1, enacted by Laws 1995, ch. 89, § 8; repealed by Laws 2023, ch. 85, § 28.

ANNOTATIONS

Repeals. — Laws 2023, ch. 85, § 28 repealed 7-2D-8.1 NMSA 1978, as enacted by Laws 1995, ch. 89, § 8, relating to tax credit, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

7-2D-9. Special rules for options, warrants and certain convertible investments.

A. In the case of stock that is acquired by the taxpayer through the exercise of a nontransferable option or warrant issued in exchange for the performance of services for the corporation issuing it, through the conversion of convertible debt or in exchange for securities of the corporation in a transaction described in Section 368 of the Internal Revenue Code:

(1) the stock shall be treated as acquired by the taxpayer at original issue; and

(2) the stock shall be treated as having been held during the period that the option, warrant or debt was held or that the security was outstanding.

B. For purposes of Subsection A of Section 7-2D-5 NMSA 1978 and notwithstanding Subsection B of that section, in the case of a debt instrument converted to stock or stock issued in exchange for securities in a transaction described in Section 368 of the Internal Revenue Code, such stock shall be treated as issued for an amount equal to the sum of:

(1) the principal amount of the debt or security at the time of the conversion or exchange; and

(2) accrued but unpaid interest on that loan or security.

History: Laws 1993, ch. 313, § 9; 1995, ch. 89, § 9.

ANNOTATIONS

Cross references. — For Section 368 of the Internal Revenue Code, *see* 26 U.S.C. § 368.

The 1995 amendment, effective June 16, 1995, substituted "a nontransferable option or warrant issued in exchange for the performance of services for the corporation issuing it" for "an applicable option or warrant" in the introductory paragraph of Subsection A; substituted "Section 7-2D-5 NMSA 1978" for "Section 5 of the Venture Capital Investment Act" near the beginning of Subsection B; and deleted former Subsection C which defined "applicable option or warrant".

7-2D-10. Certain tax-free and other transfers.

A. This section applies to the following transfers of stock:

(1) by gift;

(2) at death;

(3) to the extent that the basis of the property in the hands of the transferee is determined by reference to the basis of the property in the hands of the transferor by reason of Sections 334(b), 723 or 732 of the Internal Revenue Code; and

(4) of qualified diversifying business stock for other qualified diversifying business stock in a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code.

B. In the case of a transfer of stock to which this section applies, the transferee shall be treated as having acquired the stock in the same manner as the transferor and as having held such stock during any continuous period immediately preceding the transfer during which it was held or treated as held under this section by the transferor.

C. In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if a qualified diversifying business stock is transferred for other stock that is not qualified diversifying business stock, the transfer shall be treated as a transfer to which this section applies solely with respect to the person receiving such other stock.

D. This section applies to the sale or exchange of stock treated as qualified diversifying business stock by reason of Subsection C of this section only to the extent of the gain, if any, that would have been recognized at the time of the transfer described in Subsection C of this section if Section 351 or 368 of the Internal Revenue Code had not applied at that time.

E. For purposes of this subsection, stock treated as qualified diversifying business stock under Subsection C of this section shall be so treated for subsequent transactions

or reorganizations, except that the limitation of Subsection D of this section shall be applied as of the time of the first transfer to which Subsection C of this section applied.

F. Except in the case of a transaction described in Section 368 of the Internal Revenue Code, this section applies only if, immediately after the transaction, the corporation issuing the stock owns, directly or indirectly, stock representing control, within the meaning of Section 368(c) of the Internal Revenue Code, of the corporation whose stock was transferred.

History: Laws 1993, ch. 313, § 10.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 313 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after the adjournment of the legislature.

Cross references. — For Sections 334, 351, 368, 723, and 732 of the Internal Revenue Code, *see* 26 U.S.C. §§ 334, 351, 368, 723, and 732, respectively.

7-2D-11. Stock exchanged for property.

For purposes of the Venture Capital Investment Act, in the case where the taxpayer transfers property other than money or stock to a corporation in exchange for stock in that corporation:

A. the stock shall be treated as having been acquired by the taxpayer on the date of that exchange; and

B. the basis of the stock in the hands of the taxpayer shall be treated as equal to the fair market value of the property exchanged.

History: Laws 1993, ch. 313, § 11.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 313 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after the adjournment of the legislature.

7-2D-12. Pass-thru entities.

For purposes of the Venture Capital Investment Act, any gain or loss of a pass-thru entity that is treated for purposes of that act as a gain or loss of any person holding an interest in that entity shall retain its character as qualified diversifying business capital gain or loss in the hands of that person.

History: Laws 1993, ch. 313, § 12.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 313 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after the adjournment of the legislature.

7-2D-13. Election.

A. On any date after June 30, 1993, a taxpayer who holds any stock of a corporation that has its commercial domicile in New Mexico and meets the requirements of this section may elect to have the stock treated as a qualified diversifying business stock in accordance with the provisions of this section for purposes of claiming the tax credit pursuant to the Venture Capital Investment Act.

B. On any date after June 30, 1994, if a taxpayer holds any stock of a corporation that has its commercial domicile in New Mexico on that date and which stock, at the time it was issued, would have been treated as qualified diversifying business stock pursuant to the Venture Capital Investment Act but for the facts that the stock was issued on or before June 30, 1994 and that the stock was issued by a corporation that at the time did not have its commercial domicile in New Mexico and the value of such stock on that date exceeds its adjusted basis, the taxpayer may elect to set that date as the election date and treat the stock as having been sold on that date for an amount equal to its value on that date and as having been reacquired on that date for an amount equal to such value.

C. For purposes of determining the tax credit pursuant to Section 7-2D-8.1 NMSA 1978 and whether or not the taxpayer actually incurs federal or New Mexico income tax liability, the gain from sales determined in Subsection B of this section shall be treated as received or accrued and the holding period of the reacquired stock shall be treated as beginning on that election date. Such stock shall be treated after such reacquisition as acquired in the same manner and at the same time as the original acquisition. Neither the requirement of Subsection A of Section 7-2D-4 NMSA 1978 that the stock must have been issued after June 30, 1994 nor the requirement of Subsection A of Section 7-2D-5 NMSA 1978 that the issuing corporation have its commercial domicile in New Mexico shall apply.

D. An election under this section with respect to any stock shall be made in the manner the secretary prescribes. Such an election, once made with respect to any stock, is irrevocable.

E. Notwithstanding the provisions of this section, no credit shall be allowed or claimed on any qualified diversifying business net capital gain arising from the sale of stock prior to July 1, 1998.