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SENATE BILL 211

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Phil A. Griego

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; CLARIFYING APPLICATION OF THE HIGH-WAGE JOBS TAX CREDIT; DEFINING "BENEFITS" AND "WAGES"; EXTENDING THE CREDIT FOR FIVE YEARS; DECLARING AN EMERGENCY.

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

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

"7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING HIGH-WAGE 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 high-wage economic-based job. The credit provided in this section may be referred to as the "high-wage jobs tax credit".

B. The purpose of the high-wage jobs tax credit is

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1 to provide an incentive for urban and rural businesses to
2 create and fill new high-wage jobs in New Mexico.

3 ~~[B.]~~ C. The high-wage jobs tax credit may be
4 claimed and allowed in an amount equal to ten percent of the
5 wages and benefits distributed to an eligible employee in a new
6 high-wage economic-based job, but shall not exceed twelve
7 thousand dollars (\$12,000) per job per year.

8 ~~[G.]~~ D. The high-wage jobs tax credit may be
9 claimed by an eligible employer for each new high-wage
10 economic-based job performed for the calendar year in which the
11 new high-wage economic-based job is created and for the three
12 following qualifying periods. A taxpayer shall apply for
13 approval for the credit within one year following the end of
14 the calendar year in which the qualifying period closes.

15 ~~[D.]~~ E. A new high-wage economic-based job shall
16 not be eligible for a credit pursuant to this section unless
17 the eligible employer's total number of employees [~~with new~~
18 ~~high-wage economic-based jobs~~] on the last day of the
19 qualifying period at the location at which the job is performed
20 or based is at least one more than the number on the day prior
21 to the date the new high-wage economic-based job was created.

22 F. A new high-wage economic-based job shall not be
23 eligible for a credit pursuant to this section if:

24 (1) the new high-wage economic-based job is
25 created due to a business merger or acquisition or other change

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1 in business organization;

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

6 (3) the new high-wage economic-based job is
7 performed by:

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

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

15 G. Notwithstanding the provisions of Subsection F
16 of this section, a new high-wage economic-based job that was
17 created by another employer and for which an application for
18 the high-wage jobs tax credit was received and is under review
19 by the taxation and revenue department prior to the time of the
20 business merger or acquisition or other change in business
21 organization shall remain eligible for the high-wage jobs tax
22 credit for the balance of the qualifying periods. The new
23 employer that results from a business merger or acquisition or
24 other change in business organization may only claim the high-
25 wage jobs tax credit for the balance of the qualifying period

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1 for which the qualifying job is otherwise eligible.

2 H. A job shall not be eligible for a credit
3 pursuant to this section if the job is created due to an
4 eligible employer entering into a contract or becoming a
5 subcontractor to a contract with a governmental entity that
6 replaces one or more entities performing functionally
7 equivalent services for the governmental entity unless the job
8 is a new high-wage economic-based job that was not being
9 performed by an employee of the replaced entity.

10 ~~[E.]~~ I. With respect to each new high-wage
11 economic-based job for which an eligible employer seeks the
12 high-wage jobs tax credit, the employer shall certify:

13 (1) the amount of wages and benefits paid to
14 each eligible employee in a new high-wage economic-based job
15 during each qualifying period;

16 (2) the number of weeks the position was
17 occupied during the qualifying period;

18 (3) whether the new high-wage economic-based
19 job was in a municipality with a population of [~~forty~~] sixty
20 thousand or more or with a population of less than [~~forty~~]
21 sixty thousand according to the most recent federal decennial
22 census and whether the job was in the unincorporated area of a
23 county; and

24 (4) the total number of employees employed by
25 the employer at the job location on the day prior to the

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1 qualifying period and on the last day of the qualifying period.

2 [F.] J. To receive a high-wage jobs tax credit with
3 respect to any qualifying period, an eligible employer shall
4 apply to the taxation and revenue department on forms and in
5 the manner prescribed by the department. The application shall
6 include a certification made pursuant to Subsection [E] I of
7 this section. Applications for the high-wage jobs tax credit
8 shall be considered in the order received by the taxation and
9 revenue department.

10 [G.] K. The credit provided in this section may be
11 deducted from the modified combined tax liability of a
12 taxpayer. If the credit exceeds the modified combined tax
13 liability of the taxpayer, the excess shall be refunded to the
14 taxpayer.

15 [H.] L. The economic development department shall
16 report to the appropriate interim legislative committee before
17 November 1 of each year the cost of this tax credit to the
18 state and its impact on company recruitment and job creation.

19 [I.] M. As used in this section:

20 [~~(1)~~] "~~benefits~~" means ~~any employee benefit~~
21 ~~plan as defined in Title 1, Section 3 of the federal Employee~~
22 ~~Retirement Income Security Act of 1974, 29 U.S.C. 1002;~~

23 (1) "benefits" means all remuneration for work
24 performed that is provided to an employee in whole or in part
25 by the employer, other than wages, including insurance

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1 programs, health care, medical, dental and vision plans, life
2 insurance, employer contributions to pensions, such as a
3 401(k), and employer-provided services, such as child care,
4 offered by an employer to the employee. "Benefits" does not
5 include the employer's share of payroll taxes, social security
6 or medicare contributions, federal or state unemployment
7 insurance contributions or workers' compensation;

8 (2) "eligible employee" means an individual
9 who is employed in New Mexico by an eligible employer and who
10 is a resident of New Mexico; "eligible employee" does not
11 include an individual who:

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

20 (b) if the employer is an estate or
21 trust, is a grantor, beneficiary or fiduciary of the estate or
22 trust or is an individual who bears any of the relationships
23 described in Paragraphs (1) through (8) of 26 U.S.C. Section
24 152(a) to a grantor, beneficiary or fiduciary of the estate or
25 trust;

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1 (c) is a dependent, as that term is
2 described in 26 U.S.C. Section 152(a)(9), of the employer or,
3 if the taxpayer is a corporation, of an individual who owns,
4 directly or indirectly, more than fifty percent in value of the
5 outstanding stock of the corporation or, if the employer is an
6 entity other than a corporation, of an individual who owns,
7 directly or indirectly, more than fifty percent of the capital
8 and profits interest in the entity or, if the employer is an
9 estate or trust, of a grantor, beneficiary or fiduciary of the
10 estate or trust; or

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

18 (3) "eligible employer" means an employer that
19 [~~(a) made more than fifty percent of its sales to persons~~
20 ~~outside New Mexico during the most recent twelve months of the~~
21 ~~employer's modified combined tax liability reporting periods~~
22 ~~ending prior to claiming a high-wage jobs tax credit; or (b)]
23 is certified by the economic development department to be
24 eligible for development training program assistance pursuant
25 to Section 21-19-7 NMSA 1978;~~

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

14 (5) "new high-wage economic-based job" means a
15 new job created in New Mexico by an eligible employer on or
16 after July 1, 2004 and prior to July 1, ~~[2015]~~ 2020 that is
17 occupied for at least forty-eight weeks of a qualifying period
18 by an eligible employee who is paid wages calculated for the
19 qualifying period to be at least:

20 (a) forty thousand dollars (\$40,000) if
21 the job is performed or based: 1) in or within ten miles of
22 the external boundaries of a municipality with a population of
23 ~~[forty]~~ sixty thousand or more according to the most recent
24 federal decennial census; or 2) in a class H county; and

25 (b) twenty-eight thousand dollars

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1 (\$28,000) if the job is performed or based in: 1) a
2 municipality with a population of less than [~~forty~~] sixty
3 thousand according to the most recent federal decennial census;
4 or 2) in the unincorporated area of a county other than a class
5 H county;

6 (6) "qualifying period" means the period of
7 twelve months beginning on the day an eligible employee begins
8 working in a new high-wage economic-based job or the period of
9 twelve months beginning on the anniversary of the day an
10 eligible employee began working in a new high-wage economic-
11 based job; and

12 (7) "wages" means [~~wages as defined in~~
13 ~~Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(e)] all
14 compensation paid by an eligible employer to an eligible
15 employee through the employer's payroll system, including those
16 wages that the employee elects to defer or redirect or the
17 employee's contribution to a 401(k) or cafeteria plan program,
18 but "wages" does not include benefits or the employer's share
19 of payroll taxes."~~

20 SECTION 2. APPLICABILITY.--The provisions of this act
21 apply to taxable years beginning on or after January 1, 2013.

22 SECTION 3. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect immediately.