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HOUSE BILL 245

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

INTRODUCED BY

David L. Doyle

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

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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

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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 by the taxation and  
21 revenue department prior to March 1, 2012, and that is under  
22 review, shall remain eligible for the high-wage jobs tax credit  
23 for the balance of the qualifying periods. The new employer  
24 that results from a business merger or acquisition or other  
25 change in business organization may only claim the high-wage

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

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

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

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

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

21 (3) whether the new high-wage economic-based  
22 job was in a municipality with a population of forty thousand  
23 or more or with a population of less than forty thousand  
24 according to the most recent federal decennial census and  
25 whether the job was in the unincorporated area of a county; and

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

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

12 ~~[G.]~~ J. The credit provided in this section may be  
13 deducted from the modified combined tax liability of a  
14 taxpayer. If the credit exceeds the modified combined tax  
15 liability of the taxpayer, the excess shall be refunded to the  
16 taxpayer.

17 ~~[H.]~~ K. The economic development department shall  
18 report to the appropriate interim legislative committee before  
19 November 1 of each year the cost of this tax credit to the  
20 state and its impact on company recruitment and job creation.

21 ~~[I.]~~ L. As used in this section:

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

25 (1) "benefits" means all remuneration for work

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1 performed that is provided to an employee in whole or in part  
2 by the employer, other than wages, including insurance  
3 programs, health care, medical, dental and vision plans, life  
4 insurance, employer contributions to pensions, such as a 401k,  
5 and employer-provided services, such as child care, offered by  
6 an employer to the employee;

7 (2) "eligible employee" means an individual  
8 who is employed by an eligible employer and who is a resident  
9 of New Mexico; "eligible employee" does not include an  
10 individual who:

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

19 (b) if the employer is an estate or  
20 trust, is a grantor, beneficiary or fiduciary of the estate or  
21 trust or is an individual who bears any of the relationships  
22 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
23 152(a) to a grantor, beneficiary or fiduciary of the estate or  
24 trust;

25 (c) is a dependent, as that term is

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1 described in 26 U.S.C. Section 152(a)(9), of the employer or,  
2 if the taxpayer is a corporation, of an individual who owns,  
3 directly or indirectly, more than fifty percent in value of the  
4 outstanding stock of the corporation or, if the employer is an  
5 entity other than a corporation, of an individual who owns,  
6 directly or indirectly, more than fifty percent of the capital  
7 and profits interest in the entity or, if the employer is an  
8 estate or trust, of a grantor, beneficiary or fiduciary of the  
9 estate or trust; or

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

17 (3) "eligible employer" means an employer  
18 that:

19 (a) [~~made~~] exported more than fifty  
20 percent of its [~~sales~~] goods or services produced in New Mexico  
21 to persons outside New Mexico during the most recent twelve  
22 months of the employer's modified combined tax liability  
23 reporting periods ending prior to claiming a high-wage jobs tax  
24 credit; or

25 (b) is eligible for development training

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1 program assistance pursuant to Section 21-19-7 NMSA 1978;

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

15 (5) "new high-wage economic-based job" means a  
16 new job created in New Mexico by an eligible employer on or  
17 after July 1, 2004 and prior to July 1, [~~2015~~] 2018 that is  
18 occupied for at least forty-eight weeks of a qualifying period  
19 by an eligible employee who is paid wages calculated for the  
20 qualifying period to be at least:

21 (a) forty thousand dollars (\$40,000) if  
22 the job is performed or based in a municipality with a  
23 population of forty thousand or more according to the most  
24 recent federal decennial census; and

25 (b) twenty-eight thousand dollars

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1 (\$28,000) if the job is performed or based in a municipality  
2 with a population of less than forty thousand according to the  
3 most recent federal decennial census or in the unincorporated  
4 area of a county;

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

11 (7) "wages" means [~~wages as defined in~~  
12 ~~Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(e)~~] all  
13 gross wages and other compensation, before any payroll  
14 deductions, paid for services rendered by an individual,  
15 including commissions, cost-of-living allowances, overtime  
16 pay, hazardous-duty pay, incentive pay, on-call pay, shift  
17 differentials and bonuses, but "wages" does not include  
18 benefits."

19 SECTION 2. APPLICABILITY.--The provisions of this act  
20 shall apply to taxable years beginning on or after January 1,  
21 2011.

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

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