LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS

Bill Number: HB 499 **51st Legislature, 1st Session, 2013**

Tracking Number: .191573.3

Short Title: New Jobs Income & Corporate Income Tax Credit

Sponsor(s): Representative Don L. Tripp and Others

Analyst: Ian Kleats **Date: February 18, 2013**

Bill Summary:

HB 499 adds new material to the *Personal Income Tax Act* and the *Corporate Income and Franchise Tax Act* to provide a $1,000 tax credit for the creation of each new job by qualified businesses. Among its other provisions, HB 499 would:

- define eligible employers, eligible employees, and new jobs, where:
  - "eligible employer" means an employer employing fewer than 100 employees as of its final quarterly contribution and wage report of 2012;
  - "eligible employee" means a person employed in New Mexico and hired between January 1, 2013 and December 31, 2014 who, among other restrictions, does not own a controlling share in the business for which the person is employed; and
  - "new job" means a job created on or after January 1, 2013 and prior to December 31, 2014;

- verify taxpayer employment data from quarterly contribution and wage reports currently filed with the Department of Workforce Solutions (DWS);
- enable the Taxation and Revenue Department (TRD) to reclaim credits from taxpayers if eligible jobs are eliminated or if the total number of eligible jobs decreases;
- allow taxpayers to carry forward credits in excess of the taxpayer's income tax liability for up to three years;
- set the maximum aggregate amount of credits issued under both personal and corporate income taxes at $20.0 million across the life of the tax credit; and
- require that taxpayers apply for any new jobs tax credits on or before April 15, 2015.

Fiscal Impact:

HB 499 does not contain an appropriation.

Estimated Revenue Impact*				R or NR**	Fund(s) Affected
FY 13	FY 14	FY 15	FY 16		
0	(5,681)	(14,319)	0	R	General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss.
** Recurring (R) or Non-Recurring (NR).

Estimates provided by the TRD and the Department of Finance and Administration (DFA) are based on *net* creation of new jobs by small business. However, the provisions of HB 499 consider job creation on a firm-specific basis. This distinction means that an eligible employer could still increase its employment at the expense of some other employer; *net* job change in this scenario would be zero, but a "new jobs income tax credit" could be claimed. As a result, the estimates by TRD and DFA likely understate the actual revenue impact of the credit.

The LESC estimate attempts to account for gross, rather than net, job creation by small business by assuming that gross job creation would comprise an additional 10 percent of net small-business jobs created as estimated by DFA. Accounting for gross job creation would result in a modest increase to the FY 14 impact and a smaller increase to FY 15 because the aggregate cap would be reached.

Fiscal Issues:

The estimated fiscal impact of HB 499 could reduce General Fund revenue by approximately $5.7 million in FY 14 and $14.3 million in FY 15.

Based on *General Appropriation Act* appropriations for the last five years, the Legislature has appropriated approximately 43.5 percent of General Fund revenue for public education. The reduction of revenue from the General Fund as proposed in this bill could result in decreased annual appropriations of $2.47 million in FY 14 and $6.23 million in FY 15 for public education.

Substantive Issues:

Economic multiplier effects of any tax expenditure should be judged relative to multiplier effects from the likely use of the foregone government revenue. General Fund appropriations comprise many diverse uses, with the largest proportion going to fund public education. Without strong evidence to the contrary, an assertion that tax credits have an economic multiplier higher than economic base jobs and expenditures associated with public education or any other governmental program might be considered speculative.

Moreover, New Mexico's State Equalization Guarantee education funding formula implies that over 40 percent of government revenue would be spread equitably across the state, affecting small rural communities in a proportionate level to larger urban communities. It is unclear whether this tax credit could ensure the same equitable economic impact to all communities that public school funding would provide, even absent any discussion of the relative economic multiplier effects of the tax policy.

The TRD bill analysis notes that an employer may be eligible to double-dip, claiming multiple credits for the same new job. According to TRD, other employment-based tax credits include the High-Wage Jobs Tax Credit, Investment Credit, Job Mentorship Tax Credit, Rural Job Tax credit, Technology Jobs Tax Credit, and Veteran Employment Tax Credit.

Technical Issues:

Page 8, lines 7-9, and page 15, lines 6-8, contain definitions for eligible employers. Although the stated purpose of the tax credit is "to provide an incentive for small businesses to create and fill jobs in New Mexico," the definition of eligible employer could allow large businesses relocating to New Mexico to qualify for the tax credit. As a result, it is unclear whether the definition of eligible employers is consistent with the stated purpose of HB 499.

The DFA bill analysis notes several technical issues in that qualification criteria might pertain more to a “new job” than an “eligible employee.” For instance, the DFA analysis suggests that, in the event an employee voluntarily leaves employment or is dismissed with cause but is subsequently replaced with a new employee, an employer should still be eligible for the credit. For this reason, the DFA analysis recommends several amendments:

- page 2, line 4, insert “new job performed by an” after “each”;
- page 2, line 5, insert “a total of forty-eight weeks of the” after “for” and delete “a full”;
- page 2, line 6, insert “performing a new job” after “employee”;
- page 2, line 7, insert “forty-eight weeks of the” after “than” and deleting “the full”;
- page 2, line 9, insert “performed the new job” after “employee” and delete “was employed”; and
- make corresponding amendments to Section 2 of the bill.

In addition, Subsection F on page 3 provides that a tax credit shall not be granted for a new job if the total number of eligible employees is less than the total number of eligible employees employed by the taxpayer on December 31, 2012. Because an eligible employee is a person hired on or after January 1, 2013, employers will have zero eligible employees on December 31, 2012. Section 2 of the bill contains an identical Subsection F beginning on page 10. The DFA analysis suggests that this concern could be addressed by striking “eligible” from page 3, lines 15 and 18, and page 10, lines 22 and 25.

Finally, in Section 1, Subsections M and N appear to be in conflict. If “eligible” were struck from page 6, lines 1 and 3, Subsection M would refer to total employment decreasing from the previous year rather than decreases in eligible employment, which would remove the conflict; Subsection M would set standards for total employment whereas Subsection N would relate to changes in eligible employment. Corresponding issues could be addressed in Section 2 for Subsections K and L.

Background:

The DFA bill analysis, citing the DWS, states that New Mexico’s economy lost 3,200 jobs from December 2011 to December 2012, with the current round of job losses starting in June 2012 after 10 consecutive months of job growth. The biggest recorded job loss for the year was in August 2012 when DWS reported a loss of 13,000 jobs from the prior year. Albuquerque lost 2,300 jobs in December 2012, marking its 13th consecutive month of job losses. The largest job declines have been in professional and business services. Job growth in the construction industry continues to lag behind other sectors, and New Mexico has the worst job growth record in the region.

Committee Referrals:

HTRC/HAFC

Related Bills:

HB 559 *Small Business Gross Receipts*
SB 293 *New Business Tax Credit & Assessment*