

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILLS 101 & 299

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO TAXATION; CLARIFYING APPLICATION OF THE HIGH-WAGE
JOBS TAX CREDIT; DEFINING "BENEFITS" AND "WAGES"; EXTENDING THE
CREDIT FOR THREE 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 high-wage jobs tax credit may be claimed and

1 allowed in an amount equal to ten percent of the wages and
2 benefits distributed to an eligible employee in a new high-wage
3 economic-based job, but shall not exceed twelve thousand
4 dollars (\$12,000).

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

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

19 E. A new high-wage economic-based job shall not be
20 eligible for a credit pursuant to this section if:

21 (1) the new high-wage economic-based job is
22 created due to a business merger or acquisition or other change
23 in business organization;

24 (2) the eligible employee was terminated from
25 employment in New Mexico by another employer involved in the

1 business merger or acquisition or other change in business
2 organization with the taxpayer;

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

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

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

12 (4) the new high-wage economic-based job or
13 its functional equivalent previously qualified for the high-
14 wage jobs tax credit but the employer, prior to a business
15 merger or acquisition or other change in business organization,
16 was not approved for the credit.

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

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1 other change in business organization may only claim the high-
2 wage jobs tax credit for the balance of the qualifying periods
3 for which the qualifying job is otherwise eligible.

4 G. For all applications for high-wage jobs tax
5 credits received by the taxation and revenue department on or
6 after August 1, 2011, a job shall not be eligible for a credit
7 pursuant to this section if the job is created due to an
8 eligible employer entering into a contract or becoming a
9 subcontractor to a contract with a governmental entity that
10 replaces one or more entities performing functionally
11 equivalent services for the governmental entity unless the job
12 is a new high-wage economic-based job that was not being
13 performed by an employee of the replaced entity.

14 ~~[E.]~~ H. With respect to each new high-wage
15 economic-based job for which an eligible employer seeks the
16 high-wage jobs tax credit, the employer shall certify:

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

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

22 (3) ~~[whether the new high-wage economic-based~~
23 ~~job was in a municipality with a population of forty thousand~~
24 ~~or more or with a population of less than forty thousand]~~ the
25 population of the municipality, according to the most recent

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1 federal decennial census, where the new high-wage economic-
 2 based job was located and whether the job was in the
 3 unincorporated area of a county; and

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

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

15 J. The taxation and revenue department may allow a
 16 maximum aggregate in any fiscal year of twenty-five million
 17 dollars (\$25,000,000) in high-wage jobs tax credits provided by
 18 this section. A taxpayer who submits a claim for a high-wage
 19 jobs tax credit who is unable to receive the tax credit because
 20 the claims for the fiscal year exceed the aggregate limitation
 21 in this subsection shall be placed for the subsequent fiscal
 22 year at the front of a queue of high-wage jobs tax credit
 23 claimants submitting claims in the subsequent fiscal year in
 24 the order of the date on which the department received the
 25 application.

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1 ~~[G.]~~ K. The credit provided in this section may be
2 deducted from the modified combined tax liability of a
3 taxpayer. If the credit exceeds the modified combined tax
4 liability of the taxpayer, the excess shall be refunded to the
5 taxpayer.

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

10 ~~[I.]~~ M. As used in this section:

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

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

21 (2) "eligible employee" means an individual
22 who is employed by an eligible employer and who is a resident
23 of New Mexico; "eligible employee" does not include an
24 individual who:

25 (a) bears any of the relationships

1 described in Paragraphs (1) through (8) of 26 U.S.C. Section
2 152(a) to the employer or, if the employer is a corporation, to
3 an individual who owns, directly or indirectly, more than fifty
4 percent in value of the outstanding stock of the corporation
5 or, if the employer is an entity other than a corporation, to
6 an individual who owns, directly or indirectly, more than fifty
7 percent of the capital and profits interest in the entity;

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

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

24 (d) is working or has worked as an
25 employee or as an independent contractor for an entity that

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1 directly or indirectly owns stock in a corporation of the
2 eligible employer or other interest of the eligible employer
3 that represents fifty percent or more of the total voting power
4 of that entity or has a value equal to fifty percent or more of
5 the capital and profits interest in the entity;

6 (3) "eligible employer" means an employer
7 that:

8 (a) ~~made~~ exported more than fifty
9 percent of its ~~sales~~ goods or services produced in New Mexico
10 to persons outside New Mexico during the most recent twelve
11 months of the employer's modified combined tax liability
12 reporting periods ending prior to claiming a high-wage jobs tax
13 credit; or

14 (b) is eligible for development training
15 program assistance pursuant to Section 21-19-7 NMSA 1978;

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

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1 surcharges; but "modified combined tax liability" excludes all
 2 amounts collected with respect to local option gross receipts
 3 taxes;

4 (5) "new high-wage economic-based job" means a
 5 new job created in New Mexico by an eligible employer on or
 6 after July 1, 2004 and prior to July 1, [~~2015~~] 2018 that is
 7 occupied for at least forty-eight weeks of a qualifying period
 8 by an eligible employee who:

9 (a) for a new high-wage economic-based
 10 job created prior to January 1, 2012 is paid wages calculated
 11 for the qualifying period to be at least: [~~(a)~~] 1) forty
 12 thousand dollars (\$40,000) if the job is performed or based in
 13 a municipality with a population of forty thousand or more
 14 according to the most recent federal decennial census; and
 15 [~~(b)~~] 2) twenty-eight thousand dollars (\$28,000) if the job is
 16 performed or based in a municipality with a population of less
 17 than forty thousand according to the most recent federal
 18 decennial census or in the unincorporated area of a county; and

19 (b) for a new high-wage economic-based
 20 job created on or after January 1, 2012 is paid wages and
 21 benefits calculated for the qualifying period to be at least:
 22 1) sixty-five thousand dollars (\$65,000) if the job is
 23 performed or based in a municipality with a population of sixty
 24 thousand or more according to the most recent federal decennial
 25 census; and 2) forty thousand dollars (\$40,000) if the job is

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1 performed or based in a municipality with a population of less
2 than sixty thousand according to the most recent federal
3 decennial census or in the unincorporated area of a 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 [~~wages as defined in~~
11 ~~Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c)] all
12 gross wages and other compensation, before any payroll
13 deductions, paid for services rendered by an individual,
14 including commissions, cost-of-living allowances, overtime
15 pay, hazardous-duty pay, incentive pay, on-call pay, shift
16 differentials and bonuses, but "wages" does not include
17 benefits."~~

18 SECTION 2. APPLICABILITY.--The provisions of this act
19 apply to taxable years beginning on or after January 1, 2011.

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