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SENATE BILL 27

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2011

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TAXATION; CLARIFYING THAT THE HIGH-WAGE JOBS TAX CREDIT APPLIES TO WAGES AND BENEFITS; DEFINING "WAGES AND BENEFITS"; 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". Beginning on August 1, 2011, all applications for high-wage jobs tax credits received by the

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1 taxation and revenue department must be received within one
2 year following the end of the calendar year in which the
3 qualifying period closes.

4 B. The high-wage jobs tax credit may be claimed and
5 allowed in an amount equal to ten percent of the wages and
6 benefits distributed to an eligible employee in a new high-wage
7 economic-based job, but shall not exceed twelve thousand
8 dollars (\$12,000).

9 C. The high-wage jobs tax credit may be claimed by
10 an eligible employer for each new high-wage economic-based job
11 performed for the year in which the new high-wage economic-
12 based job is created and for the three following qualifying
13 periods.

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

21 E. For all applications for high-wage jobs tax
22 credits received by the taxation and revenue department on or
23 after August 1, 2011, a job shall not be eligible for a credit
24 pursuant to this section if the job:

25 (1) was created within one hundred eighty days

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1 of a business merger, acquisition, association, affiliation,
2 disposition or other change in organization or management
3 affecting the eligible employer; and

4 (2) was performed by:

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

9 (b) another person replacing the person
10 who performed the job, or its functional equivalent, prior to
11 the business merger, acquisition, association, affiliation,
12 disposition or other change in organization or management.

13 F. For all applications for high-wage jobs tax
14 credits received by the taxation and revenue department on or
15 after August 1, 2011, a job shall not be eligible for a credit
16 pursuant to this section if the job is created due to an
17 eligible employer entering into a contract or becoming a
18 subcontractor to a contract with a governmental entity that
19 replaces one or more entities performing functionally
20 equivalent services for the governmental entity unless the job
21 is a new high-wage economic-based job that was not being
22 performed by an employee of the replaced entity.

23 [E-] G. For an application for a high-wage jobs tax
24 credit filed with the taxation and revenue department after
25 September 16, 2010, with respect to each new high-wage

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1 economic-based job for which an eligible employer seeks the
2 high-wage jobs tax credit, the employer shall certify:

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

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

8 (3) whether the new high-wage economic-based
9 job was in a municipality with a population of forty thousand
10 or more or with a population of less than forty thousand
11 according to the most recent federal decennial census and
12 whether the job was in the unincorporated area of a county; and

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

16 [~~F~~] H. To receive a high-wage jobs tax credit with
17 respect to any qualifying period, an eligible employer shall
18 apply to the taxation and revenue department on forms and in
19 the manner prescribed by the department. The application shall
20 include a certification made pursuant to Subsection [~~F~~] G of
21 this section.

22 [~~G~~] I. The credit provided in this section may be
23 deducted from the modified combined tax liability of a
24 taxpayer. If the credit exceeds the modified combined tax
25 liability of the taxpayer, the excess shall be refunded to the

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1 taxpayer.

2 [H.] J. The economic development department shall
3 report to the appropriate interim legislative committee before
4 November 1 of each year the cost of this tax credit to the
5 state and its impact on company recruitment and job creation.

6 [I.] K. For purposes of an application for a high-
7 wage jobs tax credit filed with the taxation and revenue
8 department after September 16, 2010 and as used in this
9 section:

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

13 ~~(2)]~~ (1) "eligible employee" means an
14 individual who is employed by an eligible employer and who is a
15 resident of New Mexico; "eligible employee" does not include an
16 individual who:

17 (a) bears any of the relationships
18 described in Paragraphs (1) through (8) of 26 U.S.C. Section
19 152(a) to the employer or, if the employer is a corporation, to
20 an individual who owns, directly or indirectly, more than fifty
21 percent in value of the outstanding stock of the corporation
22 or, if the employer is an entity other than a corporation, to
23 an individual who owns, directly or indirectly, more than fifty
24 percent of the capital and profits interest in the entity;

25 (b) if the employer is an estate or

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1 trust, is a grantor, beneficiary or fiduciary of the estate or
2 trust or is an individual who bears any of the relationships
3 described in Paragraphs (1) through (8) of 26 U.S.C. Section
4 152(a) to a grantor, beneficiary or fiduciary of the estate or
5 trust;

6 (c) is a dependent, as that term is
7 described in 26 U.S.C. Section 152(a)(9), of the employer or,
8 if the taxpayer is a corporation, of an individual who owns,
9 directly or indirectly, more than fifty percent in value of the
10 outstanding stock of the corporation or, if the employer is an
11 entity other than a corporation, of an individual who owns,
12 directly or indirectly, more than fifty percent of the capital
13 and profits interest in the entity or, if the employer is an
14 estate or trust, of a grantor, beneficiary or fiduciary of the
15 estate or trust; or

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

23 ~~(3)~~ (2) "eligible employer" means an
24 employer that:

25 (a) ~~made~~ exported more than fifty

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1 percent of its [~~sales~~] goods or services produced in New Mexico
2 to persons outside New Mexico during the most recent twelve
3 months of the employer's modified combined tax liability
4 reporting periods ending prior to claiming a high-wage jobs tax
5 credit; or

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

8 [~~(4)~~] (3) "modified combined tax liability"
9 means the total liability for the reporting period for the
10 gross receipts tax imposed by Section 7-9-4 NMSA 1978 together
11 with any tax collected at the same time and in the same manner
12 as the gross receipts tax, such as the compensating tax, the
13 withholding tax, the interstate telecommunications gross
14 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
15 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
16 minus the amount of any credit other than the high-wage jobs
17 tax credit applied against any or all of these taxes or
18 surcharges; but "modified combined tax liability" excludes all
19 amounts collected with respect to local option gross receipts
20 taxes;

21 [~~(5)~~] (4) "new high-wage economic-based job"
22 means a new job created by an eligible employer on or after
23 July 1, 2004 and prior to July 1, 2015 that is occupied for at
24 least forty-eight weeks of a qualifying period by an eligible
25 employee who is paid wages and benefits calculated for the

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1 qualifying period to be at least:

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

6 (b) twenty-eight thousand dollars
7 (\$28,000) if the job is performed or based in a municipality
8 with a population of less than forty thousand according to the
9 most recent federal decennial census or in the unincorporated
10 area of a county;

11 [~~(6)~~] (5) "qualifying period" means the period
12 of twelve months beginning on the day an eligible employee
13 begins working in a new high-wage economic-based job or the
14 period of twelve months beginning on the anniversary of the day
15 an eligible employee began working in a new high-wage economic-
16 based job; and

17 [~~(7)~~] (6) "wages and benefits" means [~~wages~~
18 ~~as defined in Paragraphs (1), (2) and (3) of 26 U.S.C. Section~~
19 ~~51(e)~~] all remuneration in cash and the cash value of
20 remuneration paid in any other form for services performed by
21 an employee for an employer."

22 SECTION 2. TEMPORARY PROVISION.--An employer who filed
23 an application between September 16, 2010 and the effective
24 date of this act for a high-wage jobs tax credit that was
25 denied, in whole or in part, may file a new application for

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1 approval of that part of the high-wage jobs tax credit denied
2 notwithstanding any other provisions of law that would prevent
3 the refiling of a new claim; provided that the new claim is
4 filed not later than one year after the effective date of this
5 act.

6 SECTION 3. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect
8 immediately.