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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

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:

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

3 As used in this subchapter:

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

9 ~~(21)(20) "Salary threshold" means the amount \$112,200 of Delaware sourced compensation paid to a~~
10 ~~common law employee, rounded to the nearest \$100, calculated by multiplying \$100,000 times the inflation~~
11 ~~adjustment factor. The level of the applicable threshold in this subsection is subject to annual adjustment as more~~
12 ~~fully set forth in § 515 of this title.~~

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

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

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

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

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

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

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

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

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

37 1. 25%, plus

38 2. 0.075% for each qualified employee (in excess of 50 more than the number of qualified
39 employees employed during its base year) hired and employed in new eligible jobs.

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

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

49 (6) If, on December 31 of any two consecutive certified years after the first certified year, the qualified
50 employer does not employ at least 50 qualified employees in excess of the number of its qualified employees on

51 December 31 of its base year, the qualified employer is disqualified and shall not be permitted to claim any further
52 credit based upon the original application.

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

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

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

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

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

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

68 1. 25%, plus

69 2. 0.05% for each vital employee (in excess of 200 more than the number of vital employees
70 employed during its base year) hired and employed in new vital jobs.

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

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

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

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

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

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

92 § 2084 Limitation on credits and qualified withholding payments.

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

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

100 § 515 Filing frequency and tax computation thresholds.

101 (c) Applicability. —

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

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

SYNOPSIS

This bill makes modification to the New Economy Jobs Credit allowing qualified employers to pro-rate their job creation activity in the first certified year, ensuring the indexation of the salary threshold is conducted prior to the calendar year to assist with business planning and establishing an incentive to qualified employers to maintain their employment thresholds.

Author: Senator Walsh