HOUSE BILL 499

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

INTRODUCED BY

Don L. Tripp

AN ACT

RELATING TO TAXATION; PROVIDING FOR A NEW JOBS INCOME TAX CREDIT AND A NEW JOBS CORPORATE INCOME TAX CREDIT.

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

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

"[NEW MATERIAL] NEW JOBS INCOME TAX CREDIT.--

A. A taxpayer who is an eligible employer may apply for, and the department may allow, a tax credit against the taxpayer's tax liability imposed pursuant to the Income Tax Act for each new job the taxpayer creates if the taxpayer has paid an eligible employee wages for the performance of the new job for a total of forty-eight full-time work weeks. The credit may be referred to as the "new jobs income tax credit".

B. The new jobs income tax credit may be claimed

.191573.3

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

for a new job for the taxable year in which the taxpayer has made payment of wages to an eligible employee for performance of the new job. The tax credit may be claimed and allowed in an amount equal to one thousand dollars ($1,000) for each eligible employee employed by an eligible employer for a full taxable year. For a taxpayer who employs an eligible employee for less than the full taxable year, the amount of the credit otherwise allowed shall be multiplied by the fraction of the full taxable year for which the eligible employee was employed. The total credit claimed with respect to a single new job shall not exceed one thousand dollars ($1,000).

C. The purpose of the new jobs income tax credit is to provide an incentive for small businesses to create and fill new jobs in New Mexico.

D. A taxpayer shall not claim the new jobs income tax credit for a new job if:

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

(2) the eligible employee was terminated from employment in New Mexico by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and

(3) the new job is performed by:

(a) the person who performed the job or its functional equivalent prior to the business merger or

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

acquisition or other change in business organization; or

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

E. A job shall not be eligible for a credit pursuant to this section if the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is a new job that was not being performed by an employee of the replaced entity.

F. A new jobs income tax credit shall not be allowed for a new job if the total number of eligible employees employed by the taxpayer on the last day of the pay period during which the eligible employee was hired is less than the total number of eligible employees employed by the taxpayer on December 31, 2012.

G. To receive a new jobs income tax credit, an eligible employer shall submit to the department an application for the credit on forms and in the manner prescribed by the department. The application shall include a certification by the eligible employer of the total number of eligible employees employed by the eligible employer on:

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

(1) December 31, 2012 and each December 31 occurring thereafter; and

(2) the last day of each pay period on which a new job was created and for which the credit is claimed.

H. The aggregate amount of the new jobs income tax credits and new jobs corporate income tax credits allowed by the department shall not exceed twenty million dollars ($20,000,000). New jobs income tax credits and new jobs corporate income tax credits that have been allowed, but for which taxes have subsequently been repaid pursuant to Subsection M or N of this section or pursuant to the Corporate Income and Franchise Tax Act, shall be considered as amounts allowed toward the maximum aggregate amount of credits allowed. Applications for the new jobs income tax credits and new jobs corporate income tax credits shall be considered in the order received by the department. To be allowed, applications for the new jobs income tax credit must be received by the department on or before April 15, 2015.

I. That portion of the new jobs income tax credit approved by the department that exceeds a taxpayer's income tax liability in the taxable year in which the new jobs income tax credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The new jobs income tax credit shall not be transferred to another taxpayer.

J. A husband and wife filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the new jobs income tax credit that would have been claimed on a joint return.

K. A taxpayer may be allocated the right to claim a new jobs income tax credit in proportion to its ownership interest if the taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership and the business entity has met all of the requirements to be eligible for the credit. The total credit claimed by all members of the partnership or limited liability company shall not exceed the total allowable credit pursuant to this section.

L. For three years after the end of the taxable year for which a new jobs income tax credit is approved, the taxpayer for whom the credit is approved shall submit to the department:

(1) the quarterly contribution and wage report that the taxpayer submits to the department of workforce solutions; and

(2) any other information required by the department for evaluation of the taxpayer's eligibility for the new jobs income tax credit or responsibility to pay any income tax liability against which the credit was taken.

M. An eligible employer shall repay to the department one hundred percent of the income tax liability against which all new jobs income tax credits are taken if the

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

total number of eligible employees employed by the taxpayer on the reporting date required pursuant to Subsection L of this section decreases from the number of eligible employees employed by the taxpayer during the previous year.

N. An eligible employer shall repay to the department:

(1) ninety percent of the income tax liability against which the new jobs income tax credit is taken, if, within one year of the creation of the new job for which the credit is approved, the new job is eliminated or becomes a vacant job for at least five weeks;

(2) seventy-five percent of the income tax liability against which the new jobs income tax credit is taken, if, within two years of the creation of the new job for which the credit is approved, the new job is eliminated or becomes a vacant job for at least five weeks; and

(3) fifty percent of the income tax liability against which the new jobs income tax credit is taken, if, within three years of the creation of the new job for which the credit is approved, the new job is eliminated or becomes a vacant job for at least five weeks.

O. As used in this section:

(1) "eligible employee" means a person who is employed in New Mexico and hired between January 1, 2013 and December 31, 2014, but does not include an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust;

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation, or, if the employer is an entity other than a corporation, of an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust; or

(d) is working or has worked as an

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

employee or as an independent contractor for an entity that directly owns stock in a corporation of the eligible employer or other interest of the eligible employer that represents fifty percent or more of the total voting power of that entity or has a value equal to fifty percent or more of the capital and profits interest in the entity;

(2) "eligible employer" means an employer that employs fewer than one hundred employees as reflected in its final quarterly contribution and wage report of 2012;

(3) "full-time work week" means a period of work consisting of at least thirty-two hours of required work within a seven-day period;

(4) "new job" means a job created on or after January 1, 2013 and prior to December 31, 2014; and

(5) "wages" means all compensation paid by an employer to an employee through the employer's payroll system, including those wages that the employee elects to defer or redirect or the employee's contribution to a 401(k) or cafeteria plan program, but "wages" does not include benefits or the employer's share of payroll taxes."

SECTION 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] NEW JOBS CORPORATE INCOME TAX CREDIT.--

A. A taxpayer that is an eligible employer may apply for, and the department may allow, a tax credit against

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

the taxpayer's tax liability imposed pursuant to the Corporate Income and Franchise Tax Act for each new job the taxpayer creates if the taxpayer has paid an eligible employee wages for the performance of the new job for a total of forty-eight full-time work weeks. The credit may be referred to as the "new jobs corporate income tax credit".

B. The new jobs corporate income tax credit may be claimed for a new job for the taxable year in which the taxpayer has made payment of wages to an eligible employee for performance of the new job. The tax credit may be claimed and allowed in an amount equal to one thousand dollars ($1,000) for each eligible employee employed by an eligible employer for a full taxable year. For a taxpayer who employs an eligible employee for less than the full taxable year, the amount of the credit otherwise allowed shall be multiplied by the fraction of the full taxable year for which the eligible employee was employed. The total credit claimed with respect to a single new job shall not exceed one thousand dollars ($1,000).

C. The purpose of the new jobs corporate income tax credit is to provide an incentive for small businesses to create and fill new jobs in New Mexico.

D. A taxpayer shall not claim the new jobs corporate income tax credit for a new job if:

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

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

(2) the eligible employee was terminated from employment in New Mexico by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and

(3) the new job is performed by:

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

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

E. A job shall not be eligible for a credit pursuant to this section if the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is a new job that was not being performed by an employee of the replaced entity.

F. A new jobs corporate income tax credit shall not be allowed for a new job if the total number of eligible employees employed by the taxpayer on the last day of the pay period during which the eligible employee was hired is less than the total number of eligible employees employed by the

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

taxpayer on December 31, 2012.

G. To receive a new jobs corporate income tax credit, an eligible employer shall submit to the department an application for the credit on forms and in the manner prescribed by the department. The application shall include a certification by the eligible employer of the total number of eligible employees employed by the eligible employer on:

(1) December 31, 2012 and each December 31 occurring thereafter; and

(2) the last day of each pay period on which a new job was created and for which the credit is claimed.

H. The aggregate amount of the new jobs corporate income tax credits and new jobs income tax credits allowed by the department shall not exceed twenty million dollars ($20,000,000). New jobs corporate income tax credits and new jobs income tax credits that have been allowed, but for which taxes have subsequently been repaid pursuant to Subsection K or L of this section and the Income Tax Act, shall be considered as amounts allowed toward the maximum aggregate amount of credits allowed. Applications for the new jobs corporate income tax credits and new jobs income tax credits shall be considered in the order received by the department. To be allowed, applications for the new jobs corporate income tax credit must be received by the department on or before April 15, 2015.

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

I. That portion of the new jobs corporate income tax credit approved by the department that exceeds a taxpayer's corporate income tax liability in the taxable year in which the new jobs corporate income tax credit is claimed shall not be refunded to the taxpayer but may be carried forward for up to three years. The new jobs corporate income tax credit shall not be transferred to another taxpayer.

J. For three years after the end of the taxable year for which a new jobs corporate income tax credit is approved, the taxpayer for whom the credit is approved shall submit to the department:

(1) the quarterly contribution and wage report that the taxpayer submits to the department of workforce solutions; and

(2) any other information required by the department for evaluation of the taxpayer's eligibility for the new jobs corporate income tax credit or responsibility to pay any corporate income tax liability against which the credit was taken.

K. An eligible employer shall repay to the department one hundred percent of the corporate income tax liability against which all new jobs corporate income tax credits are taken if the total number of eligible employees employed by the taxpayer on the reporting date required pursuant to Subsection J of this section decreases from the

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

number of eligible employees employed by the taxpayer during the previous year.

L. An eligible employer shall repay to the department:

(1) ninety percent of the corporate income tax liability against which the new jobs corporate income tax credit is taken, if, within one year of the creation of the new job for which the credit is approved, the new job is eliminated or becomes a vacant job for at least five weeks;

(2) seventy-five percent of the corporate income tax liability against which the new jobs corporate income tax credit is taken, if, within two years of the creation of the new job for which the credit is approved, the new job is eliminated or becomes a vacant job for at least five weeks; and

(3) fifty percent of the corporate income tax liability against which the new jobs corporate income tax credit is taken, if, within three years of the creation of the new job for which the credit is approved, the new job is eliminated or becomes a vacant job for at least five weeks.

M. As used in this section:

(1) "eligible employee" means a person who is employed in New Mexico and hired between January 1, 2013 and December 31, 2014, but does not include an individual who:

(a) bears any of the relationships

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

described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interest in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust;

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation, or, if the employer is an entity other than a corporation, of an individual who owns, directly, or indirectly, more than fifty percent of the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust; or

(d) is working or has worked as an employee or as an independent contractor for an entity that

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

directly owns stock in a corporation of the eligible employer or other interest of the eligible employer that represents fifty percent or more of the total voting power of that entity or has a value equal to fifty percent or more of the capital and profits interest in the entity;

(2) "eligible employer" means an employer that employs fewer than one hundred employees as reflected in its final quarterly contribution and wage report of 2012;

(3) "full-time work week" means a period of work consisting of at least thirty-two hours of required work within a seven-day period;

(4) "new job" means a job created on or after January 1, 2013 and prior to December 31, 2014; and

(5) "wages" means all compensation paid by an employer to an employee through the employer's payroll system, including those wages that the employee elects to defer or redirect or the employee's contribution to a 401(k) or cafeteria plan program, but "wages" does not include benefits or the employer's share of payroll taxes."

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