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HOUSE BILL 200

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Carl Trujillo and Candie G. Sweetser

AN ACT

RELATING TO TAXATION; MODIFYING THE HIGH-WAGE JOBS TAX CREDIT;
CHANGING THE ELIGIBILITY FOR AND THE AMOUNT OF 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 ~~[who]~~ that is an eligible employer
may apply for, and the 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
to provide an incentive for urban and rural businesses to

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1 create and fill new high-wage [~~economic-based~~] jobs in New
2 Mexico.

3 C. The high-wage jobs tax credit may be claimed and
4 allowed in an amount equal to [~~ten percent of~~] the amount of
5 wages, up to one hundred fifty thousand dollars (\$150,000),
6 distributed to an eligible employee in a new high-wage
7 [~~economic-based~~] job [~~but shall not exceed twelve thousand~~
8 ~~dollars (\$12,000) per job~~] multiplied by the current highest
9 personal income tax rate percentage, as provided in the Income
10 Tax Act, per qualifying period. The high-wage jobs tax credit
11 may be claimed by an eligible employer for each new high-wage
12 [~~economic-based~~] job performed for the year in which the new
13 high-wage [~~economic-based~~] job is created and for [~~the three~~]
14 consecutive qualifying periods [~~as provided in this section~~].

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

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1 taxpayer fails to file the annual application within the time
2 limits provided in this section, the application shall be
3 denied by the department. The department shall make a
4 determination on the application within one hundred eighty days
5 of the date on which the application was filed [~~provided that~~
6 ~~the one hundred eighty day period shall not begin until the~~
7 ~~application is complete, as determined by the department~~].

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

23 F. [~~Any consecutive qualifying period for a new~~
24 ~~high-wage economic-based job shall not be eligible for a credit~~
25 ~~pursuant to this section unless the wage, the forty-eight week~~

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1 ~~occupancy and the residency requirements for a new high-wage~~
2 ~~economic-based job are met for each consecutive qualifying~~
3 ~~period.]~~ If [any] a consecutive qualifying period for a new
4 high-wage [economic-based] job does not meet the wage, [the
5 ~~forty-eight-week~~] occupancy and [the] residency requirements,
6 [all-subsequent] then the qualifying [periods-are] period is
7 ineligible.

8 G. Except as provided in Subsection H of this
9 section, a new high-wage [economic-based] job shall not be
10 eligible for a credit pursuant to this section if:

11 (1) the new high-wage [economic-based] job is
12 created due to a business merger or acquisition or other change
13 in business organization;

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

18 (3) the new high-wage [economic-based] job is
19 performed by:

20 (a) the person who performed the job or
21 its functional equivalent prior to the business merger or
22 acquisition or other change in business organization; or

23 (b) a person replacing the person who
24 performed the job or its functional equivalent prior to a
25 business merger or acquisition or other change in business

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1 organization.

2 H. A new high-wage [~~economic-based~~] job that was
3 created by another employer and for which an application for
4 the high-wage jobs tax credit was received and is under review
5 by the department prior to the time of the business merger or
6 acquisition or other change in business organization shall
7 remain eligible for the high-wage jobs tax credit for the
8 balance of the consecutive qualifying periods. The new
9 employer that results from a business merger or acquisition or
10 other change in business organization may only claim the high-
11 wage jobs tax credit for the balance of the consecutive
12 qualifying periods for which the new high-wage [~~economic-based~~]
13 job is otherwise eligible.

14 I. A new high-wage [~~economic-based~~] job shall not
15 be eligible for a credit pursuant to this section if the job is
16 created due to an eligible employer entering into a contract or
17 becoming a subcontractor to a contract with a governmental
18 entity that replaces one or more entities performing
19 functionally equivalent services for the governmental entity
20 unless the job is a new high-wage [~~economic-based~~] job that was
21 not being performed by an employee of the replaced entity.

22 J. A new high-wage [~~economic-based~~] job shall not
23 be eligible for a credit pursuant to this section if the
24 eligible employer has more than one business location in New
25 Mexico from which it conducts business and the requirements of

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1 Subsection E of this section are satisfied solely by moving the
2 job from one business location of the eligible employer in New
3 Mexico to another business location of the eligible employer in
4 New Mexico.

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

8 (1) the amount of wages paid to each eligible
9 employee in a new high-wage [~~economic-based~~] job during the
10 qualifying period;

11 (2) the number of weeks each position was
12 occupied during the qualifying period;

13 (3) whether the new high-wage [~~economic-based~~]
14 job was in a municipality with a population of sixty thousand
15 or more or with a population of less than sixty thousand
16 according to the most recent federal decennial census and
17 whether the job was in the unincorporated area of a county;

18 (4) [~~whether the application pertains to the~~
19 ~~first, second, third or fourth~~] which qualifying period the
20 application pertains to for each eligible employee;

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

24 (6) the total number of threshold jobs
25 performed or based at the eligible employer's location on the

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1 day prior to the qualifying period and on the last day of the
2 qualifying period;

3 (7) for an eligible employer that has more
4 than one business location in New Mexico from which it conducts
5 business, the total number of threshold jobs performed or based
6 at each business location of the eligible employer in New
7 Mexico on the day prior to the qualifying period and on the
8 last day of the qualifying period;

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

12 (9) whether the eligible employer has ceased
13 business operations at any of its business locations in New
14 Mexico [~~and~~

15 ~~(10) whether the application is precluded by~~
16 ~~Subsection O of this section].~~

17 L. Any person who willfully submits a false,
18 incorrect or fraudulent certification required pursuant to
19 Subsection K of this section shall be subject to all applicable
20 penalties under the Tax Administration Act, except that the
21 amount on which the penalty is based shall be the total amount
22 of credit requested on the application for approval.

23 M. Except as provided in Subsection N of this
24 section, an approved high-wage jobs tax credit shall be claimed
25 against the taxpayer's modified combined tax liability and

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1 shall be filed with the return due immediately following the
2 date of the credit approval. If the credit exceeds the
3 taxpayer's modified combined tax liability, the excess shall be
4 refunded to the taxpayer.

5 N. If the taxpayer ceases business operations in
6 New Mexico while an application for credit approval is pending
7 or after an application for credit has been approved for any
8 qualifying period for a new high-wage [~~economic-based~~] job, the
9 department shall not grant an additional high-wage jobs tax
10 credit to that taxpayer [~~except as provided in Subsection O of~~
11 ~~this section~~] and shall extinguish any amount of credit
12 approved for that taxpayer that has not already been claimed
13 against the taxpayer's modified combined tax liability.

14 [~~O. A taxpayer that has received a high-wage jobs~~
15 ~~tax credit shall not submit a new application for a credit for~~
16 ~~a minimum of five calendar years from the closing date of the~~
17 ~~last qualifying period for which the taxpayer received the~~
18 ~~credit if the taxpayer:~~

19 (1) ~~lost eligibility to claim a tax credit~~
20 ~~from a previous application pursuant to Subsection E or N of~~
21 ~~this section; or~~

22 (2) ~~reduces its total full-time employees in~~
23 ~~New Mexico by more than five percent after the date on which~~
24 ~~the last qualifying period on the taxpayer's previous~~
25 ~~application ends.~~

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1 P.] O. The economic development department and the
2 taxation and revenue department shall report to the appropriate
3 interim legislative committee each year the cost of [~~this~~] the
4 high-wage jobs tax credit to the state and its impact on
5 company recruitment and job creation.

6 [Q.] P. As used in this section:

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

14 (2) "consecutive qualifying [~~periods~~] period"
15 means each of the [~~three~~] seven qualifying periods successively
16 following the qualifying period in which the new high-wage
17 [~~economic-based~~] job was created;

18 (3) "department" means the taxation and
19 revenue department;

20 (4) "domicile" means the sole place where an
21 individual has a true, fixed, permanent home. It is the place
22 where the individual has a voluntary, fixed habitation of self
23 and family with the intention of making a permanent home;

24 (5) "eligible employee" means an individual
25 who is employed in New Mexico by an eligible employer and who

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1 is a resident of New Mexico; "eligible employee" does not
2 include an individual who:

3 (a) bears any of the relationships
4 described in Paragraphs (1) through (8) of 26 U.S.C. Section
5 152(a) to the employer or, if the employer is a corporation, to
6 an individual who owns, directly or indirectly, more than fifty
7 percent in value of the outstanding stock of the corporation
8 or, if the employer is an entity other than a corporation, to
9 an individual who owns, directly or indirectly, more than fifty
10 percent of the capital and profits interest in the entity;

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

17 (c) is a dependent, as that term is
18 described in 26 U.S.C. Section 152(a)(9), of the employer or,
19 if the taxpayer is a corporation, of an individual who owns,
20 directly or indirectly, more than fifty percent in value of the
21 outstanding stock of the corporation or, if the employer is an
22 entity other than a corporation, of an individual who owns,
23 directly or indirectly, more than fifty percent of the capital
24 and profits interest in the entity or, if the employer is an
25 estate or trust, of a grantor, beneficiary or fiduciary of the

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1 estate or trust; or

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

9 (6) "eligible employer" means an employer that
10 ~~[(a) sold and delivered more than fifty~~
11 ~~percent of its goods produced in New Mexico or non-retail~~
12 ~~services performed in New Mexico to persons outside~~
13 ~~New Mexico for use or resale outside New Mexico during the~~
14 ~~applicable qualifying period; provided that the fifty percent~~
15 ~~of those goods or services is measured by the eligible~~
16 ~~employer's gross receipts;~~

17 (b)] is receiving or is eligible to
18 receive development training program assistance pursuant to
19 Section 21-19-7 NMSA 1978 during the applicable qualifying
20 period; [and

21 ~~(c) whose principal business activities~~
22 ~~at the location in New Mexico for which the high-wage jobs tax~~
23 ~~credit is being claimed consist of manufacturing or performing~~
24 ~~non-retail services during the applicable qualifying period;~~

25 ~~(7) "for use or resale outside New Mexico"~~

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1 ~~means that the person who purchases the eligible employer's~~
2 ~~goods or services uses or resells the goods or services outside~~
3 ~~New Mexico or makes initial use of the goods or services~~
4 ~~outside New Mexico. If the purchaser conducts business in~~
5 ~~multiple states, goods and services are deemed for use or~~
6 ~~resale outside New Mexico, unless New Mexico is the primary~~
7 ~~market for the purchaser's goods or services;~~

8 ~~(8) "full-time employee" means an employee who~~
9 ~~works for the same employer an average of at least thirty-two~~
10 ~~hours per week for at least forty-eight weeks per year;~~

11 ~~(9) "manufacturing" means "manufacturing" as~~
12 ~~that term is used in Section 7-9A-3 NMSA 1978]~~

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

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1 [~~(11)~~] (8) "new high-wage [~~economic-based~~]
2 job" means a new job created in New Mexico by an eligible
3 employer on or after July 1, 2004 and prior to July 1, [~~2020~~]
4 2028 that is occupied for at least [~~forty-eight~~] forty-four
5 weeks of a qualifying period by an eligible employee who is
6 paid wages calculated for the qualifying period to be at least:

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

20 (b) for a new high-wage [~~economic-based~~]
21 job created on or after July 1, 2015: 1) sixty thousand
22 dollars (\$60,000) if the job is performed or based in or within
23 ten miles of the external boundaries of a municipality with a
24 population of sixty thousand or more according to the most
25 recent federal decennial census or in a class H county; and 2)

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1 forty thousand dollars (\$40,000) if the job is performed or
2 based in a municipality with a population of less than sixty
3 thousand according to the most recent federal decennial census
4 or in the unincorporated area, that is not within ten miles of
5 the external boundaries of a municipality with a population of
6 sixty thousand or more, of a county other than a class H
7 county;

8 [~~(12) "non-retail service" means a specialized~~
9 ~~service, excluding a construction service of any type, that is~~
10 ~~sold to another business or business entity and is used by the~~
11 ~~business or business entity to develop products for or deliver~~
12 ~~services to its customers. "Non-retail service" is not~~
13 ~~provided by direct individual-to-individual interaction and is~~
14 ~~not offered to the general public by the business or business~~
15 ~~entity. "Non-retail service" includes:~~

16 ~~(a) research, development, engineering~~
17 ~~and testing services performed for a manufacturer that uses the~~
18 ~~product of the service to develop new or improve existing~~
19 ~~products;~~

20 ~~(b) software and software application~~
21 ~~development services performed for a business;~~

22 ~~(c) data processing and hosting services~~
23 ~~performed for a business that uses the service to deliver~~
24 ~~products or service to its own customers;~~

25 ~~(d) digital film production services and~~

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1 ~~post-film production services performed for a business that~~
2 ~~will market the digital product or film;~~

3 ~~(e) customer or call center services~~
4 ~~performed for a business, if those services do not support~~
5 ~~retail activities of the eligible employer; and~~

6 ~~(f) professional services, such as~~
7 ~~accounting, engineering, legal and information technology~~
8 ~~services, if the eligible employer does not offer those~~
9 ~~services for sale to the general public;~~

10 ~~(13) "performed in New Mexico" means that the~~
11 ~~labor, activities, property and equipment necessary to~~
12 ~~complete, but not to deliver, a service all occur or are~~
13 ~~utilized within New Mexico;~~

14 ~~(14) "produced in New Mexico" means the~~
15 ~~creation, bringing into existence or making available a good or~~
16 ~~product for commercial sale through the expense of labor or~~
17 ~~capital, or both, within New Mexico;~~

18 ~~(15)]~~ (9) "qualifying period" means the period
19 of twelve months beginning on the day an eligible employee
20 begins working in a new high-wage [economic-based] job or the
21 period of twelve months beginning on the anniversary of the day
22 an eligible employee began working in a new high-wage
23 [economic-based] job;

24 [~~(16)]~~ (10) "resident" means a natural person
25 whose domicile is in New Mexico at the time of hire or within

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1 one hundred eighty days of the date of hire;

2 [~~(17)~~] (11) "threshold job" means a job that
3 is occupied for at least [~~forty-eight~~] forty-four weeks of a
4 calendar year by an eligible employee and that meets the wage
5 requirements for a "new high-wage [~~economic-based~~] job"; and

6 [~~(18)~~] (12) "wages" means all compensation
7 paid by an eligible employer to an eligible employee through
8 the employer's payroll system, including those wages that the
9 employee elects to defer or redirect or the employee's
10 contribution to a 401(k) or cafeteria plan program, but "wages"
11 does not include benefits or the employer's share of payroll
12 taxes, social security or medicare contributions, federal or
13 state unemployment insurance contributions or workers'
14 compensation."

15 SECTION 2. APPLICABILITY.--The provisions of this act
16 apply to qualifying periods beginning on or after January 1,
17 2018.