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SENATE BILL 36

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO TAXATION; ENACTING NEW SECTIONS OF THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT; CREATING THE STATE GRADUATE EMPLOYMENT INCOME TAX CREDIT AND STATE GRADUATE EMPLOYMENT CORPORATE INCOME TAX CREDIT; AUTHORIZING THE TAXATION AND REVENUE DEPARTMENT TO REVEAL AGGREGATE TAX CREDIT OR DEDUCTION INFORMATION TO FACILITATE A REPORT TO LEGISLATIVE COMMITTEES.

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

SECTION 1. Section 7-1-8.8 NMSA 1978 (being Laws 2009, Chapter 243, Section 10) is amended to read:

"7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES AND LEGISLATIVE COMMITTEES.--An employee of the department may reveal to:

A. a committee of the legislature for a valid

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1 legislative purpose, return information concerning any tax or
2 fee imposed pursuant to the Cigarette Tax Act;

3 B. the revenue stabilization and tax policy
4 committee and the legislative finance committee, return
5 information necessary to facilitate the compilation of a report
6 to those committees on the effectiveness of a tax credit or
7 deduction that is required pursuant to law; provided that the
8 return information shall not include a taxpayer's name, address
9 or government-issued identification number;

10 [~~B.~~] C. the attorney general, return information
11 acquired pursuant to the Cigarette Tax Act for purposes of
12 Section 6-4-13 NMSA 1978 and the master settlement agreement
13 defined in Section 6-4-12 NMSA 1978;

14 [~~G.~~] D. the commissioner of public lands, return
15 information for use in auditing that pertains to rentals,
16 royalties, fees and other payments due the state under land
17 sale, land lease or other land use contracts;

18 [~~D.~~] E. the secretary of human services or the
19 secretary's delegate, under a written agreement with the
20 department, the last known address with date of all names
21 certified to the department as being absent parents of children
22 receiving public financial assistance, but only for the purpose
23 of enforcing the support liability of the absent parents by the
24 child support enforcement division or any successor
25 organizational unit;

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1 ~~[E-]~~ F. the department of information technology,
2 by electronic media, a database updated quarterly that contains
3 the names, addresses, county of address and taxpayer
4 identification numbers of New Mexico personal income tax
5 filers, but only for the purpose of producing the random jury
6 list for the selection of petit or grand jurors for the state
7 courts pursuant to Section 38-5-3 NMSA 1978;

8 ~~[F-]~~ G. the state courts, the random jury lists
9 produced by the department of information technology under
10 Subsection ~~[E]~~ F of this section;

11 ~~[G-]~~ H. the director of the New Mexico department
12 of agriculture or the director's authorized representative,
13 upon request of the director or representative, the names and
14 addresses of all gasoline or special fuel distributors,
15 wholesalers and retailers;

16 ~~[H-]~~ I. the public regulation commission, return
17 information with respect to the Corporate Income and Franchise
18 Tax Act required to enable the commission to carry out its
19 duties;

20 ~~[I-]~~ J. the state racing commission, return
21 information with respect to the state, municipal and county
22 gross receipts taxes paid by racetracks;

23 ~~[J-]~~ K. the gaming control board, tax returns of
24 license applicants and their affiliates as provided in
25 Subsection E of Section 60-2E-14 NMSA 1978;

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1 ~~[K-]~~ L. the director of the workers' compensation
2 administration or to the director's representatives authorized
3 for this purpose, return information to facilitate the
4 identification of taxpayers that are delinquent or noncompliant
5 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
6 1978; and

7 ~~[H-]~~ M. the secretary of workforce solutions or the
8 secretary's delegate, return information for use in enforcement
9 of unemployment insurance collections pursuant to the terms of
10 a written reciprocal agreement entered into by the department
11 with the secretary of workforce solutions for exchange of
12 information."

13 **SECTION 2.** A new section of the Income Tax Act is enacted
14 to read:

15 "[NEW MATERIAL] STATE GRADUATE EMPLOYMENT INCOME TAX
16 CREDIT.--

17 A. A taxpayer who files an individual New Mexico
18 income tax return, who is not a dependent of another individual
19 and who is the owner of a New Mexico sole proprietorship,
20 partnership or limited liability company may claim a credit in
21 an amount equal to five thousand dollars (\$5,000) of the gross
22 wages paid to each qualified state graduate who is employed
23 full time in New Mexico by the taxpayer for at least seven
24 months during the first taxable year for which the return is
25 filed and for twelve months during the second taxable year for

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1 which the return is filed. A taxpayer shall not be eligible
2 for a credit provided in this section if the qualified state
3 graduate upon which the credit is predicated is replacing or
4 performing the job or functional equivalent of a previous
5 qualified state graduate who is no longer employed by the
6 taxpayer. The tax credit provided by this section may be
7 referred to as the "state graduate employment income tax
8 credit".

9 B. The purpose of the state graduate employment
10 income tax credit is to encourage the full-time employment of
11 qualified state graduates within eighteen months of graduation
12 from one of the state educational institutions enumerated in
13 Article 12, Section 11 of the constitution of New Mexico.

14 C. A taxpayer who is the owner of a New Mexico sole
15 proprietorship, partnership or limited liability company may
16 claim the state graduate employment income tax credit for each
17 taxable year in which the taxpayer employs one or more
18 qualified state graduates; provided that the taxpayer may not
19 claim the state graduate employment income tax credit for any
20 individual qualified state graduate for more than two taxable
21 years or if the qualified state graduate upon whom the credit
22 is predicated is replacing or performing the job or functional
23 equivalent of a previous qualified state graduate who is no
24 longer employed by the taxpayer. A taxpayer shall apply for
25 approval for a credit within one year following the end of the

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1 calendar year in which the taxpayer employs the qualified state
2 graduate upon whom the credit is predicated.

3 D. That portion of a state graduate employment
4 income tax credit approved by the department that exceeds a
5 taxpayer's income tax liability in the taxable year in which
6 the state graduate employment income tax credit is claimed
7 shall not be refunded to the taxpayer. The state graduate
8 employment income tax credit shall not be carried forward or
9 transferred to another taxpayer.

10 E. A husband and wife filing separate returns for a
11 taxable year for which they could have filed a joint return may
12 each claim only one-half of the state graduate employment
13 income tax credit that would have been claimed on a joint
14 return.

15 F. A taxpayer who otherwise qualifies and claims a
16 state graduate employment income tax credit in New Mexico that
17 may be claimed by a partnership or limited liability company of
18 which the taxpayer is a member may claim a credit only in
19 proportion to the taxpayer's interest in the partnership or
20 limited liability company. The total credit claimed by all
21 members of the partnership or limited liability company shall
22 not exceed the allowable credit pursuant to Subsection A of
23 this section.

24 G. The taxpayer shall submit to the higher
25 education department with respect to each employee for whom the

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1 state graduate employment income tax credit is claimed:

2 (1) information required by the secretary of
3 higher education with respect to the employee's employment by
4 the taxpayer during the taxable year for which the state
5 graduate employment income tax credit is claimed; and

6 (2) information required by the secretary of
7 higher education establishing that the employee is a qualified
8 state graduate and was not also employed in the same taxable
9 year by another taxpayer claiming a state graduate employment
10 income tax credit for that employee pursuant to this section or
11 the Corporate Income and Franchise Tax Act.

12 H. The higher education department, with the
13 cooperation of the taxation and revenue department, shall adopt
14 rules establishing procedures to certify qualified state
15 graduates for purposes of obtaining a state graduate employment
16 income tax credit. The rules shall ensure that not more than
17 one state graduate employment income tax credit per qualified
18 state graduate shall be allowed in a taxable year and that the
19 credits allowed per qualified state graduate are limited to a
20 maximum of two years. The higher education department shall
21 issue a dated certificate of eligibility containing a list of
22 the qualified state graduates employed by the taxpayer claiming
23 the state graduate employment income tax credit, including
24 identifying information such as the social security number of
25 the employee, the date of graduation and the name of the state

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1 educational institution from which the employee graduated, the
2 date of employment of the employee by the taxpayer and the
3 number of hours worked per week by the employee. All
4 certificates of eligibility issued pursuant to this subsection
5 shall be sequentially numbered, and an account of all
6 certificates issued or destroyed shall be maintained by the
7 higher education department. The taxation and revenue
8 department shall audit the records of the state graduate
9 employment income tax credit maintained by the higher education
10 department on a periodic basis to ensure effective
11 administration of the state graduate employment income tax
12 credit and compliance with the Tax Administration Act and this
13 section.

14 I. To claim a state graduate employment income tax
15 credit, the taxpayer shall provide to the taxation and revenue
16 department the certificate of eligibility issued by the higher
17 education department pursuant to this section to the taxpayer
18 for the taxable year for which the state graduate employment
19 income tax credit is claimed.

20 J. A taxpayer who claims and is granted approval
21 for the state graduate employment income tax credit shall not
22 apply for or be granted approval for the rural job tax credit,
23 the high-wage jobs tax credit or the additional credit pursuant
24 to the Technology Jobs Tax Credit Act based on the same job
25 upon which the state graduate employment income tax credit is

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1 predicated.

2 K. The department may allow a maximum annual
3 aggregate of two million dollars (\$2,000,000) in state graduate
4 employment income tax credits provided by this section and
5 state graduate employment corporate income tax credits provided
6 by the Corporate Income and Franchise Tax Act. Applications
7 for the state graduate employment income tax credit shall be
8 considered in the order received by the department. A taxpayer
9 who submits a claim for a state graduate employment income tax
10 credit and who is unable to receive the tax credit because the
11 claims exceed the annual aggregate limitation in this
12 subsection shall be placed for the subsequent year ahead of the
13 other state graduate employment income tax credit claimants
14 submitting claims in the subsequent year in the order of the
15 date on which the department received the application.

16 L. A taxpayer allowed a tax credit pursuant to this
17 section shall report the amount of the credit to the department
18 in a manner required by the department.

19 M. The department shall compile an annual report on
20 the state graduate employment income tax credit that shall
21 include the number of taxpayers approved by the department to
22 receive the credit, the aggregate amount of credits approved
23 and any other information necessary to evaluate the
24 effectiveness of the credit. Beginning in 2018 and every five
25 years thereafter that the credit is in effect, the department

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1 shall compile and present the annual reports to the revenue
2 stabilization and tax policy committee and the legislative
3 finance committee with an analysis of the effectiveness and
4 cost of the tax credit and whether the tax credit is performing
5 the purpose for which it was created.

6 N. As used in this section:

7 (1) "benefits" means any employee benefit plan
8 as defined in Title 1, Section 3 of the federal Employee
9 Retirement Income Security Act of 1974, 29 U.S.C. 1002; and

10 (2) "qualified state graduate" means an
11 individual who:

12 (a) is a New Mexico resident;

13 (b) files an individual New Mexico
14 income tax return;

15 (c) is hired prior to June 1, 2019 and
16 within eighteen months of graduation from one of the state
17 educational institutions of higher learning enumerated in
18 Article 12, Section 11 of the constitution of New Mexico;

19 (d) completed a post-baccalaureate
20 graduate master's or professional degree within three years or,
21 if part-time, within the credit equivalent, or a doctoral
22 degree within six years or, if part-time, within the credit
23 equivalent, in the discipline of physical or life sciences,
24 technology, engineering, mathematics or a health-related field;
25 and

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1 (e) receives benefits and works at least
2 forty hours per week for at least seven months during the first
3 taxable year and for twelve months during the second taxable
4 year for which the state graduate employment income tax credit
5 is claimed."

6 SECTION 3. A new section of the Corporate Income and
7 Franchise Tax Act is enacted to read:

8 "[NEW MATERIAL] STATE GRADUATE EMPLOYMENT CORPORATE INCOME
9 TAX CREDIT.--

10 A. A taxpayer that is a New Mexico corporation and
11 that files a corporate income tax return may claim a credit in
12 an amount equal to five thousand dollars (\$5,000) of the gross
13 wages paid to each qualified state graduate who is employed
14 full time in New Mexico by the taxpayer for at least seven
15 months during the first taxable year for which the return is
16 filed and for twelve months during the second taxable year for
17 which the return is filed. A taxpayer shall not be eligible
18 for a credit provided in this section if the qualified state
19 graduate upon which the credit is predicated is replacing or
20 performing the job or functional equivalent of a previous
21 qualified state graduate who is no longer employed by the
22 taxpayer. The tax credit provided by this section may be
23 referred to as the "state graduate employment corporate income
24 tax credit".

25 B. The purpose of the state graduate employment

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1 corporate income tax credit is to encourage the full-time
2 employment of qualified state graduates within eighteen months
3 of graduation from one of the state educational institutions
4 enumerated in Article 12, Section 11 of the constitution of New
5 Mexico.

6 C. A taxpayer may claim the state graduate
7 employment corporate income tax credit for each taxable year in
8 which the taxpayer employs one or more qualified state
9 graduates; provided that the taxpayer may not claim the state
10 graduate employment corporate income tax credit for any
11 individual qualified state graduate for more than two calendar
12 years from the date of hire or if the qualified state graduate
13 upon whom the credit is predicated is replacing or performing
14 the job or functional equivalent of a previous qualified state
15 graduate who is no longer employed by the taxpayer. A taxpayer
16 shall apply for approval for a credit within one year following
17 the end of the calendar year in which the taxpayer employs the
18 qualified state graduate upon whom the credit is predicated.

19 D. That portion of a state graduate employment
20 corporate income tax credit approved by the department that
21 exceeds a taxpayer's corporate income tax liability in the
22 taxable year in which the credit is claimed shall not be
23 refunded to the taxpayer. The state graduate employment
24 corporate income tax credit shall not be carried forward or
25 transferred to another taxpayer.

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1 E. The taxpayer shall submit to the higher
2 education department with respect to each employee for whom the
3 state graduate employment corporate income tax credit is
4 claimed:

5 (1) information required by the secretary of
6 higher education with respect to the employee's employment by
7 the taxpayer during the taxable year for which the state
8 graduate employment corporate income tax credit is claimed; and

9 (2) information required by the secretary of
10 higher education establishing that the employee is a qualified
11 state graduate and was not also employed in the same taxable
12 year by another taxpayer claiming a state graduate employment
13 corporate income tax credit for that employee pursuant to this
14 section or the Income Tax Act.

15 F. The higher education department, with the
16 cooperation of the taxation and revenue department, shall adopt
17 rules establishing procedures to certify qualified state
18 graduates for purposes of obtaining a state graduate employment
19 corporate income tax credit. The rules shall ensure that not
20 more than one state graduate employment corporate income tax
21 credit per qualified state graduate shall be allowed in a
22 taxable year and that the credits allowed per qualified state
23 graduate are limited to a maximum of two years. The higher
24 education department shall issue a dated certificate of
25 eligibility containing a list of the qualified state graduates

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1 employed by the taxpayer claiming the state graduate employment
2 corporate income tax credit, including identifying information
3 such as the social security number of the employee, the date of
4 graduation and the name of the state educational institution
5 from which the employee graduated, the date of employment of
6 the employee by the taxpayer and the number of hours worked per
7 week by the employee. All certificates of eligibility issued
8 pursuant to this subsection shall be sequentially numbered, and
9 an account of all certificates issued or destroyed shall be
10 maintained by the higher education department. The taxation
11 and revenue department shall audit the records of the state
12 graduate employment corporate income tax credit maintained by
13 the higher education department on a periodic basis to ensure
14 effective administration of the state graduate employment
15 corporate income tax credit and compliance with the Tax
16 Administration Act and this section.

17 G. To claim a state graduate employment corporate
18 income tax credit, the taxpayer shall provide to the taxation
19 and revenue department the certificate of eligibility issued by
20 the higher education department pursuant to this section to the
21 taxpayer for the taxable year for which the state graduate
22 employment corporate income tax credit is claimed.

23 H. A taxpayer that claims and is granted approval
24 for the state graduate employment corporate income tax credit
25 shall not apply for or be granted approval for the rural job

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1 tax credit, the high-wage jobs tax credit or the additional
2 credit pursuant to the Technology Jobs Tax Credit Act based on
3 the same job upon which the state graduate employment corporate
4 income tax credit is predicated.

5 I. The department may allow a maximum annual
6 aggregate of two million dollars (\$2,000,000) in state graduate
7 employment corporate income tax credits provided by this
8 section and state graduate employment income tax credits
9 provided by the Income Tax Act. Applications for the state
10 graduate employment corporate income tax credit shall be
11 considered in the order received by the department. A taxpayer
12 that submits a claim for a state graduate employment corporate
13 income tax credit and that is unable to receive the tax credit
14 because the claims exceed the annual aggregate limitation in
15 this subsection shall be placed for the subsequent year ahead
16 of state graduate employment corporate income tax credit
17 claimants submitting claims in the subsequent year in the order
18 of the date on which the department received the application.

19 J. A taxpayer allowed a tax credit pursuant to this
20 section shall report the amount of the credit to the department
21 in a manner required by the department.

22 K. The department shall compile an annual report on
23 the state graduate employment corporate income tax credit that
24 shall include the number of taxpayers approved by the
25 department to receive the credit, the aggregate amount of

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1 credits approved and any other information necessary to
2 evaluate the effectiveness of the credit. Beginning in 2018
3 and every five years thereafter that the credit is in effect,
4 the department shall compile and present the annual reports to
5 the revenue stabilization and tax policy committee and the
6 legislative finance committee with an analysis of the
7 effectiveness and cost of the tax credit and whether the tax
8 credit is performing the purpose for which it was created.

9 L. As used in this section:

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

13 (2) "qualified state graduate" means an
14 individual who:

15 (a) is a New Mexico resident;

16 (b) files an individual New Mexico
17 income tax return;

18 (c) is hired prior to June 1, 2019 and
19 within eighteen months of graduation from one of the state
20 educational institutions of higher learning enumerated in
21 Article 12, Section 11 of the constitution of New Mexico;

22 (d) completed a post-baccalaureate
23 graduate master's or professional degree within three years or,
24 if part-time, within the credit equivalent, or a doctoral
25 degree within six years or, if part-time, within the credit

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1 equivalent, in the discipline of physical or life sciences,
2 technology, engineering, mathematics or a health-related field;
3 and

4 (e) receives benefits and works at least
5 forty hours per week for at least seven months during the first
6 taxable year and twelve months during the second taxable year
7 for which the state graduate employment corporate income tax
8 credit is claimed."

9 SECTION 4. APPLICABILITY.--The provisions of this act
10 apply to taxable years beginning on or after January 1, 2014.