

1 SENATE BILL 11

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Timothy M. Keller and James E. Smith

5
6
7 FOR THE SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE
8 AND THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

9
10 AN ACT

11 RELATING TO TAXATION; ENACTING NEW SECTIONS OF THE INCOME TAX
12 ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT; CREATING
13 THE STATE GRADUATE EMPLOYMENT TAX CREDIT.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of the Income Tax Act is enacted
17 to read:

18 "[NEW MATERIAL] STATE GRADUATE EMPLOYMENT TAX CREDIT.--

19 A. A taxpayer who files an individual New Mexico
20 income tax return, who is not a dependent of another individual
21 and who is the owner of a New Mexico sole proprietorship,
22 partnership or limited liability company may claim a credit in
23 an amount equal to five thousand dollars (\$5,000) of the gross
24 wages paid to each qualified state graduate who is employed
25 full time in New Mexico by the taxpayer for at least seven

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1 months during the first taxable year for which the return is
2 filed and for twelve months during the second taxable year for
3 which the return is filed. A taxpayer shall not be eligible
4 for a credit provided in this section if the qualified state
5 graduate upon which the credit is predicated is replacing or
6 performing the job or functional equivalent of a previous
7 qualified state graduate who is no longer employed by the
8 taxpayer. The tax credit provided by this section may be
9 referred to as the "state graduate employment tax credit".

10 B. The purpose of the state graduate employment tax
11 credit is to encourage the full-time employment of qualified
12 state graduates within eighteen months of graduation from one
13 of the state educational institutions enumerated in Article 12,
14 Section 11 of the constitution of New Mexico.

15 C. A taxpayer who is the owner of a New Mexico sole
16 proprietorship, partnership or limited liability company may
17 claim the state graduate employment tax credit provided in this
18 section for each taxable year in which the taxpayer employs one
19 or more qualified state graduates; provided that the taxpayer
20 may not claim the state graduate employment tax credit for any
21 individual qualified state graduate for more than two taxable
22 years or if the qualified state graduate upon whom the credit
23 is predicated is replacing or performing the job or functional
24 equivalent of a previous qualified state graduate who is no
25 longer employed by the taxpayer. A taxpayer shall apply for

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1 approval for a credit within one year following the end of the
2 calendar year in which the taxpayer employs the qualified state
3 graduate upon whom the credit is predicated.

4 D. That portion of a state graduate employment tax
5 credit approved by the department that exceeds a taxpayer's
6 income tax liability in the taxable year in which the state
7 graduate employment tax credit is claimed shall not be refunded
8 to the taxpayer. The state graduate employment tax credit
9 shall not be carried forward or transferred to another
10 taxpayer.

11 E. A husband and wife filing separate returns for a
12 taxable year for which they could have filed a joint return may
13 each claim only one-half of the state graduate employment tax
14 credit that would have been claimed on a joint return.

15 F. A taxpayer who otherwise qualifies and claims a
16 state graduate employment tax credit in New Mexico that may be
17 claimed by a partnership or limited liability company of which
18 the taxpayer is a member may claim a credit only in proportion
19 to the taxpayer's interest in the partnership or limited
20 liability company. The total credit claimed by all members of
21 the partnership or limited liability company shall not exceed
22 the allowable credit pursuant to Subsection A of this section.

23 G. The taxpayer shall submit to the higher
24 education department with respect to each employee for whom the
25 state graduate employment tax credit is claimed:

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1 (1) information required by the secretary of
2 higher education with respect to the employee's employment by
3 the taxpayer during the taxable year for which the state
4 graduate employment tax credit is claimed; and

5 (2) information required by the secretary of
6 higher education establishing that the employee is a qualified
7 state graduate and was not also employed in the same taxable
8 year by another taxpayer claiming a state graduate employment
9 tax credit for that employee pursuant to this section or the
10 Corporate Income and Franchise Tax Act.

11 H. The higher education department, with the
12 cooperation of the taxation and revenue department, shall adopt
13 rules establishing procedures to certify qualified state
14 graduates for purposes of obtaining a state graduate employment
15 tax credit. The rules shall ensure that not more than one
16 state graduate employment tax credit per qualified state
17 graduate shall be allowed in a taxable year and that the
18 credits allowed per qualified state graduate are limited to a
19 maximum of two years. The higher education department shall
20 issue a dated certificate of eligibility containing a list of
21 the qualified state graduates employed by the taxpayer claiming
22 the state graduate employment tax credit, including identifying
23 information such as the social security number of the employee,
24 the date of graduation and the name of the state educational
25 institution from which the employee graduated, the date of

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1 employment of the employee by the taxpayer and the number of
2 hours worked per week by the employee. All certificates of
3 eligibility issued pursuant to this subsection shall be
4 sequentially numbered, and an account of all certificates
5 issued or destroyed shall be maintained by the higher education
6 department. The taxation and revenue department shall audit
7 the records of the state graduate employment tax credit
8 maintained by the higher education department on a periodic
9 basis to ensure effective administration of the state graduate
10 employment tax credit and compliance with the Tax
11 Administration Act and this section.

12 I. To claim a state graduate employment tax credit,
13 the taxpayer shall provide to the taxation and revenue
14 department the certificate of eligibility issued by the higher
15 education department pursuant to this section to the taxpayer
16 for the taxable year for which the state graduate employment
17 tax credit is claimed.

18 J. A taxpayer who claims and is granted approval
19 for the state graduate employment tax credit shall not apply
20 for or be granted approval for the rural job tax credit, the
21 high-wage jobs tax credit or the additional credit pursuant to
22 the Technology Jobs Tax Credit Act based on the same job upon
23 which the state graduate employment tax credit is predicated.

24 K. The department may allow a maximum annual
25 aggregate of two million dollars (\$2,000,000) in state graduate

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1 employment tax credits provided by this section and the
2 Corporate Income and Franchise Tax Act. Applications for the
3 state graduate employment tax credit shall be considered in the
4 order received by the department. A taxpayer who submits a
5 claim for a state graduate employment tax credit and who is
6 unable to receive the tax credit because the claims exceed the
7 annual aggregate limitation in this subsection shall be placed
8 for the subsequent year ahead of the other state graduate
9 employment tax credit claimants submitting claims in the
10 subsequent year in the order of the date on which the
11 department received the application.

12 L. The taxation and revenue department shall
13 compile an annual report that includes the number of taxpayers
14 approved by the department to receive a state graduate
15 employment tax credit. Notwithstanding any other section of
16 law to the contrary, the taxation and revenue department and
17 the higher education department may disclose the number of
18 applicants for the state graduate employment tax credit, the
19 amount of each credit approved, the number of qualified state
20 graduates hired, the length of time that the qualified state
21 graduate is employed while the taxpayer received the state
22 graduate employment tax credit and any other information
23 required by the legislature or the taxation and revenue
24 department to aid in evaluating the effectiveness of the state
25 graduate employment tax credit.

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1 M. An appropriate legislative committee shall
2 review the effectiveness of the state graduate employment tax
3 credit every four years beginning in 2017.

4 N. As used in this section:

5 (1) "benefits" means any employee benefit plan
6 as defined in Title 1, Section 3 of the federal Employee
7 Retirement Income Security Act of 1974, 29 U.S.C. 1002; and

8 (2) "qualified state graduate" means an
9 individual who:

10 (a) is a New Mexico resident;

11 (b) files an individual New Mexico
12 income tax return;

13 (c) is hired prior to June 1, 2018 and
14 within eighteen months of graduation from one of the state
15 educational institutions of higher learning enumerated in
16 Article 12, Section 11 of the constitution of New Mexico;

17 (d) completed a post-baccalaureate
18 graduate master's or professional degree within three years or,
19 if part-time, within the credit equivalent, or a doctoral
20 degree within six years or, if part-time, within the credit
21 equivalent, in the discipline of physical or life sciences,
22 technology, engineering, mathematics or a health-related field;
23 and

24 (e) receives benefits and works at least
25 forty hours per week for at least seven months during the first

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1 taxable year and for twelve months during the second taxable
2 year for which the state graduate employment tax credit is
3 claimed."

4 SECTION 2. A new section of the Corporate Income and
5 Franchise Tax Act is enacted to read:

6 "[NEW MATERIAL] STATE GRADUATE EMPLOYMENT TAX CREDIT.--

7 A. A taxpayer that is a New Mexico corporation and
8 that files a corporate income tax return may claim a credit in
9 an amount equal to five thousand dollars (\$5,000) of the gross
10 wages paid to each qualified state graduate who is employed
11 full time in New Mexico by the taxpayer for at least seven
12 months during the first taxable year for which the return is
13 filed and for twelve months during the second taxable year for
14 which the return is filed. A taxpayer shall not be eligible
15 for a credit provided in this section if the qualified state
16 graduate upon which the credit is predicated is replacing or
17 performing the job or functional equivalent of a previous
18 qualified state graduate who is no longer employed by the
19 taxpayer. The tax credit provided by this section may be
20 referred to as the "state graduate employment tax credit".

21 B. The purpose of the state graduate employment tax
22 credit is to encourage the full-time employment of qualified
23 state graduates within eighteen months of graduation from one
24 of the state educational institutions enumerated in Article 12,
25 Section 11 of the constitution of New Mexico.

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1 C. A taxpayer may claim the state graduate
2 employment tax credit provided in this section for each taxable
3 year in which the taxpayer employs one or more qualified state
4 graduates; provided that the taxpayer may not claim the state
5 graduate employment tax credit for any individual qualified
6 state graduate for more than two calendar years from the date
7 of hire or if the qualified state graduate upon whom the credit
8 is predicated is replacing or performing the job or functional
9 equivalent of a previous qualified state graduate who is no
10 longer employed by the taxpayer. A taxpayer shall apply for
11 approval for a credit within one year following the end of the
12 calendar year in which the taxpayer employs the qualified state
13 graduate upon whom the credit is predicated.

14 D. That portion of a state graduate employment tax
15 credit approved by the department that exceeds a taxpayer's
16 corporate income tax liability in the taxable year in which the
17 credit is claimed shall not be refunded to the taxpayer. The
18 state graduate employment tax credit shall not be carried
19 forward or transferred to another taxpayer.

20 E. The taxpayer shall submit to the higher
21 education department with respect to each employee for whom the
22 state graduate employment tax credit is claimed:

23 (1) information required by the secretary of
24 higher education with respect to the employee's employment by
25 the taxpayer during the taxable year for which the state

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1 graduate employment tax credit is claimed; and

2 (2) information required by the secretary of
3 higher education establishing that the employee is a qualified
4 state graduate and was not also employed in the same taxable
5 year by another taxpayer claiming a state graduate employment
6 tax credit for that employee pursuant to this section or the
7 Income Tax Act.

8 F. The higher education department, with the
9 cooperation of the taxation and revenue department, shall adopt
10 rules establishing procedures to certify qualified state
11 graduates for purposes of obtaining a state graduate employment
12 tax credit. The rules shall ensure that not more than one
13 state graduate employment tax credit per qualified state
14 graduate shall be allowed in a taxable year and that the
15 credits allowed per qualified state graduate are limited to a
16 maximum of two years. The higher education department shall
17 issue a dated certificate of eligibility containing a list of
18 the qualified state graduates employed by the taxpayer claiming
19 the state graduate employment tax credit, including identifying
20 information such as the social security number of the employee,
21 the date of graduation and the name of the state educational
22 institution from which the employee graduated, the date of
23 employment of the employee by the taxpayer and the number of
24 hours worked per week by the employee. All certificates of
25 eligibility issued pursuant to this subsection shall be

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1 sequentially numbered, and an account of all certificates
2 issued or destroyed shall be maintained by the higher education
3 department. The taxation and revenue department shall audit
4 the records of the state graduate employment tax credit
5 maintained by the higher education department on a periodic
6 basis to ensure effective administration of the state graduate
7 employment tax credit and compliance with the Tax
8 Administration Act and this section.

9 G. To claim a state graduate employment tax credit,
10 the taxpayer shall provide to the taxation and revenue
11 department the certificate of eligibility issued by the higher
12 education department pursuant to this section to the taxpayer
13 for the taxable year for which the state graduate employment
14 tax credit is claimed.

15 H. A taxpayer that claims and is granted approval
16 for the state graduate employment tax credit shall not apply
17 for or be granted approval for the rural job tax credit, the
18 high-wage jobs tax credit or the additional credit pursuant to
19 the Technology Jobs Tax Credit Act based on the same job upon
20 which the state graduate employment tax credit is predicated.

21 I. The department may allow a maximum annual
22 aggregate of two million dollars (\$2,000,000) in state graduate
23 employment tax credits provided by this section and the Income
24 Tax Act. Applications for the state graduate employment tax
25 credit shall be considered in the order received by the

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1 department. A taxpayer that submits a claim for a state
2 graduate employment tax credit and that is unable to receive
3 the tax credit because the claims exceed the annual aggregate
4 limitation in this subsection shall be placed for the
5 subsequent year ahead of state graduate employment tax credit
6 claimants submitting claims in the subsequent year in the order
7 of the date on which the department received the application.

8 J. The taxation and revenue department shall
9 compile an annual report that includes the number of taxpayers
10 approved by the department to receive a state graduate
11 employment tax credit. Notwithstanding any other section of
12 law to the contrary, the taxation and revenue department and
13 the higher education department may disclose the number of
14 applicants for the state graduate employment tax credit, the
15 amount of each credit approved, the number of qualified state
16 graduates hired, the length of time that the qualified state
17 graduate is employed while the taxpayer received the tax credit
18 and any other information required by the legislature or the
19 taxation and revenue department to aid in evaluating the
20 effectiveness of the state graduate employment tax credit.

21 K. An appropriate legislative committee shall
22 review the effectiveness of the state graduate employment tax
23 credit every four years beginning in 2017.

24 L. As used in this section:

25 (1) "benefits" means any employee benefit plan

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1 as defined in Title 1, Section 3 of the federal Employee
2 Retirement Income Security Act of 1974, 29 U.S.C. 1002; and

3 (2) "qualified state graduate" means an
4 individual who:

5 (a) is a New Mexico resident;

6 (b) files an individual New Mexico
7 income tax return;

8 (c) is hired prior to June 1, 2018 and
9 within eighteen months of graduation from one of the state
10 educational institutions of higher learning enumerated in
11 Article 12, Section 11 of the constitution of New Mexico;

12 (d) completed a post-baccalaureate
13 graduate master's or professional degree within three years or,
14 if part-time, within the credit equivalent, or a doctoral
15 degree within six years or, if part-time, within the credit
16 equivalent, in the discipline of physical or life sciences,
17 technology, engineering, mathematics or a health-related field;
18 and

19 (e) receives benefits and works at least
20 forty hours per week for at least seven months during the first
21 taxable year and twelve months during the second taxable year
22 for which the state graduate employment tax credit is claimed."

23 **SECTION 3. APPLICABILITY.**--The provisions of this act
24 apply to taxable years beginning on or after January 1, 2013.