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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 that is an eligible employer may apply for, and the department may allow, a tax credit for each new high-wage 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 jobs in New Mexico.

C. The high-wage jobs tax credit may be claimed and allowed in an amount equal to eight and one-half percent of the wages distributed to an eligible employee in a new high-wage job but shall not exceed 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 job performed for the year in which the new high-wage job is created and for

1 consecutive qualifying periods.

2 D. To receive a high-wage jobs tax credit, a
3 taxpayer shall file an application for approval of the credit
4 with the department once per calendar year on forms and in
5 the manner prescribed by the department. The annual
6 application shall contain the certification required by
7 Subsection K of this section and shall contain all qualifying
8 periods that closed during the calendar year for which the
9 application is made. Any qualifying period that did not
10 close in the calendar year for which the application is made
11 shall be denied by the department. The application for a
12 calendar year shall be filed no later than December 31 of the
13 following calendar year. If a taxpayer fails to file the
14 annual application within the time limits provided in this
15 section, the application shall be denied by the department.
16 The department shall make a determination on the application
17 within one hundred eighty days of the date on which the
18 application was filed.

19 E. A new high-wage job shall not be eligible for a
20 credit pursuant to this section for the initial qualifying
21 period unless the eligible employer's total number of
22 employees with threshold jobs on the last day of the initial
23 qualifying period at the location at which the job is
24 performed or based is at least one more than the number of
25 threshold jobs on the day prior to the date the new high-wage

1 job was created. A new high-wage job shall not be eligible
2 for a credit pursuant to this section for a consecutive
3 qualifying period unless the total number of threshold jobs
4 at a location at which the job is performed or based on the
5 last day of that qualifying period is greater than or equal
6 to the number of threshold jobs at that same location on the
7 last day of the initial qualifying period for the new
8 high-wage job.

9 F. If a consecutive qualifying period for a new
10 high-wage job does not meet the wage, occupancy and residency
11 requirements, then the qualifying period is ineligible.

12 G. Except as provided in Subsection H of this
13 section, a new high-wage job shall not be eligible for a
14 credit pursuant to this section if:

15 (1) the new high-wage job is created due to
16 a business merger or acquisition or other change in business
17 organization;

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

22 (3) the new high-wage job is performed by:

23 (a) the person who performed the job or
24 its functional equivalent prior to the business merger or
25 acquisition or other change in business organization; or

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

5 H. A new high-wage job that was created by another
6 employer and for which an application for the high-wage jobs
7 tax credit was received and is under review by the department
8 prior to the time of the business merger or acquisition or
9 other change in business organization shall remain eligible
10 for the high-wage jobs tax credit for the balance of the
11 consecutive qualifying periods. The new employer that
12 results from a business merger or acquisition or other change
13 in business organization may only claim the high-wage jobs
14 tax credit for the balance of the consecutive qualifying
15 periods for which the new high-wage job is otherwise
16 eligible.

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

25 J. A new high-wage job shall not be eligible for a

1 credit pursuant to this section if the eligible employer has
2 more than one business location in New Mexico from which it
3 conducts business and the requirements of Subsection E of
4 this section are satisfied solely by moving the job from one
5 business location of the eligible employer in New Mexico to
6 another business location of the eligible employer in New
7 Mexico.

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

11 (1) the amount of wages paid to each
12 eligible employee in a new high-wage job during the
13 qualifying period;

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

16 (3) whether the new high-wage job was in a
17 municipality with a population of sixty thousand or more or
18 with a population of less than sixty thousand according to
19 the most recent federal decennial census and whether the job
20 was in the unincorporated area of a county;

21 (4) which qualifying period the application
22 pertains to for each eligible employee;

23 (5) the total number of employees employed
24 by the employer at the job location on the day prior to the
25 qualifying period and on the last day of the qualifying

1 period;

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

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

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

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

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

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

1 approval.

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

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

18 O. A taxpayer that has received a high-wage jobs
19 tax credit shall not submit a new application for the credit
20 for a minimum of two calendar years from the closing date of
21 the last qualifying period for which the taxpayer received
22 the credit if the taxpayer lost eligibility to claim the
23 credit from a previous application pursuant to Subsection N
24 of this section.

25 P. The economic development department and the

1 taxation and revenue department shall report to the
2 appropriate interim legislative committee each year the cost
3 of the high-wage jobs tax credit to the state and its impact
4 on company recruitment and job creation.

5 Q. As used in this section:

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

14 (2) "consecutive qualifying period" means
15 each of the three qualifying periods successively following
16 the qualifying period in which the new high-wage job was
17 created;

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

20 (4) "domicile" means the sole place where an
21 individual has a true, fixed, permanent home. It is the
22 place where the individual has a voluntary, fixed habitation
23 of self and family with the intention of making a permanent
24 home;

25 (5) "eligible employee" means an individual

1 who is employed in New Mexico by an eligible employer and who
2 is a resident of New Mexico; "eligible employee" does not
3 include an individual who:

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

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

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

1 capital and profits interest in the entity or, if the
2 employer is an estate or trust, of a grantor, beneficiary or
3 fiduciary of the estate or trust; or

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

11 (6) "eligible employer" means an employer
12 that, during the applicable qualifying period, would be
13 eligible for development training program assistance under
14 the fiscal year 2019 policies defining development training
15 program eligibility developed by the industrial training
16 board in accordance with Section 21-19-7 NMSA 1978;

17 (7) "modified combined tax liability" means
18 the total liability for the reporting period for the gross
19 receipts tax imposed by Section 7-9-4 NMSA 1978 together with
20 any tax collected at the same time and in the same manner as
21 the gross receipts tax, such as the compensating tax, the
22 withholding tax, the interstate telecommunications gross
23 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
24 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
25 minus the amount of any credit other than the high-wage jobs

1 tax credit applied against any or all of these taxes or
2 surcharges; but "modified combined tax liability" excludes
3 all amounts collected with respect to local option gross
4 receipts taxes;

5 (8) "new high-wage job" means a new job
6 created in New Mexico by an eligible employer on or after
7 July 1, 2004 and prior to July 1, 2026 that is occupied for
8 at least forty-four weeks of a qualifying period by an
9 eligible employee who is paid wages calculated for the
10 qualifying period to be at least:

11 (a) for a new high-wage job created
12 prior to July 1, 2015: 1) forty thousand dollars (\$40,000)
13 if the job is performed or based in or within ten miles of
14 the external boundaries of a municipality with a population
15 of sixty thousand or more according to the most recent
16 federal decennial census or in a class H county; and 2)
17 twenty-eight thousand dollars (\$28,000) if the job is
18 performed or based in a municipality with a population of
19 less than sixty thousand according to the most recent federal
20 decennial census or in the unincorporated area, that is not
21 within ten miles of the external boundaries of a municipality
22 with a population of sixty thousand or more, of a county
23 other than a class H county; and

24 (b) for a new high-wage job created on
25 or after July 1, 2015: 1) sixty thousand dollars (\$60,000)

1 if the job is performed or based in or within ten miles of
2 the external boundaries of a municipality with a population
3 of sixty thousand or more according to the most recent
4 federal decennial census or in a class H county; and 2) forty
5 thousand dollars (\$40,000) if the job is performed or based
6 in a municipality with a population of less than sixty
7 thousand according to the most recent federal decennial
8 census or in the unincorporated area, that is not within ten
9 miles of the external boundaries of a municipality with a
10 population of sixty thousand or more, of a county other than
11 a class H county;

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

16 (10) "qualifying period" means the period of
17 twelve months beginning on the day an eligible employee
18 begins working in a new high-wage job or the period of twelve
19 months beginning on the anniversary of the day an eligible
20 employee began working in a new high-wage job;

21 (11) "resident" means a natural person whose
22 domicile is in New Mexico at the time of hire or within one
23 hundred eighty days of the date of hire;

24 (12) "threshold job" means a job that is
25 occupied for at least forty-four weeks of a calendar year by

1 an eligible employee and that meets the wage requirements for
2 a "new high-wage job"; and

3 (13) "wages" means all compensation paid by
4 an eligible employer to an eligible employee through the
5 employer's payroll system, including those wages that the
6 employee elects to defer or redirect or the employee's
7 contribution to a 401(k) or cafeteria plan program, but
8 "wages" does not include benefits or the employer's share of
9 payroll taxes, social security or medicare contributions,
10 federal or state unemployment insurance contributions or
11 workers' compensation."

12 SECTION 2. APPLICABILITY.--The provisions of this act
13 apply to qualifying periods beginning on or after January 1,
14 2019.
