

CHAPTER 396
FORMERLY
SENATE BILL NO. 271

AN ACT TO AMEND TITLE SUBCHAPTER IX OF TITLE 30 OF THE DELAWARE CODE RELATING TO TAX CREDITS.

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

Section 1. Amend § 2081, Subchapter IX, Chapter 20, Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2081. Definitions.

As used in this subchapter:

(1) "Affiliated group" has the meaning provided by § 1504 of the Internal Revenue Code (26 U.S.C. § 1504), but including for this purpose pass-through entities, as defined in § 1601 of this title that would be includible if they were classified as corporations, the equity interests in which would be treated as stock, and the ownership of such interests would satisfy the stock ownership requirements of the said 26 U.S.C. § 1504.

(2) "Base year" shall mean the calendar year immediately preceding a qualified employer's first certified year.

(3) "Brownfield" shall have the meaning set forth in § 9103 of Title 7.

(4) "Certified," "certification," or "recertification" mean or refer in their context to the first written determination of the Secretary issued to an employer that it is a qualified employer pursuant to the provisions of this subchapter, or the Secretary's annual review of that written determination.

(5) "Certified year" shall mean a calendar year for which an employer is certified to be eligible for New Economy Jobs Program credits under this subchapter.

(6) "Compensation" means that part of the sum reported on Form W-2, or equivalent form of the United States Department of Treasury, Internal Revenue Service as "Medicare wages and tips" that is attributable to Delaware sources.

(7) "Credit" means a reduction of the final balance for tax or fees reported due by a qualified employer on a tax or information return pursuant to the New Economy Jobs Program.

(8) "Director" means the Director of the Delaware Economic Development Office as defined in § 5002(c) of Title 29.

(9) "Eligible job" means any single position held by a common-law employee in this State for which the compensation equals or exceeds the salary threshold. More than 1 consecutive employee may perform an eligible job during a single calendar year so long as the total compensation of all consecutive employees performing such eligible jobs during such calendar year equals or exceeds the salary threshold.

(10) "Incorporated municipality" means and includes the area within the January 1, 2007, boundaries of cities, towns and villages created under any general or special law of this State for general governmental purposes which possess legislative, administrative and police powers for the general exercise of municipal functions and which carry on such functions through a set of elected and other officials.

(11) "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.

(12) "New Economy Jobs Program" means the Program authorized pursuant to this subchapter to encourage the creation of high wage, knowledge-based jobs in this State.

(13) "Qualified employee" means a common-law employee employed in an eligible job in this State.

(14) "Qualified employer" means an employer certified to be eligible for New Economy Jobs Program credits under this subchapter.

(15) "Qualified withholding payments" means (subject to the limitations of § 2084 of this title) the total amount of tax withheld, accounted for, and paid to the Secretary pursuant to subchapter VII of Chapter 11 of this title by a qualified employer on account of the compensation paid so many of the qualified employees or vital employees as are counted in determining New Economy Program credits.

(16) "Salary threshold" means the amount 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.

(17) "Secretary" means the individual appointed as administrator and head of the Delaware Department of Finance pursuant to § 8302 of Title 29.

(18) "Vital employee" means a common-law employee employed in a vital job in this State.

(19) "Vital job" means any single position held by a vital employee in this State.

~~(18)~~(20) "Targeted growth area" means a geographic area designated as "investment level 1" or "investment level 2" on the strategy maps of the most recent executive order approving the strategies for state policies and spending, originally approved in December, 1999.

~~(19)~~(21) "Targeted growth county" means a county in this State having, on June 30, 2007, fewer than 250,000 inhabitants as reported in the most recent County Population Estimate of the United States Department of Commerce, Bureau of Census.

Section 2. Amend § 2082(d), Subchapter IX, Chapter 20, Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(d) For any single calendar year subsequent to its first certified year in which a qualified employer hires and employs no fewer than 50 additional qualified employees in new eligible jobs or no fewer than 200 additional vital employees in new vital jobs, the qualified employer may:

(1) Elect to treat such additional qualified employees either as an addition to its existing number of qualified employees under its existing certification; or

(2) Make a separate application pursuant to this section and § 2083 of this title for certification and credits with respect to such additional qualified employees.

Section 3. Amend § 2083, Subchapter IX, Chapter 20, Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2083. Credits for New Economy Jobs Program employment.

(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 shall be eligible during its first certified year and for the 9 taxable years thereafter for 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 this title.

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

(b) Credits based on minimum and 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 a certified year no fewer than 50 qualified employees in excess of the number of its qualified employees during 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.

(2) In no case shall the total credit available under this subsection exceed 40% times X.

(3) In no case shall qualified employees counted for purposes of claiming New Economy Jobs Program credits under this subsection be included in the calculation of employment under subsection (c) of this section.

(c) Credits based on minimum and 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 a certified year no fewer than 200 vital employees in excess of the number of its vital employees during 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.

(2) In no case shall the total credit available under this subsection exceed 40% times X.

(3) In no case shall vital employees counted for purposes of claiming New Economy Jobs Program credits under this subsection be included in the calculation of employment under subsection (b) of this section.

~~(e)~~(d) Additional credit based on geographic employment. -- In addition to the credits determined on the qualified withholding payments for qualified employees or vital employees identified under subsections (b) and (c) of this section, a qualified employer may claim additional credits determined by:

(1) Multiplying Y-1 times 10%, where "Y-1" equals the total of the qualified withholding payments on the compensation of such qualified employees or vital employees identified to be employed in new eligible jobs or vital jobs in an incorporated municipality or a targeted growth area,

(2) Multiplying Y-2 times 5%, where "Y-2" equals the total of the qualified withholding payments on the compensation of such qualified employees or vital employees identified to be employed in new eligible jobs or vital jobs in a reclaimed Brownfield in which the qualified employer is the first tenant, and

(3) Multiplying Y-3 times 10%, where "Y3" equals the total of the qualified withholding payments on the compensation of such qualified employees or vital employees identified to be employed in new eligible jobs or vital jobs in a targeted growth county.

Section 4. Amend § 2084, Subchapter IX, Chapter 20, Title 30 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2084. Limitation on credits and qualified withholding payments.

Notwithstanding § 2083 of this title,

(1) The total amount of New Economy Jobs Program credit allowable under this subchapter for any qualified employer during any calendar year shall not exceed 65% percent of its qualified withholding payments;

(2) If the Secretary finds that a qualified employer's qualified withholding payments unreasonably exceed the amount of tax required to be withheld, accounted for, and paid by a taxpayer to the Secretary pursuant to subchapter VII of Chapter 11 of this title the Secretary may limit such qualified withholding payments to an amount which is reasonable. The Secretary or the Secretary's delegate shall mail written notice of such determination to the taxpayer. The taxpayer may, within 30 days of the date of mailing such notice, institute a written protest of such finding to the Secretary in the manner provided under § 523 of this title for protests of assessments. The Secretary's determination of the protest shall be final;

(3) No qualified employees or vital employees counted for purposes of claiming New Economy Jobs Program credits under this subchapter may be included in the calculation of employment for purposes of claiming tax credits provided by subchapters II, and III and X of this chapter or as provided by § 1105(h) of Title 5;

(4) No qualified employee or vital employee in any certified year who was employed in Delaware in the base year by a member of an affiliated group which conducted or conducts business in this State during the base year or any year thereafter shall be counted as newly hired or employed qualified employees or vital employees or qualified employees in new eligible jobs for purposes of calculating the New Economy Jobs Program credits under this subchapter; and

(5) No more than 10% of the total number of qualified employees or vital employees counted for purposes of claiming New Economy Jobs Program credits under this subchapter may be individuals who were required by the provisions of Chapter 11 of this title to file a personal income tax return for the base year.

Section 5. This Act shall take effect for vital employees hired after June 30, 2012.

Approved August 13, 2012