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FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/13

SPONSOR Tripp LAST UPDATED 02/15/13 HB 499

SHORT TITLE New Jobs Income & Corporate Income Tax Credit SB _____

ANALYST van Moorsel

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15	FY16	FY17		
	(\$5,200.0)	(\$14,300.0)	\$0.0	\$0.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)
 Economic Development Department (EDD)

SUMMARY

Synopsis of Bill

House Bill 499 (HB 499) amends the Income Tax Act and the Corporate Income Tax Act to create a nonrefundable, nontransferable “new jobs income tax credit.”

The bill would allow an eligible employer who employs fewer than 100 employees to claim a credit equal to \$1 thousand for each eligible employee employed by an eligible employer for a full taxable year. Eligible employees must be hired between January 1, 2013 and December 31, 2014. To be eligible for the credit, the taxpayer shall pay wages to an eligible employee performing the new job for a period of forty-eight full-time work weeks, and the credit will be pro-rated for any period of time less than one year.

For an employee employed less than a full taxable year, the amount of the credit is multiplied by the fraction of the taxable year for which the employee was employed. The tax credit would be applied against the taxpayer’s personal and corporate income tax liability. The bill provides that the credit is not available for new jobs if:

- the new job is created due to a business merger or acquisition or other change in business organization;

- the eligible employee was terminated from employment in New Mexico by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and
- the new job is performed by (a) the person who performed the job or its functional equivalent prior to the business merger or acquisition or other change in business organization; or (b) a person replacing that person.
- the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is a new job that was not being performed by an employee of the replaced entity;
- the total number of eligible employees employed by the taxpayer on the last day of the pay period during which the eligible employee was hired is less than the total number of eligible employees employed by the taxpayer on December 31, 2012.

HB 499 caps the total new jobs income tax credit at \$20 million (against both personal and corporate income tax). Applications for the credit must be received by the Taxation and Revenue Department (TRD) on or before April 15, 2015. Any portion of the credit in excess of a taxpayer's income tax liability may be carried forward for up to three years.

For three years after the end of the tax year for which the income tax credit is approved, HB 499 requires an eligible employer to repay 100 percent of the income tax liability against which all new jobs income tax credits are taken if the number of eligible employees decreases from the number of eligible employees employed by the taxpayer in the previous year. The bill also provides for the partial repayment of the credit according to the following schedule:

- 90 percent of the credit amount if, within one year of the creation of the new job for which the credit is approved, the new job is eliminated or is vacant at least five weeks;
- 75 percent of the credit amount if, within two years of the creation of the new job, it is eliminated or is vacant at least five weeks; and
- 50 percent of the credit amount if, within three years of the creation of the new job, it is eliminated or is vacant for at least five weeks.

Any amounts repaid pursuant to the provisions described above are applied to the \$20 million maximum aggregate amount of the credit.

The bill requires taxpayers applying for the credit to provide information to the TRD concerning the employer's qualification for the credit and the employee's eligibility.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends (June 14, 2013).

FISCAL IMPLICATIONS

The Department of Finance and Administration's (DFA) analysis of the impact of HB 499 uses net new job data compiled by the Statistics of U.S. Businesses (SUSB) to determine the number of New Mexican jobs created by firms with fewer than 100 employees each year. Future annual job creation for these firms is extrapolated from Moody's Analytics private employment forecast. This estimate is multiplied by \$1,000 per job. The analysis assumes all credits claimed

for jobs created in tax year 2013 would be claimed in FY14 and all credits claimed for jobs created in tax year 2014 would be claimed in FY15. The TRD's analysis also projects the estimated growth in eligible jobs over the same period.

The SUSB data include full- and part-time employees on payroll as of March 12 of each year, and does not include the proprietors and partners of unincorporated businesses. The data excludes farm workers, private households and government employees.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

The DFA cites the Workforce Solutions Department, in reporting New Mexico lost 3,200 jobs from December 2011 to December 2012. The current round of job losses started in June after 10 months of job growth. The biggest recorded job loss for the year was in August 2012 when the WSD reported a loss of 13,000 jobs from the prior year. Albuquerque lost 2,300 jobs in December 2012, marking the 13th consecutive month of job losses. The largest job declines have been in professional and business services or economic-based jobs. Job growth in the construction industry continues to lag behind, and New Mexico has the worst job growth record in the region.

The DFA adds that lack of hiring can be attributed to many factors, including economic uncertainty, weak consumer demand and high costs of training and employment. This proposal would provide employers incentive to hire by reducing hiring costs, and would allow employers the flexibility to offer higher wages, thereby attracting better-qualified applicants. Many other states have enacted similar legislation. By tying the incentive to retention requirements the legislation better targets economic-based jobs.

As New Mexico's economy begins to recover from the Great Recession, discouraged workers will begin returning to the labor market, further exacerbating unemployment. HB 499 may better allow small businesses to absorb the excess labor, and reduce unemployment.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is not met since the TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the credit and other information to determine whether the credit is meeting its purpose.

TECHNICAL ISSUES

The DFA identifies several technical issues with HB 499, and proposes the following changes:

- The criteria should pertain to the "new job" not the "eligible employee." In the event, that the employee voluntarily leaves employment or is dismissed, but is subsequently replaced with a new employee, the employer should still be eligible for the credit. For this reason, the DFA recommends the following changes:
 - On page 2, line 4, insert "new job performed by an" after "each."
 - On page 2, line 5, insert "a total of forty-eight weeks of the" after "for" and delete "a full".
 - On page 2, line 6, insert "performing a new job" after "employee".
 - On page 2, line 7, insert "forty-eight weeks of the" after "than" and delete "the full".
 - On page 2, line 9, insert "performed the new job" after "employee" and delete "was employed".
 - On page 3, line 18, "eligible" should be replaced by "total". The definition of eligible employee is a person hired on or after January 1, 2013, so employers will have zero eligible employees on December 31, 2012.
 - On page 5, section M conflicts with the provision on page 6, section N. Recommend deletion of section M.
 - On page 8, line 20, delete the extraneous quotation mark at the end of the sentence.
 - The deadline of April 15, 2015 does not allow new jobs created on December 31, 2014 to be eligible for the full credit. A possible amendment would allow the credit to be claimed no later than April 15, 2016.
 - Corresponding changes should be made within Section 2 of the legislation.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate