

underscoring 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 462

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO THE MINIMUM WAGE; INCREASING THE MINIMUM WAGE;
PROVIDING A TAX CREDIT TO BE TAKEN AGAINST A TAXPAYER'S
MODIFIED COMBINED TAX LIABILITY FOR SMALL BUSINESSES TO REDUCE
THE IMPACT OF INCREASING WAGES TO THE NEW MINIMUM WAGE;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 50-4-22 NMSA 1978 (being Laws 1955,
Chapter 200, Section 3, as amended by Laws 2005, Chapter 302,
Section 1 and by Laws 2005, Chapter 306, Section 1) is amended
to read:

"50-4-22. MINIMUM WAGES.--

A. An employer, except as provided in Section
50-4-21 NMSA 1978, shall pay the minimum wage rate of [~~five
dollars fifteen cents (\$5.15)~~] seven dollars fifty cents

underscored material = new
[bracketed material] = delete

1 (\$7.50) an hour, except that an employer furnishing food,
2 utilities, supplies or housing to an employee who is engaged in
3 agriculture may deduct the reasonable value of such furnished
4 items from any wages due to the employee.

5 B. An employee subject to Subsection A of this
6 section who customarily and regularly receives more than thirty
7 dollars (\$30.00) a month in tips shall be paid a minimum hourly
8 wage of [~~two dollars thirteen cents (\$2.13)~~] three dollars ten
9 cents (\$3.10). The employer may consider tips as part of
10 wages, but the tips combined with the employer's cash wage
11 shall not equal less than [~~five dollars sixty cents (\$5.60)~~]
12 seven dollars fifty cents (\$7.50) per hour. All tips received
13 by such employees shall be retained by the employee, except
14 that nothing in this section shall prohibit the pooling of tips
15 among employees.

16 C. An employee subject to the provisions of
17 Subsection A of this section shall not be required to work more
18 than forty hours in any week of seven days, unless the employee
19 is paid one and one-half times the employee's regular hourly
20 rate of pay for all hours worked in excess of forty hours. For
21 an employee who is paid a fixed salary for fluctuating hours
22 and who is employed by an employer a majority of whose business
23 in New Mexico consists of providing investigative services to
24 the federal government, the hourly rate may be calculated in
25 accordance with the provisions of the federal Fair Labor

.158683.2

underscored material = new
[bracketed material] = delete

1 Standards Act of 1938 and the regulations pursuant to that act;
2 provided that in no case shall the hourly rate be less than the
3 federal minimum wage."

4 Section 2. A new section of Chapter 7, Article 9G NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] SMALL BUSINESS MINIMUM WAGE TAX CREDIT.--

7 A. A tax credit to be known as the "small business
8 minimum wage tax credit" may be taken for a three-year period
9 beginning in 2007 by a taxpayer against the taxpayer's total
10 modified combined tax liability on modified combined tax
11 liability tax reports due on or after February 25, 2007.

12 B. A small business that pays increased wages to
13 one or more employees due to the increase in the minimum wage
14 on January 1, 2007 may deduct the amount of the small business
15 minimum wage tax credit due for the period for which the
16 taxpayer is reporting.

17 C. The small business minimum wage tax credit may
18 be taken for each reporting period during 2007 through 2009 in
19 an amount equal to the total difference in wages paid to all
20 employees whose salaries increased to seven dollars fifty cents
21 (\$7.50) per hour due to the increase in the minimum wage on
22 January 1, 2007 multiplied by:

23 (1) for reports due for 2007 modified combined
24 tax liability, forty percent;

25 (2) for reports due for 2008 modified combined
.158683.2

underscored material = new
[bracketed material] = delete

1 tax liability, thirty percent; and

2 (3) for reports due for 2009 modified combined
3 tax liability, twenty percent.

4 D. To calculate the difference in wages for an
5 individual employee, the taxpayer shall subtract the wage paid
6 immediately prior to January 1, 2007 from seven dollars fifty
7 cents (\$7.50) and multiply that amount by the number of hours
8 worked by the employee during the reporting period.

9 E. The small business minimum wage tax credit may
10 only be deducted from the taxpayer's modified combined tax
11 liability. Any portion of the small business minimum wage tax
12 credit that remains at the end of the taxpayer's reporting
13 period may be carried forward for three years until the
14 reporting period including December 31, 2012.

15 F. The small business minimum wage tax credit shall
16 be administered by the department pursuant to the provisions of
17 the Tax Administration Act.

18 G. As used in this section:

19 (1) "department" means the taxation and
20 revenue department;

21 (2) "employee" means a person employed by a
22 small business on a full-time, part-time, seasonal or temporary
23 basis and includes the owner and employees that are related to
24 the owner who are employed in the small business; "employee"
25 only includes a person who was employed by the small business

.158683.2

underscored material = new
[bracketed material] = delete

1 prior to January 1, 2007 and whose employment has continued
2 without interruption into the reporting period for which the
3 small business minimum wage tax credit is being claimed;

4 (3) "modified combined tax liability" means
5 the total liability for the reporting period for the gross
6 receipts tax imposed by Section 7-9-4 NMSA 1978 together with
7 any tax collected at the same time and in the same manner as
8 that gross receipts tax, such as the compensating tax, the
9 withholding tax, the interstate telecommunications gross
10 receipts tax, the surcharge imposed by Section 63-9D-5 NMSA
11 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
12 minus the amount of any credit other than the small business
13 minimum wage tax credit applied against any or all of those
14 taxes or surcharges; provided that "modified combined tax
15 liability" excludes all amounts collected with respect to local
16 option gross receipts taxes;

17 (4) "reporting period" means the time interval
18 for which a taxpayer is reporting gross receipts tax,
19 compensating tax and all other taxes reported at the same time
20 on the same form as required by the department;

21 (5) "small business" means a business located
22 in New Mexico that employs twenty-five or fewer employees and
23 that has total annual revenue of less than five million dollars
24 (\$5,000,000); provided, however, that calculations for
25 determining the number of employees or the total revenue shall

.158683.2

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

1 include all of the employees or all revenue generated at all
2 locations of the business whether located within or outside of
3 the state; and

4 (6) "taxpayer" means a person who is liable
5 for payment of a tax or to whom an assessment has been made, if
6 the assessment remains unabated or the amount of the assessment
7 has not been paid."

8 Section 3. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is January 1, 2007.