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HOUSE BILL 242

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

INTRODUCED BY

David C. Chavez

AN ACT

RELATING TO TAXATION; AMENDING THE DEFINITIONS OF "ELIGIBLE EMPLOYER" AND "WAGES" FOR THE PURPOSES OF THE RURAL JOB TAX CREDIT; CLARIFYING ELIGIBILITY OF CERTAIN JOBS FOR THE RURAL JOB TAX CREDIT; DECLARING AN EMERGENCY.

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

**SECTION 1.** Section 7-2E-1.1 NMSA 1978 (being Laws 2007, Chapter 172, Section 2) is amended to read:

"7-2E-1.1. TAX CREDIT--RURAL JOB TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "rural job tax credit". Every eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each qualifying job the employer creates. The maximum tax credit amount with respect to each qualifying job is equal to:

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1 (1) twenty-five percent of the first sixteen  
2 thousand dollars (\$16,000) in wages paid for the qualifying job  
3 if the job is performed or based at a location in a tier one  
4 area; or

5 (2) twelve and one-half percent of the first  
6 sixteen thousand dollars (\$16,000) in wages paid if the  
7 qualifying job is performed or based at a location in a tier  
8 two area.

9 B. The amount of the rural job tax credit shall be  
10 six and one-fourth percent of the first sixteen thousand  
11 dollars (\$16,000) in wages paid for the qualifying job in a  
12 qualifying period. The rural job tax credit may be claimed for  
13 each qualifying job for a maximum of:

14 (1) four qualifying periods for each  
15 qualifying job performed or based at a location in a tier one  
16 area; and

17 (2) two qualifying periods for each qualifying  
18 job performed or based at a location in a tier two area.

19 C. With respect to each qualifying job for which an  
20 eligible employer seeks the rural job tax credit, the employer  
21 shall certify the amount of wages paid to each eligible  
22 employee during each qualifying period, the number of weeks  
23 during the qualifying period the position was occupied and  
24 whether the qualifying job was in a tier one or tier two area.

25 D. The economic development department shall

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1 determine which employers are eligible employers and shall  
2 report the listing of eligible businesses to the taxation and  
3 revenue department in a manner and at times the departments  
4 shall agree upon.

5 E. To receive a rural job tax credit with respect  
6 to any qualifying period, an eligible employer must apply to  
7 the taxation and revenue department on forms and in the manner  
8 the department may prescribe. The application shall include a  
9 certification made pursuant to Subsection C of this section.

10 If all the requirements of this section have been complied  
11 with, the taxation and revenue department may issue to the  
12 applicant a document granting a tax credit for the appropriate  
13 qualifying period. The tax credit document shall be numbered  
14 for identification and declare its date of issuance and the  
15 amount of rural job tax credit allowed for the respective jobs  
16 created. The tax credit documents may be sold, exchanged or  
17 otherwise transferred and may be carried forward for a period  
18 of three years from the date of issuance. The parties to such  
19 a transaction to sell, exchange or transfer a rural job tax  
20 credit document shall notify the department of the transaction  
21 within ten days of the sale, exchange or transfer.

22 F. The holder of the tax credit document may apply  
23 all or a portion of the rural job tax credit granted by the  
24 document against the holder's modified combined tax liability,  
25 personal income tax liability or corporate income tax

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1 liability. Any balance of rural job tax credit granted by the  
2 document may be carried forward for up to three years from the  
3 date of issuance of the tax credit document. No amount of  
4 rural job tax credit may be applied against a gross receipts  
5 tax imposed by a municipality or county.

6 G. Notwithstanding the provisions of Section 7-1-8  
7 NMSA 1978, the taxation and revenue department may disclose to  
8 any person the balance of rural job tax credit remaining on any  
9 tax credit document and the balance of credit remaining on that  
10 document for any period.

11 H. The secretary of economic development, the  
12 secretary of taxation and revenue and the secretary of [~~labor~~]  
13 workforce solutions or their designees shall annually evaluate  
14 the effectiveness of the rural job tax credit in stimulating  
15 economic development in the rural areas of New Mexico and make  
16 a joint report of their findings to each session of the  
17 legislature so long as the rural job tax credit is in effect.

18 I. An eligible employer that creates a qualifying  
19 job in the period beginning on or after July 1, 2006 but before  
20 July 1, 2007 or creates a qualifying job, the qualifying period  
21 of which includes a part of the period between July 1, 2006 and  
22 July 1, 2007, for which the eligible employer has not received  
23 a rural job tax credit document pursuant to this section may  
24 submit an application for, and the department may issue to the  
25 eligible employer applying, a document granting a tax credit

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1 for the appropriate qualifying period. Claims for a rural job  
2 tax credit submitted pursuant to the provisions of this  
3 subsection shall be submitted within three years from the date  
4 of issuance of the rural job tax credit document.

5 J. A qualifying job shall not be eligible for a  
6 rural job tax credit pursuant to this section if:

7 (1) the job is created due to a business  
8 merger or acquisition or other change in business organization;

9 (2) the eligible employee was terminated from  
10 employment in New Mexico by another employer involved in the  
11 business merger or acquisition or other change in business  
12 organization;

13 (3) the job is performed by:

14 (a) the person who performed the job or  
15 its functional equivalent prior to the business merger or  
16 acquisition or other change in business organization; or

17 (b) a person replacing the person who  
18 performed the job or its functional equivalent prior to the  
19 business merger or acquisition or other change in business  
20 organization; and

21 (4) the job or its functional equivalent  
22 previously qualified for the rural job tax credit but the  
23 employer prior to the business merger or acquisition or other  
24 change in business organization was not approved for the  
25 credit.

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1           K. Notwithstanding the provisions of Subsection J  
2 of this section, a qualifying job that was created by another  
3 employer and for which an application for the rural job tax  
4 credit was received by the taxation and revenue department  
5 prior to March 1, 2012, and is under review for approval, shall  
6 remain eligible for the rural job tax credit for the balance of  
7 the qualifying periods. The new employer that results from a  
8 business merger or acquisition or other change in business  
9 organization may only claim the rural job tax credit for the  
10 balance of the qualifying periods for which the qualifying job  
11 is otherwise eligible.

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

22           ~~[J.]~~ M. As used in this section:

23                   (1) "eligible employee" means any individual  
24 other than an individual who:

25                           (a) bears any of the relationships

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1 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
2 152(a) to the employer or, if the employer is a corporation, to  
3 an individual who owns, directly or indirectly, more than fifty  
4 percent in value of the outstanding stock of the corporation  
5 or, if the employer is an entity other than a corporation, to  
6 any individual who owns, directly or indirectly, more than  
7 fifty percent of the capital and profits interests in the  
8 entity;

9 (b) if the employer is an estate or  
10 trust, is a grantor, beneficiary or fiduciary of the estate or  
11 trust or is an individual who bears any of the relationships  
12 described in Paragraphs (1) through (8) of 26 U.S.C. Section  
13 152(a) to a grantor, beneficiary or fiduciary of the estate or  
14 trust; or

15 (c) is a dependent, as that term is  
16 described in 26 U.S.C. Section 152(a)(9), of the employer or,  
17 if the taxpayer is a corporation, of an individual who owns,  
18 directly or indirectly, more than fifty percent in value of the  
19 outstanding stock of the corporation or, if the employer is an  
20 entity other than a corporation, of any individual who owns,  
21 directly or indirectly, more than fifty percent of the capital  
22 and profits interests in the entity or, if the employer is an  
23 estate or trust, of a grantor, beneficiary or fiduciary of the  
24 estate or trust;

25 (2) "eligible employer" means an employer

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1 who ~~[has been approved for in-plant training assistance]~~ is  
2 eligible for development training program assistance pursuant  
3 to Section 21-19-7 NMSA 1978;

4 (3) "metropolitan statistical area" means a  
5 metropolitan statistical area in New Mexico as determined by  
6 the United States bureau of the census;

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

19 (5) "qualifying job" means a job established  
20 by the employer that is occupied by an eligible employee for at  
21 least forty-eight weeks of a qualifying period;

22 (6) "qualifying period" means the period of  
23 twelve months beginning on the day an eligible employee begins  
24 working in a qualifying job or the period of twelve months  
25 beginning on the anniversary of the day an eligible employee

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1 began working in a qualifying job;

2 (7) "rural area" means any part of the state  
3 other than:

4 (a) an H class county;

5 (b) the state fairgrounds;

6 (c) an incorporated municipality within  
7 a metropolitan statistical area if the municipality's  
8 population is thirty thousand or more according to the most  
9 recent federal decennial census; and

10 (d) any area within ten miles of the  
11 exterior boundaries of a municipality described in Subparagraph  
12 (c) of this paragraph;

13 (8) "tier one area" means:

14 (a) any municipality within the rural  
15 area if the municipality's population according to the most  
16 recent federal decennial census is fifteen thousand or less; or

17 (b) any part of the rural area that is  
18 not within the exterior boundaries of a municipality;

19 (9) "tier two area" means any municipality  
20 within the rural area if the municipality's population  
21 according to the most recent federal decennial census is more  
22 than fifteen thousand; and

23 (10) "wages" means ~~[wages as defined by~~  
24 ~~Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c)]~~ all  
25 gross wages and other compensation, before any payroll

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1 deductions, paid for services rendered by an individual,  
2 including commissions, cost-of-living allowances, overtime pay,  
3 hazardous-duty pay, incentive pay, on-call pay, shift  
4 differentials, bonuses and the cash value of all remuneration  
5 paid to an employee."

6 SECTION 2. APPLICABILITY.--The provisions of this act  
7 shall apply to taxable years beginning on or after January 1,  
8 2011.

9 SECTION 3. EMERGENCY.--It is necessary for the public  
10 peace, health and safety that this act take effect  
11 immediately."