

HOUSE BILL 165

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Candie G. Sweetser

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

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

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

C. The high-wage jobs tax credit may be claimed and allowed in an amount equal to [~~ten~~] eight and one-half percent of the wages distributed to an eligible employee in a new high-wage [~~economic-based~~] job but shall not exceed [~~twelve thousand dollars (\$12,000)~~] twelve thousand seven hundred fifty dollars (\$12,750) per job per qualifying period. The high-wage jobs tax credit may be claimed by an eligible employer for each new high-wage [~~economic-based~~] job performed for the year in which the new high-wage [~~economic-based~~] job is created and for [~~the three~~] consecutive qualifying periods [~~as provided in this section~~].

D. To receive a high-wage jobs tax credit, a taxpayer shall file an application for approval of the credit with the department once per calendar year on forms and in the manner prescribed by the department. The annual application shall contain the certification required by Subsection K of this section and shall contain all qualifying periods that closed during the calendar year for which the application is

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made. Any qualifying period that did not close in the calendar year for which the application is made shall be denied by the department. The application for a calendar year shall be filed no later than December 31 of the following calendar year. If a taxpayer fails to file the annual application within the time limits provided in this section, the application shall be denied by the department. The department shall make a determination on the application within one hundred eighty days of the date on which the application was filed [~~provided that the one hundred eighty day period shall not begin until the application is complete, as determined by the department~~].

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

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for the new high-wage [~~economic-based~~] job.

F. [~~Any consecutive qualifying period for a new high-wage economic-based job shall not be eligible for a credit pursuant to this section unless the wage, the forty-eight-week occupancy and the residency requirements for a new high-wage economic-based job are met for each consecutive qualifying period.~~] If [~~any~~] a consecutive qualifying period for a new high-wage [~~economic-based~~] job does not meet the wage, [~~the forty-eight-week~~] occupancy and [~~the~~] residency requirements, [~~all subsequent~~] then the qualifying [~~periods are~~] period is ineligible.

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

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

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

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

(a) the person who performed the job or its functional equivalent prior to the business merger or

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acquisition or other change in business organization; or

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

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

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

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J. A new high-wage [~~economic-based~~] job shall not be eligible for a credit pursuant to this section if the eligible employer has more than one business location in New Mexico from which it conducts business and the requirements of Subsection E of this section are satisfied solely by moving the job from one business location of the eligible employer in New Mexico to another business location of the eligible employer in New Mexico.

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

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

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

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

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

(5) the total number of employees employed by

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the employer at the job location on the day prior to the qualifying period and on the last day of the qualifying period;

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

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

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

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

(10) whether the application is precluded by Subsection O of this section.

L. Any person who willfully submits a false, incorrect or fraudulent certification required pursuant to Subsection K of this section shall be subject to all applicable penalties under the Tax Administration Act, except that the amount on which the penalty is based shall be the total amount

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of credit requested on the application for approval.

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

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

O. A taxpayer that has received a high-wage jobs tax credit shall not submit a new application for [~~a~~] the credit for a minimum of [~~five~~] two calendar years from the closing date of the last qualifying period for which the taxpayer received the credit if the taxpayer [~~(1)~~] lost eligibility to claim [~~a tax~~] the credit from a previous application pursuant to Subsection [~~E or~~] N of this section [~~or~~

~~(2) reduces its total full-time employees in~~

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~~New Mexico by more than five percent after the date on which the last qualifying period on the taxpayer's previous application ends].~~

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

Q. As used in this section:

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

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

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

(4) "domicile" means the sole place where an individual has a true, fixed, permanent home. It is the place where the individual has a voluntary, fixed habitation of self

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and family with the intention of making a permanent home;

(5) "eligible employee" means an individual who is employed in New Mexico by an eligible employer and who is a resident of New Mexico; "eligible employee" does not include an individual who:

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

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

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a)(9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, of an individual who owns,

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directly or indirectly, more than fifty percent of the capital and profits interest in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust; or

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

(6) "eligible employer" means an employer that

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

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

~~(c) whose principal business activities at the location in New Mexico for which the high-wage jobs tax~~

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~~credit is being claimed consist of manufacturing or performing non-retail services during the applicable qualifying period;~~

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

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

~~(9) "manufacturing" means "manufacturing" as that term is used in Section 7-9A-3 NMSA 1978], during the applicable qualifying period, would be eligible for development training program assistance under the fiscal year 2019 policies defining development training program eligibility developed by the industrial training board in accordance with Section 21-19-7 NMSA 1978;~~

~~(10)~~ (7) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as the gross receipts tax, such as the compensating tax, the

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withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the high-wage jobs tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

[~~(11)~~] (8) "new high-wage [~~economic-based~~] job" means a new job created in New Mexico by an eligible employer on or after July 1, 2004 and prior to July 1, [2020] Hf1→2029←Hf1 Hf1→2026←Hf1 that is occupied for at least [~~forty-eight~~] forty-four weeks of a qualifying period by an eligible employee who is paid wages calculated for the qualifying period to be at least:

(a) for a new high-wage [~~economic-based~~] job created prior to July 1, 2015: 1) forty thousand dollars (\$40,000) if the job is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; and 2) twenty-eight thousand dollars (\$28,000) if the job is performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in the unincorporated area, that is not within ten miles of .211510.3

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the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county; and

(b) for a new high-wage [~~economic-based~~] job created on or after July 1, 2015: 1) sixty thousand dollars (\$60,000) if the job is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; and 2) forty thousand dollars (\$40,000) if the job is performed or based in a municipality with a population of less than sixty thousand according to the most recent federal decennial census or in the unincorporated area, that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than a class H county;

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

~~(a) research, development, engineering~~

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~~and testing services performed for a manufacturer that uses the product of the service to develop new or improve existing products;~~

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

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

~~(d) digital film production services and post-film production services performed for a business that will market the digital product or film;~~

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

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

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

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

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~~capital, or both, within New Mexico;~~

Hf1→(9) "new job" means a job that is occupied by an employee who has not been employed in New Mexico by the eligible employer in the three years prior to the date of hire;←Hf1

{15}] Hf1→(9) (10)←Hf1 "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a new high-wage [~~economic-based~~] job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a new high-wage [~~economic-based~~] job;

{16}] Hf1→(10) (11)←Hf1 "resident" means a natural person whose domicile is in New Mexico at the time of hire or within one hundred eighty days of the date of hire;

{17}] Hf1→(11) (12)←Hf1 "threshold job" means a job that is occupied for at least [~~forty-eight~~] forty-four weeks of a calendar year by an eligible employee and that meets the wage requirements for a "new high-wage [~~economic-based~~] job"; and

{18}] Hf1→(12) (13)←Hf1 "wages" means all compensation paid by an eligible employer to an eligible employee through the employer's payroll system, including those wages that the employee elects to defer or redirect or the employee's contribution to a 401(k) or cafeteria plan program, but "wages" does not include benefits or the employer's share

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of payroll taxes, social security or medicare contributions, federal or state unemployment insurance contributions or workers' compensation."

SECTION 2. APPLICABILITY.--The provisions of this act apply to qualifying periods beginning on or after January 1, 2019.