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SENATE BILL 151

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Daniel A. Ivey-Soto

AN ACT

RELATING TO TAXATION; DECREASING THE REQUIRED AMOUNT OF WAGES A  
TAXPAYER MUST PAY AN EMPLOYEE TO QUALIFY FOR A HIGH-WAGE JOBS  
TAX CREDIT.

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

8 D. The high-wage jobs tax credit may be claimed by  
9 an eligible employer for each new high-wage economic-based job  
10 performed for the year in which the new high-wage economic-  
11 based job is created and for the three consecutive qualifying  
12 periods. A taxpayer shall apply for approval of the credit  
13 after the close of a qualifying period, but not later than  
14 twelve months following the end of the calendar year in which  
15 the taxpayer's final qualifying period closes.

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

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

25 (1) the new high-wage economic-based job is

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1 created due to a business merger or acquisition or other change  
2 in business organization;

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

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

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

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

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

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1 wage jobs tax credit for the balance of the qualifying period  
2 for which the qualifying job is otherwise eligible.

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

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

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

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

19 (3) whether the new high-wage economic-based  
20 job was in a municipality with a population of sixty thousand  
21 or more or with a population of less than sixty thousand  
22 according to the most recent federal decennial census and  
23 whether the job was in the unincorporated area of a 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 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 I of this  
7 section.

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

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

17 M. As used in this section:

18 (1) "benefits" means all remuneration for work  
19 performed that is provided to an employee in whole or in part  
20 by the employer, other than wages, including insurance  
21 programs, health care, medical, dental and vision plans, life  
22 insurance, employer contributions to pensions, such as a  
23 401(k), and employer-provided services, such as child care,  
24 offered by an employer to the employee. "Benefits" does not  
25 include the employer's share of payroll taxes, social security

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1 or medicare contributions, federal or state unemployment  
2 insurance contributions or workers' compensation;

3 (2) "eligible employee" means an individual  
4 who is employed in New Mexico by an eligible employer and who  
5 is a resident of New Mexico; "eligible employee" does not  
6 include an individual who:

7 (a) bears any of the relationships  
8 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
9 152(a) to the employer or, if the employer is a corporation, to  
10 an individual who owns, directly or indirectly, more than fifty  
11 percent in value of the outstanding stock of the corporation  
12 or, if the employer is an entity other than a corporation, to  
13 an individual who owns, directly or indirectly, more than fifty  
14 percent of the capital and profits interest in the entity;

15 (b) if the employer is an estate or  
16 trust, is a grantor, beneficiary or fiduciary of the estate or  
17 trust or is an individual who bears any of the relationships  
18 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
19 152(a) to a grantor, beneficiary or fiduciary of the estate or  
20 trust;

21 (c) is a dependent, as that term is  
22 described in 26 U.S.C. Section 152(a)(9), of the employer or,  
23 if the taxpayer is a corporation, of an individual who owns,  
24 directly or indirectly, more than fifty percent in value of the  
25 outstanding stock of the corporation or, if the employer is an

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1 entity other than a corporation, of an individual who owns,  
2 directly or indirectly, more than fifty percent of the capital  
3 and profits interest in the entity or, if the employer is an  
4 estate or trust, of a grantor, beneficiary or fiduciary of the  
5 estate or trust; or

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

13 (3) "eligible employer" means an employer  
14 that:

15 (a) made more than fifty percent of its  
16 sales of goods or services produced in New Mexico to persons  
17 outside New Mexico during the applicable qualifying period; or

18 (b) is certified by the economic  
19 development department to be eligible for development training  
20 program assistance pursuant to Section 21-19-7 NMSA 1978;

21 (4) "modified combined tax liability" means  
22 the total liability for the reporting period for the gross  
23 receipts tax imposed by Section 7-9-4 NMSA 1978 together with  
24 any tax collected at the same time and in the same manner as  
25 the gross receipts tax, such as the compensating tax, the

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1 withholding tax, the interstate telecommunications gross  
2 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA  
3 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,  
4 minus the amount of any credit other than the high-wage jobs  
5 tax credit applied against any or all of these taxes or  
6 surcharges; but "modified combined tax liability" excludes all  
7 amounts collected with respect to local option gross receipts  
8 taxes;

9 (5) "new high-wage economic-based job" means a  
10 new job created in New Mexico by an eligible employer on or  
11 after July 1, 2004 and prior to July 1, 2020 that is occupied  
12 for at least forty-eight weeks of a qualifying period by an  
13 eligible employee who is paid wages calculated for the  
14 qualifying period to be at least:

15 (a) for a new high-wage economic-based  
16 job created prior to July 1, 2015: 1) forty thousand dollars  
17 (\$40,000) if the job is performed or based in or within ten  
18 miles of the external boundaries of a municipality with a  
19 population of sixty thousand or more according to the most  
20 recent federal decennial census or in a class H county; and 2)  
21 twenty-eight thousand dollars (\$28,000) if the job is performed  
22 or based in a municipality with a population of less than sixty  
23 thousand according to the most recent federal decennial census  
24 or in the unincorporated area, that is not within ten miles of  
25 the external boundaries of a municipality with a population of

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1 sixty thousand or more, of a county other than a class H  
2 county; ~~and~~

3 (b) for a new high-wage economic-based  
4 job created on or after July 1, 2015 and prior to July 1, 2016:  
5 1) sixty thousand dollars (\$60,000) if the job is performed or  
6 based in or within ten miles of the external boundaries of a  
7 municipality with a population of sixty thousand or more  
8 according to the most recent federal decennial census or in a  
9 class H county; and 2) forty thousand dollars (\$40,000) if the  
10 job is performed or based in a municipality with a population  
11 of less than sixty thousand according to the most recent  
12 federal decennial census or in the unincorporated area, that is  
13 not within ten miles of the external boundaries of a  
14 municipality with a population of sixty thousand or more, of a  
15 county other than a class H county; and

16 (c) for a new high-wage economic-based  
17 job created on or after July 1, 2016: 1) forty-five thousand  
18 dollars (\$45,000) if the job is performed or based in or within  
19 ten miles of the external boundaries of a municipality with a  
20 population of sixty thousand or more according to the most  
21 recent federal decennial census or in a class H county; and 2)  
22 thirty-five thousand dollars (\$35,000) if the job is performed  
23 or based in a municipality with a population of less than sixty  
24 thousand according to the most recent federal decennial census  
25 or in the unincorporated area, that is not within ten miles of

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1 the external boundaries of a municipality with a population of  
2 sixty thousand or more, of a county other than a class H  
3 county;

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

10 (7) "wages" means all compensation paid by an  
11 eligible employer to an eligible employee through the  
12 employer's payroll system, including those wages that the  
13 employee elects to defer or redirect or the employee's  
14 contribution to a 401(k) or cafeteria plan program, but "wages"  
15 does not include benefits or the employer's share of payroll  
16 taxes."