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SENATE BILL 620

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO TAXATION; PROVIDING FOR A TAX CREDIT FOR NEW
ENERGY-EXPORTING INDUSTRIES JOBS.

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

Section 1. A new section of Chapter 7 NMSA 1978 is
enacted to read:

"~~[NEW MATERIAL]~~ ENERGY-EXPORTING INDUSTRIES JOBS TAX
CREDIT--QUALIFYING ENERGY-EXPORTING JOBS.--"

A. A taxpayer who is an eligible employer may apply
for, and the taxation and revenue department may allow, a tax
credit for each new energy-exporting industries job. The
credit provided in this section may be referred to as the
"energy-exporting industries jobs tax credit".

B. The energy-exporting industries jobs tax credit
may be claimed and allowed in an amount equal to twenty-five

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1 percent of the wages and benefits distributed to an eligible
2 employee in a new energy-exporting industries job, but shall
3 not exceed forty thousand dollars (\$40,000).

4 C. The energy-exporting industries jobs tax credit
5 may be claimed by an eligible employer for each new energy-
6 exporting industries job performed for the year in which the
7 new energy-exporting industries job is created.

8 D. With respect to each new energy-exporting
9 industries job for which an eligible employer seeks the tax
10 credit, the employer shall certify:

11 (1) the amount of wages paid to each eligible
12 employee in a new job during each qualifying period;

13 (2) the number of weeks the position was
14 occupied during the qualifying period;

15 (3) whether the new energy-exporting
16 industries job was in a municipality with a population of forty
17 thousand or more, or with a population of less than forty
18 thousand, according to the most recent federal decennial
19 census, and whether the job was in the unincorporated area of a
20 county; and

21 (4) the total number of employees employed by
22 the employer at the job location on the day prior to the
23 qualifying period and on the last day of the qualifying period.

24 E. To receive an energy-exporting industries jobs
25 tax credit with respect to any qualifying period, an eligible

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1 employer shall apply to the taxation and revenue department on
2 forms and in the manner prescribed by the department. The
3 application shall include a certification made pursuant to this
4 section.

5 F. The credit provided in this section may be
6 deducted from the modified combined tax liability of a
7 taxpayer. If the credit exceeds the modified combined tax
8 liability of the taxpayer, the excess shall be refunded to the
9 taxpayer.

10 G. The economic development department shall report
11 to the appropriate interim legislative committee before
12 November 1 of each year the cost of this tax credit to the
13 state and its impact on company recruitment and job creation.

14 H. As used in this section:

15 (1) "benefits" means any employee benefit plan
16 as defined in Title 1, Section 3 of the federal Employee
17 Retirement Income Security Act of 1974, 29 U.S.C. 1002;

18 (2) "eligible employee" means an individual
19 who is employed by an eligible employer and who is a resident
20 of New Mexico; "eligible employee" does not include an
21 individual who:

22 (a) bears any of the relationships
23 described in Paragraphs (1) through (8) of 26 U.S.C. Section
24 152(a) to the employer or, if the employer is a corporation, to
25 an individual who owns, directly or indirectly, more than fifty

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1 percent in value of the outstanding stock of the corporation
2 or, if the employer is an entity other than a corporation, to
3 an individual who owns, directly or indirectly, more than fifty
4 percent of the capital and profits interest in the entity;

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

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

21 (d) is working or has worked as an
22 employee or as an independent contractor for an entity that
23 directly or indirectly owns stock in a corporation of the
24 eligible employer or other interest of the eligible employer
25 that represents fifty percent or more of the total voting power

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1 of that entity or has a value equal to fifty percent or more of
2 the capital and profits interest in the entity;

3 (3) "eligible employer" means an employer in
4 the energy-exporting industries that:

5 (a) made more than fifty percent of its
6 sales to persons outside New Mexico during the most recent
7 twelve months of the employer's modified combined tax liability
8 reporting periods ending prior to claiming an energy-exporting
9 industries jobs tax credit; or

10 (b) is eligible for development training
11 program assistance pursuant to Section 21-19-7 NMSA 1978;

12 (4) "modified combined tax liability" means
13 the total liability for the reporting period for the gross
14 receipts tax imposed by Section 7-9-4 NMSA 1978 together with
15 any tax collected at the same time and in the same manner as
16 the gross receipts tax, such as the compensating tax, the
17 withholding tax, the interstate telecommunications gross
18 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
19 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
20 minus the amount of any credit other than the energy-exporting
21 industries jobs tax credit applied against any or all of these
22 taxes or surcharges; but "modified combined tax liability"
23 excludes all amounts collected with respect to local option
24 gross receipts taxes;

25 (5) "new energy-exporting industries job"

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1 means a job created by an eligible employer on or after July 1,
2 2009 that is occupied for at least forty-eight weeks of a
3 qualifying period by an eligible employee;

4 (6) "qualifying period" means the period of
5 twelve months beginning on the day an eligible employee begins
6 working in a new job or the period of twelve months beginning
7 on the anniversary of the day an eligible employee began
8 working in a new energy-exporting industries job; and

9 (7) "wages" means wages as defined in
10 Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c)."

11 Section 2. APPLICABILITY.--The provisions of this act
12 apply to taxable years beginning on or after January 1, 2010.