

ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING

Pursuant to North Dakota Century Code Section 54-35-26, created by 2015 Senate Bill No. 2057, a variety of economic development tax incentives are to be reviewed by a Legislative Management interim committee every 6 years. The study is aimed at ensuring that economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the new jobs credit from income tax withholding and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING

Chapter 52-02.1 allows an employer engaged in a primary sector business to enter into an agreement with Job Service North Dakota for the establishment of training and education programs directed at new jobs within the employer's business. The agreement must specify the date the program will commence; identify program costs; and provide a guarantee by the employer for payment of program costs and an assurance that any deferral of payment will not exceed 10 years from the date the program commences. The agreement also must provide an assurance that every employee participating in the program will be paid at least \$10 per hour, plus benefits, by the end of the first year of employment and for the life of the loan; list the maximum amount of the credit from withholding or tuition and fee payments allowed for the project; and specify that on-the-job training costs for employees may not exceed 50 percent of the annual gross wages and salaries for the new jobs in the first full year following the date the project commences. If program costs will require financing, the loan or grant must be secured and payable from a sufficient portion of future receipts of payments authorized by the agreement. Job Service North Dakota may not enter into an agreement until an employer requiring financing has sufficiently qualified for financing.

Once the agreement is executed, Job Service North Dakota will notify the Tax Commissioner who shall then credit the income tax withholding on wages paid by the employer to each new employee participating in the program. An amount equivalent to the credited amount shall be transmitted to the State Treasurer for allocation to a special fund from which payments will be made to the lender that provided the program loan or to the employer if the program costs were self-funded. Once the program costs have been satisfied, the employer's credits must cease. A new employee participating in a program will receive full credit for the amount withheld while the cost of the program is being reimbursed.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING

Provisions of the new jobs credit from income tax withholding were first enacted through the passage of 1993 House Bill No. 1518. The provisions of the credit, as originally enacted, were substantially similar to the provisions found in current law with the exception of the refund option for employers whose training programs are self-funded. Upon a review of the legislative history pertaining to the bill, the perceived goal of the Legislative Assembly in creating this credit was to encourage community economic development by incentivizing businesses to locate to or expand within North Dakota by providing government-assisted new jobs training. The credit was viewed as a way to reward employers for training workers for new, skilled, and higher paying jobs and as a way for North Dakota to compete with other states for new businesses. It was estimated that the provisions of House Bill No. 1518 would result in a \$500,000 reduction in general fund revenues during the 1993-95 biennium. This estimate was arrived at by assuming lost tax revenue from 750 jobs with an average hourly wage of \$10 per hour and 750 jobs with an average hourly wage of \$8 per hour.

The only changes to the credit following its enactment occurred in 1999 and 2017. Senate Bill No. 2096 (1999) added the reimbursement option for employers that self-financed training costs. House Bill No. 1044 (2017) created a uniform definition of "primary sector business" in Title 1, which expanded the definition previously referenced in Section 52-02.1-01 to include a definition of "new wealth."

Information provided by the Tax Department in December 2017 indicates \$1,470,239 in withholding collections was allocated to the new jobs credit program in fiscal year 2016 and \$1,574,425 was allocated in fiscal year 2017.

**DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS
OF THE NEW JOBS CREDIT FROM INCOME TAX WITHHOLDING**

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive; and
5. Benefits that flow to out-of-state concerns resulting from the incentive.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department; and
3. The North Dakota Economic Development Foundation.