

HOUSE BILL NO. 908

INTRODUCED BY C. SCHOMER, E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING JOB GROWTH INCENTIVE TAX CREDITS TO INCLUDE CERTAIN APPRENTICES IN THE CONSTRUCTION INDUSTRY; REVISING LAWS RELATING TO WHEN THE TAX CREDIT MAY BE CLAIMED; REVISING THE DEFINITION OF "QUALIFYING NEW EMPLOYEE" TO INCLUDE AN APPRENTICE; REMOVING THE SUNSET DATE ON THE TAX CREDIT; AND AMENDING SECTIONS 15-30-2357, 15-30-2361, 15-31-175, AND 39-11-404, MCA; AND REPEALING SECTION 24, CHAPTER 550, LAWS OF 2021, AND SECTION 4, CHAPTER 391, LAWS OF 2023."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 15-30-2357, MCA, IS AMENDED TO READ:

"15-30-2357. Tax credit for hiring registered apprentice or veteran apprentice. (1) Subject to the provisions of [~~15-30-2361 (8) and~~] 39-6-109, a taxpayer is allowed a credit against the tax imposed by chapter 31 or this chapter for employing a registered apprentice or registered veteran apprentice who works in Montana.

(2) The credit may not exceed the taxpayer's tax liability and may not be carried forward or carried back.

(3) The credit may be claimed only in the tax year in which the department of labor and industry approved the credit as provided in 39-6-109(4). If a taxpayer claims the credit but was not approved by the department of labor and industry, the taxpayer's return must be processed without regard to the credit.

(4) For fiscal year filers, the credit available to claim in the current fiscal year is the credit allowed for the calendar year that ends within the taxpayer's fiscal period.

(5) Subject to the probationary period provided for in 39-6-109, if an employer employs an apprentice for less than the full preceding calendar year, the employer may apply for the full credit for the year in which the apprentice was employed.

(6) The department shall, after consultation with the department of labor and industry, prescribe a

form for a taxpayer to claim the tax credit. The form must provide the department with sufficient information for the proper administration of the credit.

(7) The department shall provide the department of labor and industry an annual report detailing the tax credit provided to employers for the previous year. The information provided to the department of labor and industry is subject to the provisions of 15-30-2618 and 15-31-511.

(8) The department may adopt rules, prepare forms, and maintain records that are necessary to implement this credit. (Bracketed language terminates December 31, 2028--sec. 4, Ch. 391, L. 2023.)"

SECTION 2. SECTION 15-30-2361, MCA, IS AMENDED TO READ:

"15-30-2361. (Temporary) Grow Montana jobs -- annual job growth incentive tax credit. (1)

Subject to the provisions of 39-11-404, a taxpayer is allowed an annual job growth incentive tax credit against the tax imposed by chapter 31 or this chapter for creating qualifying net employee growth in the state.

(2) The amount of the credit is equal to 50% of the taxpayer's total estimated taxes imposed on the taxpayer each year for the Montana source wages paid to qualifying new employees in the credit certificate under the Federal Insurance Contributions Act, 26 U.S.C. 3111(a) and (b).

(3) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to succeeding tax years for a period not to exceed 10 years from the tax year the credit was claimed. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first. Any credit remaining 10 years after the tax year for which the credit is based may not be refunded or credited to the taxpayer.

(4) The credit may be claimed for up to 7 years, but only in a tax year in which the department of labor and industry approved the credit by issuing the taxpayer with a credit certificate as provided in 39-11-404. If a taxpayer claims the credit but was not approved by the department of labor and industry, the taxpayer's return will be processed without regard to the credit.

(5) For fiscal year filers, the credit available to claim in the current fiscal year is the credit allowed

for the calendar year that ends within the taxpayer's fiscal period.

(6) The department shall, after consultation with the department of labor and industry, prescribe a form for a taxpayer to claim the tax credit. The form must provide the department with sufficient information for the proper administration of the credit.

(7) The department shall provide the department of labor and industry with an annual report detailing the tax credit provided to taxpayers for the previous year. The information provided to the department of labor and industry is subject to the provisions of 15-30-2618 and 15-31-511.

~~(8) — A taxpayer claiming this credit may not claim the apprenticeship tax credit pursuant to sections 15-30-2357, 15-31-173, and 39-6-109 in the same tax year that this credit is claimed. This subsection does not prevent a credit carryover from this credit from being used in a tax year in which the apprenticeship tax credit is claimed.~~

~~(9)~~(8) Each biennium, the department shall provide to the revenue interim committee information regarding all approvals granted and credit certificates issued, including the credits claimed, the names of the qualifying employers of the credits, and the amount of tax credits claimed. This information is not subject to the confidentiality requirements of 15-30-2618 or 15-31-511.

~~(40)~~(9) For the purposes of this section, the terms "credit certificate", "qualifying employer", "qualifying net employee growth", and "qualifying new employee" have the same meaning as those terms are defined in 39-11-404. (Terminates December 31, 2028--sec. 4, Ch. 391, L. 2023.)"

Section 3. Section 15-31-175, MCA, is amended to read:

"15-31-175. (Temporary) Grow Montana jobs -- annual job growth incentive tax credit. (1) There is an annual job growth incentive tax credit against the taxes otherwise due under 15-31-121 or 15-31-122 that is allowable in the amount established pursuant to 15-30-2361 when a taxpayer hires qualifying new employees as defined in 39-11-404 in the state. The credit is administered as provided in 15-30-2361, 39-11-404, and this section.

(2) If the credit allowed under this section is claimed by a small business corporation as defined in 15-30-3301 or a partnership, the credit must be attributed to shareholders or partners using the same proportion to report the corporation's or partnership's income or loss for Montana income tax purposes.

(Terminates December 31, 2028--sec. 4, Ch. 391, L. 2023.)"

Section 4. Section 39-11-404, MCA, is amended to read:

"39-11-404. (Temporary) Employer job growth incentive tax credit -- administration. (1) An employer that hires qualifying new employees is eligible for an annual job growth incentive tax credit against income taxes imposed pursuant to Title 15, chapter 30 or 31.

(2) The amount and duration of the credit is administered by the department of revenue as provided in 15-30-2361 and 15-31-175.

(3) A qualifying employer seeking approval to claim a credit shall apply for a credit certificate with the department for the preceding calendar year. The application must be submitted on a form prescribed by the department on which the employer:

(a) identifies and describes the number of qualifying new employees hired;

(b) provides necessary details to calculate the net employee growth and qualifying net employee growth;

(c) provides documentation necessary to calculate the job growth incentive tax credit, including but not limited to the average yearly wage of each qualifying new employee; and

(d) submits any other information the department considers necessary for auditing purposes and to determine whether the employer qualifies for a credit certificate.

(4) After receiving an application, the department shall:

(a) provide the employer with a credit certificate, which must accompany the employer's tax return that is filed with the department of revenue; or

(b) deny an application for a credit certificate and provide the employer with the reasoning for the denial. Prior to issuing a denial, the department shall provide the employer with an opportunity to resolve deficiencies in the application.

(5) The department shall provide to the department of revenue a list of the qualifying employers approved for a credit certificate, the qualifying new employees employed by the qualifying employer, and the aggregate total of net employee growth and qualified net employee growth for qualified employers claiming the credit. The list must include the federal tax identification number of the qualifying employer and the name and

social security number or federal tax identification number of the qualifying new employees that were utilized during the issuance of a credit certificate.

(6) The identity and social security number or federal tax identification number of individuals employed by the employer are subject to the provisions of 15-30-2618 and 15-31-511.

(7) The department may audit an employer applying for a credit certificate or who has obtained a credit certificate.

(8) By November 1 of each year, the department shall multiply the minimum yearly wage in subsection (10)(j)(i)(C) by the inflation factor for the following tax year and round the product to the nearest \$10. The resulting minimum yearly wage is effective for that following tax year and must be used in calculating the minimum yearly wage.

(9) The department may adopt rules necessary to administer this section.

(10) For the purposes of this section, the following definitions apply:

(a) "Business transfer" means any change in ownership or transfer of all or a material portion of the business to another entity or individual by entity merger, combination, reorganization, asset acquisition, transfer, or other similar business transaction in which an existing business is continued under new ownership or a different entity.

(b) "Credit certificate" means a statement issued by the department to a qualifying employer that provides the number of qualifying new employees hired or retained by the qualifying employer starting with calendar year 2022 and ending in calendar year 2028.

(c) "Department" means the department of labor and industry provided for in 2-15-1701.

(d) "Employer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by Title 15, chapters 30 and 31.

(e) "Inflation factor" means a number determined for each tax year by dividing the consumer price index as defined in 15-30-2101 for June of the previous tax year by the consumer price index for June 2021.

(f) "Net employee growth" means the total number of qualifying new employees employed by the employer in the state during any calendar year starting with calendar year 2022 and ending in calendar year 2028.

(g) "Predecessor" means any entity or individual that operated a business prior to a business

transfer to the employer.

(h) "Qualifying employer" means an employer with qualifying net employee growth.

(i) "Qualifying net employee growth" means:

(A) unless subsection (10)(i)(i)(B) applies, net employee growth equal to at least 10 qualifying new employees during the first year the credit is claimed and at least 15 total qualifying new employees during any subsequent calendar year;

(B) for a county with a population of 20,000 or less, net employee growth equal to at least 5 qualifying new employees during the first year the credit is claimed and at least 7 total qualifying new employees during any subsequent calendar year.

(ii) In order to qualify, the net employee growth must be associated with a project in the state that encourages, promotes, and stimulates economic development in the sectors of construction, natural resources, mining, agriculture, forestry, manufacturing, transportation, utilities, or outdoor recreation.

(j) (i) "Qualifying new employee" means:

(A) an employee of a qualifying employer:

~~(A)(I)~~ who is hired in any calendar year starting with calendar year 2022 and ending in calendar year 2028;

~~(B)(II)~~ who is employed for at least 6 months during the year for which the credit is granted;

~~(C)(III)~~ with a yearly wage of at least \$50,000, plus any benefits paid to other employees of the employer; and

~~(D)(IV)~~ who increases the number of total employees that are employed by the employer from the number of employees employed by the employer in calendar year 2021; or

(B) an apprentice as defined in 39-6-101 who is in the construction industry.

(ii) The term does not include an employee:

(A) previously employed by the employer or a predecessor in the preceding 12 months; or

(B) hired to replace an employee of a predecessor. (Terminates December 31, 2028--sec. 4, Ch. 391, L. 2023.)"

NEW SECTION. SECTION 5. REPEALER. SECTION 24, CHAPTER 550, LAWS OF 2021, AND SECTION 4,

1 CHAPTER 391, LAWS OF 2023, ARE REPEALED.

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