

ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - WORKFORCE RECRUITMENT CREDIT

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 over the ensuing six-year period. 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 workforce recruitment credit 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 WORKFORCE RECRUITMENT CREDIT

Section 57-38-01.25 provides for a workforce recruitment credit. The income tax credit is available to income taxpayers who are employers in this state and have incurred costs to recruit and hire employees for hard-to-fill employment positions in North Dakota. The credit is equal to 5 percent of the first 12 months of salary paid by the employer to an employee hired to fill a hard-to-fill position for which the annual salary meets or exceeds the state average wage. For purposes of the workforce recruitment credit, the state average wage is equal to 125 percent of the state average wage amount published by Job Service North Dakota at the time the employee is hired.

The credit may be claimed in the tax year following the employee's completion of the first 12 consecutive months of employment. The amount of credit exceeding a taxpayer's liability may be carried forward to each of the four succeeding taxable years. A "hard-to-fill employment position" is defined as a position that requires an employer to use extraordinary recruitment methods and a position an employer has been unsuccessful in filling for six consecutive months. An employer must use a fee-based recruiter, advertise the position in a publication directed at a particular profession and on a fee-based employment website, and pay a signing bonus, moving expenses, or nontypical fringe benefits to meet the requirement of having used extraordinary recruitment methods. A passthrough entity entitled to the credit must be considered the taxpayer for purposes of the credit and the amount of credit allowed must be determined at the passthrough entity level and passed through to the entity's partners, shareholders, or members in proportion to their respective ownership interests in the passthrough entity.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE WORKFORCE RECRUITMENT CREDIT

The workforce recruitment credit was first enacted through the passage of 2007 House Bill No. 1018. The provisions of Section 57-38-01.25, as originally enacted, were nearly identical to the provisions found in current law. Upon a review of the legislative history pertaining to House Bill No. 1018, the perceived goal of the Legislative Assembly in creating this credit was to address the shortage of workers in North Dakota and incentivize employers in this state to use extraordinary recruitment methods to fill high-paying, hard-to-fill positions. The credit was seen as a tool to help stimulate an influx of workers into the state and promote increased business and economic development. The estimated fiscal effect of the workforce recruitment credit could not be determined during the 2007 legislative session.

The only changes to Section 57-38-01.25 following its enactment occurred during the 2009 and 2013 legislative sessions and were technical in nature. The passage of 2009 House Bill No. 1324 eliminated the optional long-form filing method (Form ND-2) and replaced it with a simplified filing method for any taxpayer who did not have tax deductions or credits, and 2013 House Bill No. 1106 streamlined the lengthy description of a passthrough entity by providing a definition of the term at the outset of the income tax chapter.

Information provided to the Political Subdivision Taxation Committee by the Tax Department on July 29, 2015, and later amended on August 12, 2015, indicates the credit was not claimed on any corporate income tax returns in tax years 2007 through 2014. The number of individual income tax returns on which the credit was claimed and the total amount claimed is as follows:

- In tax year 2007, the credit was not claimed on any individual income tax returns;
- In tax years 2008 and 2009, the amount claimed cannot be disclosed due to confidentiality restrictions as the credit was claimed on fewer than five returns;
- In tax year 2010, the credit was not claimed on any individual income tax returns;
- In tax year 2011, a total of \$12,771 was claimed over six returns; and

- In tax years 2012 through 2014, the amount claimed cannot be disclosed due to confidentiality restrictions as the credit was claimed on fewer than five returns.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE WORKFORCE RECRUITMENT CREDIT

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;
5. Benefits that flow to out-of-state concerns resulting from the incentive; and
6. The use of this type of incentive in other states.

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.