

**History:** Laws 1993, ch. 313, § 13; 1995, ch. 89, § 10.

#### **ANNOTATIONS**

**The 1995 amendment,** effective June 16, 1995, in Subsection C, substituted "Section 7-2D-8.1 NMSA 1978" for "Section 3 of the Venture Capital Investment Act", "Section 7-2D-4 NMSA 1978" for "Section 4 of the Venture Capital Investment Act" and "Section 7-2D-5 NMSA 1978" for "Section 5 of the Venture Capital Investment Act".

### **7-2D-14. Administration of act.**

The Venture Capital Investment Act shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

**History:** Laws 1993, ch. 313, § 14.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1993, ch. 313 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after the adjournment of the legislature.

**Compiler's notes.** — Laws 1993, ch. 313, § 17 provided that if any part or application of the act is held invalid, the entire act shall be deemed invalid and shall cease to apply and the credit shall not be extended to any taxpayer.

## **ARTICLE 2E**

### **Rural Job Tax Credits**

#### **7-2E-1. Repealed.**

**History:** Laws 1999, ch. 183, § 1; 2001, ch. 184, § 1; 2005, ch. 104, § 8.

#### **ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 183, § 3 repealed 7-2E-1 NMSA 1978, as enacted by Laws 1999, ch. 183, § 1, relating to rural tax credit, effective July 1, 2006.

#### **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 approve, a tax credit for each qualifying job the employer creates. The maximum tax credit amount with respect to each qualifying job is equal to:

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

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

B. The purpose of the rural job tax credit is to encourage businesses to start new businesses or expand existing businesses in rural areas of the state.

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

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

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

D. With respect to each qualifying job for which an eligible employer seeks the rural job tax credit, the employer shall certify:

(1) the amount of wages paid to each eligible employee during each qualifying period;

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

(3) whether the qualifying job was in a tier one or tier two area;

(4) whether the application pertains to the first, second, third or fourth qualifying period, depending on whether the taxpayer is in a tier one or tier two area;

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

(7) whether the eligible employer has ceased business operations at any of its business locations in New Mexico.

E. The economic development department shall determine which employers are eligible employers and shall report the listing of eligible businesses to the taxation and revenue department in a manner and at times the departments shall agree upon.

F. To receive a rural job tax credit with respect to any qualifying period, an eligible employer shall apply to the taxation and revenue department once per calendar year on forms and in the manner the department may prescribe. The annual application shall include a certification made pursuant to Subsection D of this section and 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 department shall deny the application. If all the requirements of this section have been complied with, the taxation and revenue department shall issue to the applicant a document granting a tax credit for the appropriate qualifying period. The tax credit document shall be numbered for identification and declare its date of issuance and the amount of rural job tax credit allowed for the respective jobs created. The tax credit documents may be sold, exchanged or otherwise transferred and may be carried forward for a period of three years from the date of issuance. The parties to such a transaction to sell, exchange or transfer a rural job tax credit document shall notify the department of the transaction within ten days of the sale, exchange or transfer.

G. The holder of the tax credit document may claim all or a portion of the rural job tax credit granted by the document against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of rural job tax credit granted by the document may be carried forward for up to three years from the date of issuance of the tax credit document. No amount of rural job tax credit may be applied against a gross receipts tax or compensating tax imposed by a municipality or county.

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

I. The secretary of economic development, the secretary of taxation and revenue and the secretary of workforce solutions or their designees shall annually evaluate the effectiveness of the rural job tax credit in stimulating economic development in the rural areas of New Mexico and make a joint report of their findings to each session of the legislature so long as the rural job tax credit is in effect.

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

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

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

(3) the job is performed by:

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

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

K. Notwithstanding Subsection J of this section, a qualifying job that was created by another employer and for which the rural job tax credit application was received by the taxation and revenue department prior to July 1, 2013 and is under review or has been approved shall remain eligible for the rural job tax credit for the balance of the qualifying periods for which the job qualifies by the new employer that results from a business merger, acquisition or other change in the organization.

L. A job shall not be eligible for a rural job tax 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 in New Mexico unless the job is a qualifying job that was not being performed by an employee of the replaced entity.

M. As used in this section:

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

(2) "eligible employee" means any individual other than 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;

(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; or

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

(3) "eligible employer" means an employer who is eligible for in-plant training assistance pursuant to Section 21-19-7 NMSA 1978;

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

(5) "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 that 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 rural job tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to a gross receipts tax or compensating tax imposed by a municipality or county;

(6) "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;

(7) "qualifying job" means a new job that was created after July 1, 2000 and that was not created due to a change in organizational structure established by the employer that is occupied by an eligible employee for at least forty-four weeks of a qualifying period;

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

(9) "rural area" means any part of the state other than:

(a) an H class county;

(b) the state fairgrounds;

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

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

(10) "tier one area" means:

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

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

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

(12) "wages" means all compensation paid by an eligible employer to an eligible employee through the employer's payroll system, including those wages the employee elects to defer or redirect, such as the employee's contribution to 401(k) or cafeteria plan programs, but not including benefits or the employer's share of payroll taxes.

**History:** Laws 2007, ch. 172, § 2; 2013, ch. 58, § 1; 2021, ch. 65, § 9.

## **ANNOTATIONS**

**The 2021 amendment**, effective January 1, 2022, provided that one of the purposes of the rural job tax credit is to expand existing businesses, revised certain employer certifications with respect to each qualifying job for which an eligible employer seeks the rural job tax credit, added time limits in which to apply for the rural job tax credit, and defined "new job" and revised the definition of "qualifying job", as used in this section; in Subsection B, after "new businesses", added "or expand existing businesses"; in Subsection D, added Paragraphs D(4) through D(7); in Subsection F, after the first occurrence of "taxation and revenue department", added "once per calendar year", after "Subsection D of this section", added "and 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 department shall deny the application", and after the second occurrence of "taxation and revenue department", and deleted "may" and added "shall"; in Subsection G, after "gross receipts tax", added "or compensating tax"; deleted former Subsection J and redesignated former

Subsections K through N as Subsections J through M, respectively; in Subsection J, Paragraph J(2), after "organization", deleted "and" and added "or"; and in Subsection M, added new Paragraph M(1) and redesignated former Paragraph N(1) through N(4) as Paragraphs M(2) through M(5), respectively, in Paragraph M(2), deleted former Subparagraphs N(1)(a) through N(1)(c) and added new Subparagraphs M(2)(a) through M(2)(e), added new Paragraph M(6) and redesignated former Paragraphs N(5) through N(10) as Paragraphs M(7) through M(12), respectively, and in Paragraph M(7), after "means a", added "new", after "job", added "that was created after July 1, 2000 and that was not created due to a change in organizational structure", and after "at least", changed "forty-eight" to "forty-four".

**Applicability.** — Laws 2021, ch. 65, § 39 provided that the provisions of Laws 2021, ch. 65, § 9 apply to tax returns filed on or after January 1, 2022:

A. for rural job tax credit claims against a taxpayer's modified combined tax liability, for qualified jobs created in the calendar quarters beginning on or after July 1, 2022; and

B. for rural job tax credit claims against a taxpayer's personal income tax liability or corporate income tax liability, for qualified jobs created in taxable years beginning on or after January 1, 2022.

**The 2013 amendment**, effective July 1, 2013, provided the purpose for the rural job tax credit; clarified the eligibility of qualifying jobs for a rural job credit; defined "wages"; added Subsection B; in Subsection F, in the second sentence, after "Subsection", deleted "C" and added "D"; in Subsection I, after "secretary of", deleted "labor" and added "workforce solutions"; in Subsection J, in the first sentence, after "application for, and the", added "taxation and revenue"; added Subsections F, L and M; in Paragraph (2) of Subsection N, after "means an employer who", deleted "has been approved" and added "is eligible"; and in Paragraph (10) of Subsection N, after "means", deleted "wages as defined by Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c)" and added the remainder of the sentence.

## **7-2E-2. Repealed.**

**History:** Laws 1999, ch. 183, § 2; 2000, ch. 33, § 2; repealed by Laws 2005, ch. 104, § 27.

### **ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 104, § 27 repealed 7-2E-2 NMSA 1978, as enacted by Laws 1999, ch. 183, § 2, relating to continued applicability of rural job tax credit, effective July 1, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.