

1 HOUSE BILL 366

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; CHANGING THE REQUIREMENTS FOR WHEN A  
12 TAXPAYER MUST SUBMIT A NEW APPLICATION FOR THE HIGH-WAGE JOBS  
13 TAX CREDIT AND WHAT SHOULD BE INCLUDED IN THE APPLICATION;  
14 AMENDING THE DEFINITION OF "ELIGIBLE EMPLOYER" FOR PURPOSES OF  
15 THE HIGH-WAGE JOBS TAX CREDIT.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 7-9G-1 NMSA 1978 (being Laws 2004,  
19 Chapter 15, Section 1, as amended) is amended to read:

20 "7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING  
21 HIGH-WAGE JOBS.--

22 A. A taxpayer who is an eligible employer may apply  
23 for, and the department may allow, a tax credit for each new  
24 high-wage economic-based job. The credit provided in this  
25 section may be referred to as the "high-wage jobs tax credit".

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1           B. The purpose of the high-wage jobs tax credit is  
2 to provide an incentive for urban and rural businesses to  
3 create and fill new high-wage economic-based jobs in New  
4 Mexico.

5           C. The high-wage jobs tax credit may be claimed and  
6 allowed in an amount equal to ten percent of the wages  
7 distributed to an eligible employee in a new high-wage  
8 economic-based job, but shall not exceed twelve thousand  
9 dollars (\$12,000) per job per qualifying period. The high-wage  
10 jobs tax credit may be claimed by an eligible employer for each  
11 new high-wage economic-based job performed for the year in  
12 which the new high-wage economic-based job is created and for  
13 the three consecutive qualifying periods as provided in this  
14 section.

15           D. To receive a high-wage jobs tax credit, a  
16 taxpayer shall file an application for approval of the credit  
17 with the department once per calendar year on forms and in the  
18 manner prescribed by the department. The annual application  
19 shall contain the certification required by Subsection K of  
20 this section and shall contain all qualifying periods that  
21 closed during the calendar year for which the application is  
22 made. Any qualifying period that did not close in the calendar  
23 year for which the application is made shall be denied by the  
24 department. The application for a calendar year shall be filed  
25 no later than December 31 of the following calendar year. If a

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1 taxpayer fails to file the annual application within the time  
2 limits provided in this section, the application shall be  
3 denied by the department. The department shall make a  
4 determination on the application within one hundred eighty days  
5 of the date on which the application was filed; provided that  
6 the one-hundred-eighty-day period shall not begin until the  
7 application is complete, as determined by the department.

8 E. A new high-wage economic-based job shall not be  
9 eligible for a credit pursuant to this section for the initial  
10 qualifying period unless the eligible employer's total number  
11 of employees with threshold jobs on the last day of the initial  
12 qualifying period at the location at which the job is performed  
13 or based is at least one more than the number of threshold jobs  
14 on the day prior to the date the new high-wage economic-based  
15 job was created. A new high-wage economic-based job shall not  
16 be eligible for a credit pursuant to this section for a  
17 consecutive qualifying period unless the total number of  
18 threshold jobs at a location at which the job is performed or  
19 based on the last day of that qualifying period is greater than  
20 or equal to the number of threshold jobs at that same location  
21 on the last day of the initial qualifying period for the new  
22 high-wage economic-based job.

23 F. Any consecutive qualifying period for a new  
24 high-wage economic-based job shall not be eligible for a credit  
25 pursuant to this section unless the wage, the forty-eight-week

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1 occupancy and the residency requirements for a new high-wage  
2 economic-based job are met for each consecutive qualifying  
3 period. If any consecutive qualifying period for a new  
4 high-wage economic-based job does not meet the wage, the forty-  
5 eight-week occupancy and the residency requirements, all  
6 subsequent qualifying periods are ineligible.

7 G. Except as provided in Subsection H of this  
8 section, a new high-wage economic-based job shall not be  
9 eligible for a credit pursuant to this section if:

10 (1) the new high-wage economic-based job is  
11 created due to a business merger or acquisition or other change  
12 in business organization;

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

17 (3) the new high-wage economic-based job is  
18 performed by:

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

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

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1           H. A new high-wage economic-based job that was  
2           created by another employer and for which an application for  
3           the high-wage jobs tax credit was received and is under review  
4           by the department prior to the time of the business merger or  
5           acquisition or other change in business organization shall  
6           remain eligible for the high-wage jobs tax credit for the  
7           balance of the consecutive qualifying periods. The new  
8           employer that results from a business merger or acquisition or  
9           other change in business organization may only claim the high-  
10          wage jobs tax credit for the balance of the consecutive  
11          qualifying periods for which the new high-wage economic-based  
12          job is otherwise eligible.

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

21           J. A new high-wage economic-based job shall not be  
22          eligible for a credit pursuant to this section if the eligible  
23          employer has more than one business location in New Mexico from  
24          which it conducts business and the requirements of Subsection E  
25          of this section are satisfied solely by moving the job from one

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1 business location of the eligible employer in New Mexico to  
2 another business location of the eligible employer in New  
3 Mexico.

4 K. With respect to each annual application for a  
5 high-wage jobs tax credit, the employer shall certify and  
6 include:

7 (1) the amount of wages paid to each eligible  
8 employee in a new high-wage economic-based job during the  
9 qualifying period;

10 (2) the number of weeks each position was  
11 occupied during the qualifying period;

12 (3) whether the new high-wage economic-based  
13 job was in a municipality with a population of sixty thousand  
14 or more or with a population of less than sixty thousand  
15 according to the most recent federal decennial census and  
16 whether the job was in the unincorporated area of a county;

17 (4) whether the application pertains to the  
18 first, second, third or fourth qualifying period for each  
19 eligible employee;

20 (5) the total number of employees employed by  
21 the employer at the job location on the day prior to the  
22 qualifying period and on the last day of the qualifying period;

23 (6) the total number of threshold jobs  
24 performed or based at the eligible employer's location on the  
25 day prior to the qualifying period and on the last day of the

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1 qualifying period;

2 (7) for an eligible employer that has more  
3 than one business location in New Mexico from which it conducts  
4 business, the total number of threshold jobs performed or based  
5 at each business location of the eligible employer in New  
6 Mexico on the day prior to the qualifying period and on the  
7 last day of the qualifying period;

8 (8) whether the eligible employer is receiving  
9 or is eligible to receive development training program  
10 assistance pursuant to Section 21-19-7 NMSA 1978;

11 (9) the percentage of goods and non-retail  
12 services sold and delivered to persons outside New Mexico  
13 during the qualifying period for each location where an  
14 eligible employee's work is performed and for whom a high-wage  
15 jobs tax credit is claimed;

16 [~~(9)~~] (10) whether the eligible employer has  
17 ceased business operations at any of its business locations in  
18 New Mexico; and

19 [~~(10)~~] (11) whether the application is  
20 precluded by Subsection O of this section.

21 L. Any person who willfully submits a false,  
22 incorrect or fraudulent certification required pursuant to  
23 Subsection K of this section shall be subject to all applicable  
24 penalties under the Tax Administration Act, except that the  
25 amount on which the penalty is based shall be the total amount

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1 of credit requested on the application for approval.

2 M. Except as provided in Subsection N of this  
3 section, an approved high-wage jobs tax credit shall be claimed  
4 against the taxpayer's modified combined tax liability and  
5 shall be filed with the return due immediately following the  
6 date of the credit approval. If the credit exceeds the  
7 taxpayer's modified combined tax liability, the excess shall be  
8 refunded to the taxpayer.

9 N. If the taxpayer ceases business operations in  
10 New Mexico while an application for credit approval is pending  
11 or after an application for credit has been approved for any  
12 qualifying period for a new high-wage economic-based job, the  
13 department shall not grant an additional high-wage jobs tax  
14 credit to that taxpayer, except as provided in Subsection O of  
15 this section, and shall extinguish any amount of credit  
16 approved for that taxpayer that has not already been claimed  
17 against the taxpayer's modified combined tax liability.

18 O. A taxpayer that has received a high-wage jobs  
19 tax credit shall not submit a new application for a credit for  
20 a minimum of [~~five~~] three calendar years from the closing date  
21 of the last qualifying period for which the taxpayer received  
22 the credit if the taxpayer:

23 (1) lost eligibility to claim a tax credit  
24 from a previous application pursuant to Subsection E or N of  
25 this section; or

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1 (2) reduces its total full-time employees in  
2 New Mexico by more than [~~five~~] ten percent after the date on  
3 which the last qualifying period on the taxpayer's previous  
4 application ends.

5 P. The economic development department and the  
6 taxation and revenue department shall report to the appropriate  
7 interim legislative committee each year the cost of this tax  
8 credit to the state and its impact on company recruitment and  
9 job creation.

10 Q. As used in this section:

11 (1) "benefits" means all remuneration for work  
12 performed that is provided to an employee in whole or in part  
13 by the employer, other than wages, including the employer's  
14 contributions to insurance programs, health care, medical,  
15 dental and vision plans, life insurance, employer contributions  
16 to pensions, such as a 401(k), and employer-provided services,  
17 such as child care, offered by an employer to the employee;

18 (2) "consecutive qualifying periods" means the  
19 three qualifying periods successively following the qualifying  
20 period in which the new high-wage economic-based job was  
21 created;

22 (3) "department" means the taxation and  
23 revenue department;

24 (4) "domicile" means the sole place where an  
25 individual has a true, fixed, permanent home. It is the place

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1 where the individual has a voluntary, fixed habitation of self  
2 and family with the intention of making a permanent home;

3 (5) "eligible employee" means an individual  
4 who is employed in New Mexico by an eligible employer and who  
5 is a resident of New Mexico; "eligible employee" does not  
6 include an individual who:

7 (a) bears any of the relationships  
8 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
9 152(a) to the employer or, if the employer is a corporation, to  
10 an individual who owns, directly or indirectly, more than fifty  
11 percent in value of the outstanding stock of the corporation  
12 or, if the employer is an entity other than a corporation, to  
13 an individual who owns, directly or indirectly, more than fifty  
14 percent of the capital and profits interest in the entity;

15 (b) if the employer is an estate or  
16 trust, is a grantor, beneficiary or fiduciary of the estate or  
17 trust or is an individual who bears any of the relationships  
18 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
19 152(a) to a grantor, beneficiary or fiduciary of the estate or  
20 trust;

21 (c) is a dependent, as that term is  
22 described in 26 U.S.C. Section 152(a)(9), of the employer or,  
23 if the taxpayer is a corporation, of an individual who owns,  
24 directly or indirectly, more than fifty percent in value of the  
25 outstanding stock of the corporation or, if the employer is an

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1 entity other than a corporation, of an individual who owns,  
2 directly or indirectly, more than fifty percent of the capital  
3 and profits interest in the entity or, if the employer is an  
4 estate or trust, of a grantor, beneficiary or fiduciary of the  
5 estate or trust; or

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

13 (6) "eligible employer" means:

14 (a) an employer: [~~that:—(a)~~] 1) that  
15 sold and delivered more than fifty percent of its goods  
16 produced in New Mexico or non-retail services performed in New  
17 Mexico to persons outside New Mexico for use or resale outside  
18 New Mexico during the applicable qualifying period; provided  
19 that the fifty percent of those goods or services is measured  
20 by the eligible employer's gross receipts; [~~(b)~~] 2) that is  
21 receiving or is eligible to receive development training  
22 program assistance pursuant to Section 21-19-7 NMSA 1978 during  
23 the applicable qualifying period; and [~~(c)~~] 3) whose principal  
24 business activities, at the location in New Mexico where the  
25 work is performed by the eligible employees for [which] whom

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1 the high-wage jobs tax credit is being claimed, consist of  
2 manufacturing or performing non-retail services during the  
3 applicable qualifying period; or

4 (b) an employer that is the corporate  
5 entity's regional or national corporate headquarters, as that  
6 term is defined in Section 7-4-10 NMSA 1978;

7 (7) "for use or resale outside New Mexico"  
8 means that the person who purchases the eligible employer's  
9 goods or services uses or resells the goods or services outside  
10 New Mexico or makes initial use of the goods or services  
11 outside New Mexico. If the purchaser conducts business in  
12 multiple states, goods and services are deemed for use or  
13 resale outside New Mexico, unless New Mexico is the primary  
14 market for the purchaser's goods or services;

15 (8) "full-time employee" means an employee who  
16 works for the same employer an average of at least thirty-two  
17 hours per week for at least forty-eight weeks per year;

18 (9) "manufacturing" means "manufacturing" as  
19 that term is used in Section 7-9A-3 NMSA 1978;

20 (10) "modified combined tax liability" means  
21 the total liability for the reporting period for the gross  
22 receipts tax imposed by Section 7-9-4 NMSA 1978 together with  
23 any tax collected at the same time and in the same manner as  
24 the gross receipts tax, such as the compensating tax, the  
25 withholding tax, the interstate telecommunications gross

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1 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA  
2 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,  
3 minus the amount of any credit other than the high-wage jobs  
4 tax credit applied against any or all of these taxes or  
5 surcharges; but "modified combined tax liability" excludes all  
6 amounts collected with respect to local option gross receipts  
7 taxes;

8 (11) "new high-wage economic-based job" means  
9 a new job created in New Mexico by an eligible employer on or  
10 after July 1, 2004 and prior to July 1, 2020 that is occupied  
11 for at least forty-eight weeks of a qualifying period by an  
12 eligible employee who is paid wages calculated for the  
13 qualifying period to be at least:

14 (a) for a new high-wage economic-based  
15 job created prior to July 1, 2015: 1) forty thousand dollars  
16 (\$40,000) if the job is performed or based in or within ten  
17 miles of the external boundaries of a municipality with a  
18 population of sixty thousand or more according to the most  
19 recent federal decennial census or in a class H county; and 2)  
20 twenty-eight thousand dollars (\$28,000) if the job is performed  
21 or based in a municipality with a population of less than sixty  
22 thousand according to the most recent federal decennial census  
23 or in the unincorporated area, that is not within ten miles of  
24 the external boundaries of a municipality with a population of  
25 sixty thousand or more, of a county other than a class H

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1 county; and

2 (b) for a new high-wage economic-based  
3 job created on or after July 1, 2015: 1) sixty thousand  
4 dollars (\$60,000) if the job is performed or based in or within  
5 ten miles of the external boundaries of a municipality with a  
6 population of sixty thousand or more according to the most  
7 recent federal decennial census or in a class H county; and 2)  
8 forty thousand dollars (\$40,000) if the job is performed or  
9 based in a municipality with a population of less than sixty  
10 thousand according to the most recent federal decennial census  
11 or in the unincorporated area, that is not within ten miles of  
12 the external boundaries of a municipality with a population of  
13 sixty thousand or more, of a county other than a class H  
14 county;

15 (12) "non-retail service" means a specialized  
16 service, excluding a construction service of any type, that is  
17 sold to another business or business entity and is used by the  
18 business or business entity to develop products for or deliver  
19 services to its customers. "Non-retail service" is not  
20 provided by direct individual-to-individual interaction and is  
21 not offered to the general public by the business or business  
22 entity. "Non-retail service" includes:

23 (a) research, development, engineering  
24 and testing services performed for a manufacturer that uses the  
25 product of the service to develop new or improve existing

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1 products;

2 (b) software and software application  
3 development services performed for a business;

4 (c) data processing and hosting services  
5 performed for a business that uses the service to deliver  
6 products or service to its own customers;

7 (d) digital film production services and  
8 post-film production services performed for a business that  
9 will market the digital product or film;

10 (e) customer or call center services  
11 performed for a business, if those services do not support  
12 retail activities of the eligible employer; and

13 (f) professional services, such as  
14 accounting, engineering, legal and information technology  
15 services, if the eligible employer does not offer those  
16 services for sale to the general public;

17 (13) "performed in New Mexico" means that the  
18 labor, activities, property and equipment necessary to  
19 complete, but not to deliver, a service all occur or are  
20 utilized within New Mexico;

21 (14) "produced in New Mexico" means the  
22 creation, bringing into existence or making available a good or  
23 product for commercial sale through the expense of labor or  
24 capital, or both, within New Mexico;

25 (15) "qualifying period" means the period of

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1 twelve months beginning on the day an eligible employee begins  
2 working in a new high-wage economic-based job or the period of  
3 twelve months beginning on the anniversary of the day an  
4 eligible employee began working in a new high-wage economic-  
5 based job;

6 (16) "resident" means a natural person whose  
7 domicile is in New Mexico at the time of hire or within one  
8 hundred eighty days of the date of hire;

9 (17) "threshold job" means a job that is  
10 occupied for at least forty-eight weeks of a calendar year by  
11 an eligible employee and that meets the wage requirements for a  
12 "new high-wage economic-based job"; and

13 (18) "wages" means all compensation paid by an  
14 eligible employer to an eligible employee through the  
15 employer's payroll system, including those wages that the  
16 employee elects to defer or redirect or the employee's  
17 contribution to a 401(k) or cafeteria plan program, but "wages"  
18 does not include benefits or the employer's share of payroll  
19 taxes, social security or medicare contributions, federal or  
20 state unemployment insurance contributions or workers'  
21 compensation."

22 SECTION 2. APPLICABILITY.--The provisions of this act  
23 apply to reporting periods beginning on or after July 1, 2017.