BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 2, 2024

Bill: HB-275 **Sponsor:** Representative Joshua N. Hernandez

Short Title: High-Wage Jobs Credit Determinations

Description: This bill amends Section 7-9G-1 NMSA 1978 to remove the provision giving the department 180 days to make a determination on an application for the credit. It also changes several definitions, including extending the definition of "new high-wage job" to include a job created prior to July 1, 2030; the previous deadline was July 1, 2026. It changes the definition of "new job" by shortening the period of time that an employee must not have been employed by the employer from three years to one year. It changes the definition of "threshold job" to look at the year from the date of employment rather than using calendar years.

Effective Date: Not specified; 90 days following adjournment (May 15, 2024). Applicable to applications for a high-wage jobs tax credit received by the Taxation and Revenue Department on or after the effective date of this act.

Taxation and Revenue Department Analyst: Sara Grubbs

Estimated Revenue Impact*					**R or NR****	**Fund(s) Affected**
FY2024	**FY2025**	**FY2026**	**FY2027**	**FY2028**		
--	--	--	($6,600)	($6,800)	R	General Fund

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Methodology for Estimated Revenue Impact: The proposed changes to the definitions under Section 7-9G-1 NMSA 1978 present some technical concerns as outlined below under "Technical Issues." The Taxation and Revenue Department's (Tax & Rev) fiscal impact is based solely on the extension of the eligibility date from prior to July 1, 2026 to prior to July 1, 2030. There is potential for increased fiscal impact should technical issues be addressed. Tax & Rev reviewed the historical claims and credit amounts of the High Wage Jobs Tax Credit (HWJTC). The average aggregate amount applied towards Modified Combined Tax liability in the last four fiscal year years is $6 million. Using the University of New Mexico's Bureau of Business and Economic Research (BBER) January 2024 forecast, the Taxation and Revenue Department (Tax & Rev) indexed the data to fiscal year 2027 and then grew the estimate annually by BBER's New Mexico's wage and salary growth.

Policy Issues: While tax incentives can support specific industries or promote desired social and economic behaviors, the growing number of such incentives complicates the tax code. Introducing more tax incentives has two main consequences: (1) it creates special treatment and exceptions within the code, leading to increased tax expenditures and a narrower tax base, which negatively impacts the General Fund; and (2) it imposes a heavier compliance burden on both taxpayers and Tax & Rev. Increasing complexity and exceptions in the tax code is generally not in line with sound tax policy.

The purpose of the high-wage jobs tax credit is to provide an incentive for businesses to create and fill new high-wage jobs in New Mexico. By reducing the time from three years to one year in the definition of 'new job' – meaning that to be a "new job", the job must be occupied by an employee who has not worked for the employer for the past year, rather than the past three years -- it may incentivize a lay-off rehire cycle and may not incentivize a business in New Mexico to create truly "new" high wage jobs.

The deletion of "resident" and "domicile" would mean that non-domiciled employees who are not currently 'eligible employees' could be eligible for the credit. Most HWJTC applications include numerous non-residents, and the financial impact could be substantial. By defining resident per the Income Tax Act or by withholding for a certain amount of time rather than domicile, the credit is now incentivizing the hiring of employees who work in New Mexico and owe tax on income earned here, but is not restricted to employees who live in New Mexico. Employees who live in New Mexico are more likely to generate secondary tax revenue through gross receipts tax and other excise taxes on items purchased in New Mexico. This change would therefore reduce the indirect positive revenue impact of new hiring.

Additional analysis of Section 7-2-34 NMSA 1978 can be found in the 2023 New Mexico Tax Expenditure Report.[1]

Technical Issues: The definition of "eligible employer", Section 1, page 9, lines 24 and 25 and page 10, lines 1 through 7, delegates to the industrial training board the authority to decide which manufacturers and which services companies may claim the credit. This may violate the nondelegation doctrine because the board does not answer to the public. The board can devise the policies, but the Legislature and governor should approve the policies. In this case, for example, the board could expand who qualifies as an 'eligible employer.' The amount of the credits issued could increase materially without legislative or governor's approval.

On pages 9 and 10, the new language proposed in the definition of "eligible employer" -- "policies in effect for the fiscal years" -- is unworkable if the policies change during the year. For taxpayers to be able to predict the impact of their applications on their own operations and budget, the policy at the time of the application should control. Tax & Rev suggests "…policy in effect at the time the application for the credit is filed with the department that defined development training program eligibility developed by the industrial training board in accordance with Section 21-19-7 NMSA 1978."

On page 12, lines 15 through 20, the amended definition of "threshold job" would be difficult to administer. The application review and approval are based on qualifications within a calendar year in which the qualifying periods claimed ends. The "threshold job" definition is used to calculate an increase for each eligible employee claimed on the application based on all employees employed by the company claiming the credit. Because most businesses who claim the HWJTC have more than 1,000 employees this would require an excessive amount of documentation to be provided by the taxpayer which would be burdensome to the taxpayer. The burden also extends to Tax & Rev, by changing 44 weeks of a calendar year to the first 52 weeks of employment, Tax & Rev would need to review complete payroll documentation for every employee for the calendar year after the qualifying periods claimed ended in addition to the payroll reports for the employees being claimed. Documentation for the following calendar year is typically not available until after the application is due causing issues with the review timeline and receiving complete applications.

As noted below, it is recommended that a July 1, 2024, effective date be included in the bill.

Other Issues: None.

Administrative & Compliance Impact: Tax & Rev will make information system changes and update forms, instructions, and publications.

---

[1] See https://www.tax.newmexico.gov/forms-publications/

Implementing this bill will have a moderate impact on Tax & Rev's Information Technology Division (ITD), at approximately 480 hours or about 3 months and $26,640 of staff workload costs. This effort includes changes to the taxpayer interface, Taxpayer Access Point (TAP). Considering the effort to implement this bill, an effective date of May 15, 2024, may be challenging to meet; Tax & Rev recommends an effective date is July 1, 2024.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2024	**FY2025**	**FY2026**	**3 Year Total Cost**		
--	$26.6	--	$26.6	NR	Tax & Rev - ITD

* In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).