

ARTICLE 9G

Other Tax Credits

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 consecutive qualifying periods.

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

E. A new high-wage job shall not be eligible for a credit pursuant to this section for the initial qualifying period unless the eligible employer's total number of employees with threshold jobs on the last day of the initial qualifying period at the location at which the job is performed or based is at least one more than the number of threshold jobs on the day prior to the date the new high-wage job was created. A new high-wage job shall not be eligible for a credit pursuant to this section for a consecutive qualifying period unless the total number of threshold jobs at a location at which the job is performed or based on the last day of that qualifying period is greater than or equal to the number of threshold jobs at that same location on the last day of the initial qualifying period for the new high-wage job.

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

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

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

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

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

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

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

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

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

J. A new high-wage job shall not be eligible for a credit pursuant to this section if the eligible employer has more than one business location in New Mexico from which it conducts business and the requirements of Subsection E of this section are satisfied solely by moving the job from one business location of the eligible employer in New Mexico to another business location of the eligible employer in New Mexico.

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

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

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

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

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

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

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

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

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

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

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

L. Any person who willfully submits a false, incorrect or fraudulent certification required pursuant to Subsection K of this section shall be subject to all applicable penalties under the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], except that the amount on which the penalty is based shall be the total amount of credit requested on the application for approval.

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

N. If the taxpayer ceases business operations in New Mexico while an application for credit approval is pending or after an application for credit has been approved for

any qualifying period for a new high-wage job, the department shall not grant an additional high-wage jobs tax credit to that taxpayer except as provided in Subsection O of this section and shall extinguish any amount of credit approved for that taxpayer that has not already been claimed against the taxpayer's modified combined tax liability.

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

P. The economic development department and the taxation and revenue department shall report to the appropriate interim legislative committee each year the cost of the high-wage jobs tax credit to the state and its impact on company recruitment and job creation.

Q. As used in this section:

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

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

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

(4) "dependent" means "dependent" as defined in 26 U.S.C. 152(a), as that section may be amended or renumbered;

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

(6) "eligible employee" means an individual who is employed in New Mexico by an eligible employer and who is a resident of New Mexico; "eligible employee" does not include an individual who:

(a) is a dependent of the employer;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is a dependent of a grantor, beneficiary or fiduciary of the estate or trust;

(c) if the employer is a corporation, is a dependent of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation; or

(d) if the employer is an entity other than a corporation, estate or trust, is a dependent of an individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

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

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

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

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

(b) for a new high-wage job created on or after July 1, 2015: 1) sixty thousand dollars (\$60,000) if the job is performed or based in or within ten miles of the external boundaries of a municipality with a population of sixty thousand or more according to the most recent federal decennial census or in a class H county; and 2)

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

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

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

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

(13) "threshold job" means a job that is occupied for at least forty-four weeks of a calendar year by an eligible employee and that meets the wage requirements for a "new high-wage job"; and

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

History: Laws 2004, ch. 15, § 1; 2007, ch. 172, § 21; 2008, ch. 27, § 1; 2013, ch. 160, § 10; 2016 (2nd S.S.), ch. 3, § 6; 2019, ch. 233, § 1; 2021, ch. 65, § 29.

ANNOTATIONS

Repeals. — Laws 2007, ch. 172, § 25 repealed Laws 2004, ch. 15, § 2, effective April 2, 2007, which would have repealed the high-wage jobs tax credit on January 1, 2010.

The 2021 amendment, effective July 1, 2021, defined "dependent", as used in this section; and in Subsection Q, added new Paragraph Q(4) and redesignated former Paragraphs Q(4) through Q(13) as Paragraphs Q(5) through Q(14), respectively, and in Paragraph Q(6), deleted former Subparagraphs Q(5)(a) through Q(5)(d) and added new Subparagraphs Q(6)(a) through Q(6)(d).

The 2019 amendment, effective June 14, 2019, modified the high-wage jobs tax credit, and changed the eligibility for and the amount of the tax credit; after each occurrence of "new high-wage", deleted "economic-based" throughout the section; in Subsection C,

after "an amount equal to", deleted "ten" and added "eight and one-half", and after "shall not exceed", deleted "twelve thousand dollars (\$12,000)" and added "twelve thousand seven hundred fifty dollars (\$12,750)"; in Subsection D, after "application was filed", deleted "provided that the one-hundred-eighty-day period shall not begin until the application is complete, as determined by the department"; in Subsection F, deleted "Any consecutive qualifying period for a new high-wage economic-based job shall not be eligible for a credit pursuant to this section unless the wage, the forty-eight-week occupancy and the residency requirements for a new high-wage economic-based job are met or each consecutive qualifying period", after "meet the wage", deleted "the forty-eight-week", after "residency requirements", deleted "all subsequent" and added "then the"; in Subsection K, Paragraph K(4), deleted "whether the application pertains to the first, second, third or fourth", and added "which", and after "qualifying period", added "the application pertains to"; in Subsection O, after "minimum of", deleted "five" and added "two", deleted subsection designation "(1)", after "Subsection", deleted "E or" and added "N", and deleted former Paragraph O(2); and in Subsection Q, Paragraph Q(6), deleted former Subparagraphs Q(6)(a) through Q(6)(c) and added "during the applicable qualifying period, would be eligible for development training program assistance under the fiscal year 2019 policies defining development training program eligibility developed by the industrial training board in accordance with Section 21-19-7 NMSA 1978", deleted Paragraphs Q(7) through Q(9) and redesignated former Paragraphs Q(10) and Q(11) as Paragraphs Q(7) and Q(8), respectively, in Paragraph Q(8), in the introductory clause, after "prior to July 1", deleted "2020" and added "2026", after "for at least", deleted "forty-eight" and added "forty-four", deleted former Paragraphs Q(12) through Q(14), which defined "non-retail service", "performed in New Mexico" and "produced in New Mexico", respectively, added new Paragraph Q(9) and redesignated former Paragraphs Q(15) through Q(18) as Paragraphs Q(10) through Q(13), respectively, and in Paragraph Q(12), after "occupied for at least", deleted "forty-eight" and added "forty-four".

Applicability. — Laws 2019, ch. 233, § 2 provided that the provisions of Laws 2019, ch. 233, § 1 apply to qualifying periods beginning on or after January 1, 2019.

The 2016 (2nd S.S.) amendment, effective October 19, 2016, provided additional requirements to be eligible to claim a high-wage jobs tax credit; in Subsection A, after "may apply for, and the", deleted "taxation and revenue"; deleted the subsection designation "D" and added the language from former Subsection D to Subsection C; in Subsection C, after "qualifying periods.", deleted "A taxpayer shall apply for approval of the credit after the close of a qualifying period, but not later than twelve months following the end of the calendar year in which the taxpayer's final qualifying period closes" and added "as provided in this section"; added new Subsection D; in Subsection E, after "pursuant to this section", added "for the initial qualifying period", after "total number of employees with", deleted "high-wage economic based" and added "threshold", after "more than the number", added "of threshold jobs", and after "job was created.", added the remainder of the subsection; added a new Subsection F and redesignated former Subsections F through H as Subsections G through I, respectively; in Subsection G, after the subsection designation, added "Except as provided in

Subsection H of this section"; in Subsection H, after the subsection designation, deleted "Notwithstanding the provisions of Subsection F of this section", after "is under review by the", deleted "taxation and revenue", after each occurrence of "for the balance of the", added "consecutive", after "qualifying", deleted "period" and added "periods", and after "for which the", deleted "qualifying" and added "new high-wage economic based"; in Subsection I, after "A", added "new high-wage economic-based"; added a new Subsection J and redesignated former Subsection I as Subsection K; in Subsection K, in the introductory sentence, after "With respect to each", deleted "new high-wage economic-based job for which an eligible employer seeks the annual application for a", and after "shall certify", added "and include", in Paragraph K(1), after "the amount of wage", deleted "and benefits", and after "economic-based job during", deleted "each" and added "the", in Paragraph K(2), after "the number of weeks", deleted "the" and added "each", in Paragraph K(3), after the semicolon, deleted "and", added new Paragraph K(4) and redesignated former Paragraph K(4) as Paragraph K(5), and added new Paragraphs K(6) through K(10); deleted former Subsection J; added new Subsection L and redesignated former Subsection K as Subsection M; in Subsection M, after the subsection designation, deleted "The credit provided in this section may be deducted from the" and added "Except as provided in Subsection N of this section, an approved high-wage jobs tax credit shall be claimed against the taxpayer's", after "modified combined tax liability", deleted "of a taxpayer" and added "and shall be filed with the return due immediately following the date of the credit approval", after "If the credit exceeds the", added "taxpayer's" and after "combined tax liability", deleted "of the taxpayer"; added new Subsections N and O and redesignated former Subsections L and M as Subsection P and Q, respectively; in Subsection P, after "economic development department", added "and the taxation and revenue department", and after "appropriate interim legislative committee", deleted "before November 1 of"; in Paragraph Q(1), after "including", added "the employer's contributions to", and after "employer to the employee.", deleted the remainder of the paragraph, relating to the limitation of the term "benefits"; added new Paragraphs Q(2) through Q(4) and redesignated former Paragraphs Q(2) and Q(3) as Paragraphs Q(5) and Q(6), respectively; in Subparagraph Q(6)(a), after the subparagraph designation, deleted "made" and added "sold and delivered", after "fifty percent of its", deleted "sales of", after "goods", added "produced in New Mexico", after "or", added "non-retail", after "services", deleted "produced" and added "performed", after "outside New Mexico", added "for use or resale outside New Mexico", after "qualifying period", deleted "or" and added "provided that the fifty percent of those goods or services is measured by the eligible employer's gross receipts"; in Subparagraph Q(6)(b), after "is", deleted "certified by the economic development department to be" and added "receiving or is", after "eligible", deleted "for" and added "to receive", and after "NMSA 1978", added "during the applicable qualifying period; and"; added a new Subparagraph Q(6)(c); added new Paragraphs Q(7) through Q(9) and redesignated former Paragraphs Q(4) and Q(5) as Paragraphs Q(10) and Q(11), respectively; added new Paragraphs Q(12) through Q(14) and redesignated former Paragraph Q(6) as Paragraph Q(15); added new Paragraphs Q(16) and Q(17) and redesignated former Paragraph Q(7) as Paragraph Q(18); in Paragraph Q(18), after "employer's share of payroll taxes," added "social security or

medicare contributions, federal or state unemployment insurance contributions or workers' compensation".

Applicability. — Laws 2016 (2nd S.S.), ch. 3, § 8 provided that Laws 2016 (2nd S.S.), ch. 3, § 6 applies to applications for a high-wage jobs tax credit for a new high-wage economic-based job filed with the taxation and revenue department on or after January 1, 2017.

The 2013 amendment, effective June 14, 2013, clarified the application of the high-wage jobs tax credit; defined "benefits" and "wages"; added Subsection B; in Subsection C, after "twelve thousand dollars (\$12,000)", added "per job per qualifying period"; in Subsection D, in the first sentence, after "for the three", deleted "following" and added "consecutive" and added the second sentence; in Subsection E, after "prior to the date the", added "new high-wage economic-based"; added Subsections F through H; in Paragraph (3) of Subsection I, after "a population of", deleted "forty" and added "sixty" and after "of less than", deleted "forty" and added "sixty"; in Subsection M, deleted former Paragraph (1), which defined "benefits" to mean an employee benefit plan defined in the federal Employee Retirement Income Security Act; added Paragraph (1) of Subsection M; in Paragraph (2) of Subsection M, after "who is employed", added "in New Mexico"; in Subparagraph (a) of Paragraph (3) of Subsection M, after "fifty percent of its sale", added "of goods or services produced in New Mexico" and after "outside New Mexico during the", deleted "most recent twelve months of the employer's modified combined tax liability reporting periods ending prior to claiming a high-wage jobs tax credit" and added "applicable qualifying period"; in Subparagraph (b) of Paragraph (3) of Subsection M, after "is", added "certified by the economic development department to be"; in Paragraph (5) of Subsection M, after "means a", added "new", after "job created", added "in New Mexico", and after "July 1", deleted "2015" and added "2020"; in Subparagraph (a) of Paragraph (5) of Subsection M, at the beginning of the sentence, added "for a new high-wage economic-based job created prior to July 1, 2015; 1)", after "performed or based in", added "or within ten miles of the external boundaries of", after "population of", deleted "forty" and added "sixty", after "decennial census", added "or in a class H county", after "population of not less than", deleted "forty" and added "sixty", after "unincorporated area", added "that is not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more", and after "of a county", added "other than a class H county" and added Subparagraph (b) of Paragraph (5) of Subsection M, and in Paragraph (7) of Subsection M, after "means", deleted "wages as defined in Paragraphs (1), (2) and (3) of U.S.C. Section 51(c)" and added the remainder of the sentence.

Applicability. — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 10 applies to credit claims received on or after June 14, 2013 and to reporting periods beginning on or after that date.

The 2008 amendment, effective May 14, 2008, added Subsection H and in Paragraph (5) of Subsection I, extended the deadline to create new high-wage economic-based jobs to July 1, 2015.

The 2007 amendment, effective July 1, 2007, added "High-wage jobs" to the heading of this section.

"New job" defined. — The term "new high-wage economic-based job" is defined under the high-wage jobs tax credit as "a new job created in New Mexico by an eligible employer that is occupied for at least forty-eight weeks of a qualifying period by an eligible employee." A "new job," for purposes of § 7-9G-1(M)(5) NMSA 1978, is brought into being by the creation of a new position that did not previously exist. *Par Five Servs., LLC v. N.M. Tax'n & Revenue Dep't* and *Mosaic Potash Carlsbad Inc. v. N.M. Tax'n & Revenue Dep't*, 2021-NMCA-025.

Methodologies for determining whether taxpayers have created a "new job" are within the taxation and revenue department's authority. — The taxation and revenue department (department) has the authority to devise means and methods to evaluate whether a taxpayer is entitled to a credit because such powers arise from the statutory language by fair and necessary implication, and therefore it is within the department's authority to employ two different methodologies known as the "replacement analysis" and the "career path promotion analysis" to determine whether taxpayers have created a "new job" for purposes of the high-wage jobs tax credit. *Par Five Servs., LLC v. N.M. Tax'n & Revenue Dep't* and *Mosaic Potash Carlsbad Inc. v. N.M. Tax'n & Revenue Dep't*, 2021-NMCA-025.

The department's use of the "replacement analysis" for determining whether taxpayers have created a new job is not unreasonable. — In consolidated appeals, where administrative hearing officers upheld the taxation and revenue department's (department) denial of high-wage jobs tax credits for employees on the basis that the hiring of these employees did not create "new jobs," because the hired employees merely filled vacancies left by employees who had previously held the same job positions, the department's methodology, known as the "replacement analysis," to determine whether taxpayers have created a "new job" for purposes of the high-wage jobs tax credit or whether a taxpayer merely filled a vacant preexisting position is reasonable, because the replacement analysis is consistent with the legislative purpose of the high-wage jobs tax credit in that it guards against potential abuse while simultaneously serving as an aid to determine whether a job position is truly "new". *Par Five Servs., LLC v. N.M. Tax'n & Revenue Dep't* and *Mosaic Potash Carlsbad Inc. v. N.M. Tax'n & Revenue Dep't*, 2021-NMCA-025.

The department's use of the "career path promotion analysis" for determining whether taxpayers have created a "new job" is not unreasonable. — Where the taxation and revenue department (department) appealed an administrative hearing officer's reversal of the department's denial of the high-wage jobs tax credit under the "career path promotion" analysis, which the department utilizes when an existing employee is promoted to a different position, in order to determine whether a "new job" has been created, the hearing officer erred in overturning the department's denial, because the department's use of the "career path promotion analysis" is reasonable; the "career path promotion analysis" aims to ascertain whether a claimed "new job" is