

HOUSE BILL 275

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; REDUCING THE AMOUNT OF TIME THE TAXATION AND REVENUE DEPARTMENT SHALL MAKE A DETERMINATION ON AN APPLICATION FOR A HIGH-WAGE JOBS TAX CREDIT TO BE IN LINE WITH OTHER TAX CREDITS; CLARIFYING WILLFUL SUBMISSION OF A CERTIFICATION FOR THE CREDIT; AMENDING DEFINITIONS APPLICABLE TO THE 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 that is an eligible employer may apply for, and the department may allow, a tax credit for each new high-wage job. The credit provided in this section may be

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1 referred to as the "high-wage jobs tax credit".

2 B. The purpose of the high-wage jobs tax credit is
3 to provide an incentive for urban and rural businesses to
4 create and fill new high-wage jobs in New Mexico.

5 C. The high-wage jobs tax credit may be claimed and
6 allowed in an amount equal to eight and one-half percent of the
7 wages distributed to an eligible employee in a new high-wage
8 job but shall not exceed twelve thousand seven hundred fifty
9 dollars (\$12,750) per job per qualifying period. The high-wage
10 jobs tax credit may be claimed by an eligible employer for each
11 new high-wage job performed for the year in which the new high-
12 wage job is created and for consecutive qualifying periods.

13 D. To receive a high-wage jobs tax credit, a
14 taxpayer shall file an application for approval of the credit
15 with the department once per calendar year on forms and in the
16 manner prescribed by the department. The annual application
17 shall contain the certification required by Subsection K of
18 this section and shall contain all qualifying periods that
19 closed during the calendar year for which the application is
20 made. Any qualifying period that did not close in the calendar
21 year for which the application is made shall be denied by the
22 department. The application for a calendar year shall be filed
23 no later than December 31 of the following calendar year. If a
24 taxpayer fails to file the annual application within the time
25 limits provided in this section, the application shall be

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1 denied by the department. [~~The department shall make a~~
2 ~~determination on the application within one hundred eighty days~~
3 ~~of the date on which the application was filed.~~]

4 E. A new high-wage job shall not be eligible for a
5 credit pursuant to this section for the initial qualifying
6 period unless the eligible employer's total number of employees
7 with threshold jobs on the last day of the initial qualifying
8 period at the location at which the job is performed or based
9 is at least one more than the number of threshold jobs on the
10 day prior to the date the new high-wage job was created. A new
11 high-wage job shall not be eligible for a credit pursuant to
12 this section for a consecutive qualifying period unless the
13 total number of threshold jobs at a location at which the job
14 is performed or based on the last day of that qualifying period
15 is greater than or equal to the number of threshold jobs at
16 that same location on the last day of the initial qualifying
17 period for the new high-wage job.

18 F. If a consecutive qualifying period for a new
19 high-wage job does not meet the wage, occupancy and residency
20 requirements, then the qualifying period is ineligible.

21 G. Except as provided in Subsection H of this
22 section, a new high-wage job shall not be eligible for a credit
23 pursuant to this section if:

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

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1 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 job is performed by:

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

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

14 H. A new high-wage job that was created by another
15 employer and for which an application for the high-wage jobs
16 tax credit was received and is under review by the department
17 prior to the time of the business merger or acquisition or
18 other change in business organization shall remain eligible for
19 the high-wage jobs tax credit for the balance of the
20 consecutive qualifying periods. The new employer that results
21 from a business merger or acquisition or other change in
22 business organization may only claim the high-wage jobs tax
23 credit for the balance of the consecutive qualifying periods
24 for which the new high-wage job is otherwise eligible.

25 I. A new high-wage job shall not be eligible for a

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

8 J. A new high-wage job shall not be eligible for a
9 credit pursuant to this section if the eligible employer has
10 more than one business location in New Mexico from which it
11 conducts business and the requirements of Subsection E of this
12 section are satisfied solely by moving the job from one
13 business location of the eligible employer in New Mexico to
14 another business location of the eligible employer in New
15 Mexico.

16 K. With respect to each annual application for a
17 high-wage jobs tax credit, the employer shall certify and
18 include:

19 (1) the amount of wages paid to each eligible
20 employee in a new high-wage job during the qualifying period;

21 (2) the number of weeks each position was
22 occupied during the qualifying period;

23 (3) whether the new high-wage job was in a
24 municipality with a population of sixty thousand or more or
25 with a population of less than sixty thousand according to the

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1 most recent federal decennial census and whether the job was in
2 the unincorporated area of a county;

3 (4) which qualifying period the application
4 pertains to for each eligible employee;

5 (5) the total number of employees employed by
6 the employer at the job location on the day prior to the
7 qualifying period and on the last day of the qualifying period;

8 (6) the total number of threshold jobs
9 performed or based at the eligible employer's location on the
10 day prior to the qualifying period and on the last day of the
11 qualifying period;

12 (7) for an eligible employer that has more
13 than one business location in New Mexico from which it conducts
14 business, the total number of threshold jobs performed or based
15 at each business location of the eligible employer in New
16 Mexico on the day prior to the qualifying period and on the
17 last day of the qualifying period;

18 (8) whether the eligible employer is receiving
19 or is eligible to receive development training program
20 assistance pursuant to Section 21-19-7 NMSA 1978;

21 (9) whether the eligible employer has ceased
22 business operations at any of its business locations in New
23 Mexico; and

24 (10) whether the application is precluded by
25 Subsection 0 of this section.

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1 L. Any person who willfully submits a false
2 [~~incorrect~~] or fraudulent certification required pursuant to
3 Subsection K of this section shall be subject to all applicable
4 penalties under the Tax Administration Act, except that the
5 amount on which the penalty is based shall be the total amount
6 of credit requested on the application for approval.

7 M. Except as provided in Subsection N of this
8 section, an approved high-wage jobs tax credit shall be claimed
9 against the taxpayer's modified combined tax liability and
10 shall be filed with the return due immediately following the
11 date of the credit approval. If the credit exceeds the
12 taxpayer's modified combined tax liability, the excess shall be
13 refunded to the taxpayer.

14 N. If the taxpayer ceases business operations in
15 New Mexico while an application for credit approval is pending
16 or after an application for credit has been approved for any
17 qualifying period for a new high-wage job, the department shall
18 not grant an additional high-wage jobs tax credit to that
19 taxpayer except as provided in Subsection O of this section and
20 shall extinguish any amount of credit approved for that
21 taxpayer that has not already been claimed against the
22 taxpayer's modified combined tax liability.

23 O. A taxpayer that has received a high-wage jobs
24 tax credit shall not submit a new application for the credit
25 for a minimum of two calendar years from the closing date of

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1 the last qualifying period for which the taxpayer received the
2 credit if the taxpayer lost eligibility to claim the credit
3 from a previous application pursuant to Subsection N of this
4 section.

5 P. The economic development department and the
6 taxation and revenue department shall report to the appropriate
7 interim legislative committee each year the cost of the high-
8 wage jobs tax credit to the state and its impact on company
9 recruitment and job creation.

10 Q. As used in this section:

11 (1) "benefits" means all remuneration for work
12 performed that is provided to an employee in whole or in part
13 by the employer, other than wages, including the employer's
14 contributions to insurance programs, health care, medical,
15 dental and vision plans, life insurance, employer contributions
16 to pensions, such as a 401(k), and employer-provided services,
17 such as child care, offered by an employer to the employee;

18 (2) "consecutive qualifying period" means each
19 of the three qualifying periods successively following the
20 qualifying period in which the new high-wage job was created;

21 (3) "department" means the taxation and
22 revenue department;

23 (4) "dependent" means "dependent" as defined
24 in 26 U.S.C. 152(a), as that section may be amended or
25 renumbered;

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1 [~~(5)~~ "domicile" means the sole place where an
2 individual has a true, fixed, permanent home. It is the place
3 where the individual has a voluntary, fixed habitation of self
4 and family with the intention of making a permanent home;

5 ~~(6)~~] (5) "eligible employee" means an
6 individual who is employed in New Mexico by an eligible
7 employer and who is a resident [~~of New Mexico~~] as defined in
8 the Income Tax Act or has wages withheld pursuant to the
9 Withholding Tax Act for forty-four weeks of a qualifying
10 period; "eligible employee" does not include an individual who:

11 (a) is a dependent of the employer;

12 (b) if the employer is an estate or
13 trust, is a grantor, beneficiary or fiduciary of the estate or
14 trust or is a dependent of a grantor, beneficiary or fiduciary
15 of the estate or trust;

16 (c) if the employer is a corporation, is
17 a dependent of an individual who owns, directly or indirectly,
18 more than fifty percent in value of the outstanding stock of
19 the corporation; or

20 (d) if the employer is an entity other
21 than a corporation, estate or trust, is a dependent of an
22 individual who owns, directly or indirectly, more than fifty
23 percent of the capital and profits interests in the entity;

24 [~~(7)~~] (6) "eligible employer" means an
25 employer that, during the applicable qualifying period, would

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1 be eligible for development training program assistance under
2 the policies in effect for the fiscal year [2019] of the
3 qualifying period that closed during the calendar year for
4 which the application is made or the policies [~~defining~~] in
5 effect that define development training program eligibility
6 developed by the industrial training board in accordance with
7 Section 21-19-7 NMSA 1978;

8 [~~(8)~~] (7) "modified combined tax liability"
9 means the total liability for the reporting period for the
10 gross receipts tax imposed by Section 7-9-4 NMSA 1978 together
11 with any tax collected at the same time and in the same manner
12 as the gross receipts tax, such as the compensating tax, the
13 withholding tax, the interstate telecommunications gross
14 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
15 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
16 minus the amount of any credit other than the high-wage jobs
17 tax credit applied against any or all of these taxes or
18 surcharges; but "modified combined tax liability" excludes all
19 amounts collected with respect to local option gross receipts
20 taxes;

21 [~~(9)~~] (8) "new high-wage job" means a new job
22 created in New Mexico by an eligible employer on or after July
23 1, 2004 and prior to July 1, [2026] 2030 that is occupied for
24 at least forty-four weeks of a qualifying period by an eligible
25 employee who is paid wages calculated for the qualifying period

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1 to be at least:

2 (a) for a new high-wage job created
3 prior to July 1, 2015: 1) forty thousand dollars (\$40,000) if
4 the job is performed or based in or within ten miles of the
5 external boundaries of a municipality with a population of
6 sixty thousand or more according to the most recent federal
7 decennial census or in a class H county; and 2) twenty-eight
8 thousand dollars (\$28,000) if the job is performed or based in
9 a municipality with a population of less than sixty thousand
10 according to the most recent federal decennial census or in the
11 unincorporated area, that is not within ten miles of the
12 external boundaries of a municipality with a population of
13 sixty thousand or more, of a county other than a class H
14 county; and

15 (b) for a new high-wage job created on
16 or after July 1, 2015: 1) sixty thousand dollars (\$60,000) if
17 the job is performed or based in or within ten miles of the
18 external boundaries of a municipality with a population of
19 sixty thousand or more according to the most recent federal
20 decennial census or in a class H county; and 2) forty thousand
21 dollars (\$40,000) if the job is performed or based in a
22 municipality with a population of less than sixty thousand
23 according to the most recent federal decennial census or in the
24 unincorporated area, that is not within ten miles of the
25 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;

3 [~~(10)~~] (9) "new job" means a job that is
4 occupied by an employee who has not been employed in New Mexico
5 by the eligible employer in the [~~three years~~] twelve months
6 prior to the date of hire;

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

12 [~~(12)~~] ~~"resident" means a natural person whose~~
13 ~~domicile is in New Mexico at the time of hire or within one~~
14 ~~hundred eighty days of the date of hire;~~

15 ~~(13)~~] (11) "threshold job" means a job that:

16 (a) is occupied for at least forty-four
17 weeks of [~~a calendar year~~] the first fifty-two weeks of
18 employment by an eligible employee; provided that the fifty-
19 two-week period begins on the day the eligible employee
20 occupies the job; and [~~that~~]

21 (b) meets the wage requirements for a
22 new high-wage job; and

23 [~~(14)~~] (12) "wages" means all compensation
24 paid by an eligible employer to an eligible employee through
25 the employer's payroll system, including those wages that the

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1 employee elects to defer or redirect or the employee's
2 contribution to a 401(k) or cafeteria plan program, but "wages"
3 does not include benefits or the employer's share of payroll
4 taxes, social security or medicare contributions, federal or
5 state unemployment insurance contributions or workers'
6 compensation."

7 SECTION 2. APPLICABILITY.--The provisions of this act
8 apply to applications for a high-wage jobs tax credit received
9 by the taxation and revenue department on and after the
10 effective date of this act.