

CHAPTER 101
FORMERLY
SENATE BILL NO. 74

AN ACT TO AMEND TITLE 30, CHAPTER 20 OF THE DELAWARE CODE RELATING TO NEW ECONOMY JOBS PROGRAM CREDITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2081, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

As used in this subchapter:

~~(12)~~ "Inflation adjustment factor" means an amount equal to the Consumer Price Index prepared by the Bureau of Labor Statistics, U.S. Department of Labor for urban consumers, U.S. city average, all items, that corresponds to the calendar year for which the credit is calculated divided by the equivalent Consumer Price Index figure for 2007. Final calculations of the inflation adjustment factor for a calendar year shall be based on data available April 1 of the following calendar year.

~~(21)(20)~~ "Salary threshold" means ~~the amount \$112,200~~ of Delaware sourced compensation paid to a common law employee, rounded to the nearest \$100, calculated by multiplying \$100,000 times the inflation adjustment factor. The level of the applicable threshold in this subsection is subject to annual adjustment as more fully set forth in § 515 of this title.

~~(e) Credits allowable during the first certified year will be prorated upon the basis of the number of months before and after certification.~~

Section 2. Amend § 2083, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) Subject to the limitations contained in § 2084 of this Title and to such return requirements as may be imposed by the Delaware Bank Commissioner, Delaware Insurance Commissioner, or the Secretary, qualified employers ~~and qualified retained employers~~ shall be eligible during their first certified year and for the 9~~10~~ taxable years thereafter, and qualified retained employers shall be eligible during their first certified year and for the 9 taxable years thereafter. the credits against the taxes and/or fees imposed by the following statutory provisions:

- (1) Chapter 11 of Title 5;
- (2) Sections 702 and 703 of Title 18;
- (3) Chapter 19 of this title;
- (4) ~~Other fees and taxes imposed under Chapter 11 of this title.~~

The amount of credit shall be determined under subsections (b) through (e) of this section. ~~Credits under this section shall be taken by the qualified employer or qualified retained employer against taxes in the order specified in this subsection and to the extent thereof.~~

(b) Credits based on minimum additional employment in eligible jobs. —

(1) Subject to the limitations herein and in § 2084 of this title, in the case of a qualified employer which ~~employs in on December 31 of~~ a certified year has no fewer than 50 qualified employees in excess of the number of its qualified employees ~~during on December 31 of~~ its base year, the credit granted under subsection (a) of this section shall be that product determined by multiplying:

a. X, where "X" equals the total of its qualified withholding payments on the compensation of its qualified employees hired and employed after the base year in new eligible jobs, by

b. The credit percentage, which shall consist of the sum of the following:

1. 25%, plus

2. 0.075% for each qualified employee (in excess of 50 more than the number of qualified employees employed during its base year) hired and employed in new eligible jobs.

(4) If, on December 31 of a qualified employer's first certified year, the qualified employer does not meet the requirements of subsection (b)(1) but the number of qualified employees in excess of the number of qualified employees on December 31 of its base year is at least 50 multiplied by a fraction, the numerator of which is the number of months during which the qualified employer has employed qualified employees in new eligible jobs, and the denominator of which is 12, a qualified employer is eligible for the minimum credit percentage of 25 percent of qualified withholding payments on the compensation of the additional qualified employees and for the additional credits as determined in subsection (e) of this section.

(5) In the eleventh certified year, the calculated credit is multiplied by one minus the fraction computed pursuant to paragraph (b)(4).

(6) If, on December 31 of any two consecutive certified years after the first certified year, the qualified employer does not employ at least 50 qualified employees in excess of the number of its qualified employees on December 31 of its base year, the qualified employer is disqualified and shall not be permitted to claim any further credit based upon the original application.

(i) A disqualification under this provision may be reversed by the Secretary, in the Secretary's discretion, after receipt of a taxpayer's written request and statement of reasonable cause, if the Secretary has determined the disqualification is the result of extraordinary circumstances.

(ii) A disqualification under this provision will not preclude the formerly qualified employer from submitting a new application to the Secretary pursuant to § 2082, provided that such subsequent application shall require the establishment of a new base year.

(c) Credits based on minimum additional employment in vital jobs. —

(1) Subject to the limitations herein and in § 2084 of this title, in the case of a qualified employer which: (i) ~~employs in on December 31 of~~ a certified year no fewer than 200 vital employees in excess of the number of its vital employees ~~during on December 31 of~~ its base year and (ii) provides an average compensation to such vital employees of at least \$70,000, the credit granted under subsection (a) of this section shall be that product determined by multiplying:

a. X, where "X" equals the total of its qualified withholding payments on the compensation of its vital employees hired and employed after the base year in new vital jobs, by

b. The credit percentage, which shall consist of the sum of the following:

1. 25%, plus

2. 0.05% for each vital employee (in excess of 200 more than the number of vital employees employed during its base year) hired and employed in new vital jobs.

(4) If, on December 31 of a qualified employer's first certified year, the employer does not meet the requirements of subsection (c)(1) but the number of vital employees in excess of the number of vital employees on December 31 of its base year is at least 200 multiplied by a fraction, the numerator of which is the number of months during which the qualified employer has employed vital employees in new vital jobs, and the denominator of which is 12, a qualified employer is eligible for the minimum credit percentage of 25 percent of qualified withholding payments on the compensation of the additional vital employees and for the additional credits as determined in subsection (e) of this section.

(5) In the eleventh certified year, the calculated credit is multiplied by one minus the fraction computed pursuant to paragraph (c)(4).

(6) If, on December 31 of any two consecutive certified years after the first certified year, the qualified employer does not employ at least 200 vital employees in excess of the number of its vital employees on December 31 of its base year, the qualified employer is disqualified and shall not be permitted to claim any further credit based upon the original application.

(i) A disqualification under this provision may be reversed by the Secretary, in the Secretary's discretion, after receipt of a taxpayer's written request and statement of reasonable cause, if the Secretary has determined the disqualification is the result of extraordinary circumstances.

(ii) A disqualification under this provision will not preclude the formerly qualified employer from submitting a new application to the Secretary pursuant to § 2082, provided that such subsequent application shall require the establishment of a new base year.

Section 3. Amend § 2084, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2084 Limitation on credits and qualified withholding payments.

(6) The Secretary shall review all applications for the tax credit and all returns filed by each applicant. If in the Secretary's sole discretion, the Secretary determines that an applicant did not have a good faith basis for claiming the New Economy Jobs Credit, the Secretary may reverse the grant of the credit and issue an assessment to the applicant for the entire amount of unpaid tax, together with penalties and interest, arising out of the improper tax credit application.

Section 4. Amend § 515, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 515 Filing frequency and tax computation thresholds.

(c) Applicability. —

(1) The applicable thresholds subject to annual adjustment shall include:

f. The figure "\$112,200" as it appears in § 2081(21) of this title;

Approved July 17, 2019