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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

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

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

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

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

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

23 (3) the new job is performed by:

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

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1 acquisition or other change in business organization; or

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

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

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

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

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

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

5 H. The aggregate amount of the new jobs income tax  
6 credits and new jobs corporate income tax credits allowed by  
7 the department shall not exceed twenty million dollars  
8 (\$20,000,000). New jobs income tax credits and new jobs  
9 corporate income tax credits that have been allowed, but for  
10 which taxes have subsequently been repaid pursuant to  
11 Subsection M or N of this section or pursuant to the Corporate  
12 Income and Franchise Tax Act, shall be considered as amounts  
13 allowed toward the maximum aggregate amount of credits allowed.  
14 Applications for the new jobs income tax credits and new jobs  
15 corporate income tax credits shall be considered in the order  
16 received by the department. To be allowed, applications for  
17 the new jobs income tax credit must be received by the  
18 department on or before April 15, 2015.

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

25 J. A husband and wife filing separate returns for a

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1 taxable year for which they could have filed a joint return may  
2 each claim only one-half of the new jobs income tax credit that  
3 would have been claimed on a joint return.

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

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

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

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

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

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

5 N. An eligible employer shall repay to the  
6 department:

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

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

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

22 O. As used in this section:

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

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1 (a) bears any of the relationships  
2 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
3 152(a) to the employer or, if the employer is a corporation, to  
4 an individual who owns, directly or indirectly, more than fifty  
5 percent in value of the outstanding stock of the corporation  
6 or, if the employer is an entity other than a corporation, to  
7 an individual who owns, directly or indirectly, more than fifty  
8 percent of the capital and profits interest in the entity;

9 (b) if the employer is an estate or  
10 trust, is a grantor, beneficiary or fiduciary of the estate or  
11 trust or is an individual who bears any of the relationships  
12 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
13 152(a) to a grantor, beneficiary or fiduciary of the estate or  
14 trust;

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

25 (d) is working or has worked as an

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (3) the new job is performed by:

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

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

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

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

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1 taxpayer on December 31, 2012.

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

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

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

12 H. The aggregate amount of the new jobs corporate  
13 income tax credits and new jobs income tax credits allowed by  
14 the department shall not exceed twenty million dollars  
15 (\$20,000,000). New jobs corporate income tax credits and new  
16 jobs income tax credits that have been allowed, but for which  
17 taxes have subsequently been repaid pursuant to Subsection K or  
18 L of this section and the Income Tax Act, shall be considered  
19 as amounts allowed toward the maximum aggregate amount of  
20 credits allowed. Applications for the new jobs corporate  
21 income tax credits and new jobs income tax credits shall be  
22 considered in the order received by the department. To be  
23 allowed, applications for the new jobs corporate income tax  
24 credit must be received by the department on or before April  
25 15, 2015.

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

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

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

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

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

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

3 L. An eligible employer shall repay to the  
4 department:

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

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

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

21 M. As used in this section:

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

25 (a) bears any of the relationships

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1 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
2 152(a) to the employer or, if the employer is a corporation, to  
3 an individual who owns, directly or indirectly, more than fifty  
4 percent in value of the outstanding stock of the corporation  
5 or, if the employer is an entity other than a corporation, to  
6 an individual who owns, directly or indirectly, more than fifty  
7 percent of the capital and profits interest in the entity;

8 (b) if the employer is an estate or  
9 trust, is a grantor, beneficiary or fiduciary of the estate or  
10 trust or is an individual who bears any of the relationships  
11 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
12 152(a) to a grantor, beneficiary or fiduciary of the estate or  
13 trust;

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

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

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

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

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

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

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