

ASSEMBLY BILL NO. 308—ASSEMBLYMEN MONROE-MORENO,
FUMO, BILBRAY-AXELROD, ASSEFA; BENITEZ-THOMPSON,
COHEN, MILLER, MUNK AND TORRES

MARCH 18, 2019

Referred to Committee on Taxation

SUMMARY—Revises provisions relating to the modified business tax. (BDR 32-867)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; authorizing certain employers to receive a credit against the payroll taxes imposed on the employer if the employer pays all or part of the cost for an employee to receive academic or vocational instruction; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes a tax, commonly known as the modified business tax, on financial institutions and other businesses based on the amount of wages paid to employees each calendar quarter. (NRS 363A.130, 363B.110)

Sections 1-4 of this bill authorize an employer to receive a credit against the modified business tax if the employer pays money to a qualified provider of a course of academic or vocational instruction on behalf of an employee of the employer. To qualify for this credit, the employer must: (1) maintain its principal place of business in this State; (2) employ not more than 30 full-time or full-time equivalent employees; and (3) have average annual gross receipts of not more than \$3.5 million for the 3 years immediately preceding the last day of the month following the calendar quarter for which the credit is claimed. Under **sections 1 and 3** of this bill, the amount of the credit is equal to 50 percent of the amount paid by the employer to a qualified provider or \$500 per participating employee per year, whichever is less. To claim the credit, **sections 1 and 3** require the employer to notify the qualified provider of the employer's intent to pay for the course and claim the credit. A provider who receives such notice must apply to the Department of Taxation for approval of the credit. If the Department approves the credit, the employee is required to commence the course within 30 days after the notice of the approval is received by the employer and the employer is required to make the payment for the course not later than 30 days after the provider requires payment for the course. **Sections 1 and 3** also provide that the total combined amount of



22 credit which may be awarded to taxpayers under those sections is not more than
23 \$2.5 million per fiscal year.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 363A of NRS is hereby amended by
2 adding thereto a new section to read as follows:

3 *1. Except as otherwise provided in subsection 3, a qualified*
4 *employer who is required to pay a tax pursuant to NRS 363A.130*
5 *may receive a credit against the tax otherwise due if the employer*
6 *pays for an employee of the employer who is a Nevada resident to*
7 *participate in a course of academic or vocational instruction*
8 *provided by a qualified provider in the manner provided by this*
9 *section.*

10 2. A credit described in subsection 1 must be in an amount
11 equal to the lesser of:

12 (a) Fifty percent of the total amount paid by the qualified
13 employer to the qualified provider pursuant to subsection 1 during
14 the year; or

15 (b) Five hundred dollars per year per employee of the qualified
16 employer who participates in a course of academic or vocational
17 instruction which is paid for as described by subsection 1.

18 3. A qualified employer is not eligible for the credit described
19 in subsection 1 if the employer requires the employee to reimburse
20 the employer or otherwise pay for any costs or expenses charged
21 by the qualified provider in connection with the course of
22 academic or vocational instruction.

23 4. To receive the credit authorized by subsection 1, a qualified
24 employer who intends to pay for an employee to participate in a
25 course of academic or vocational instruction must, before making
26 such a payment, notify the qualified provider of the course of the
27 employer's intent to make the payment and to seek the credit
28 authorized by subsection 1. The provider shall, before accepting
29 any such payment, apply to the Department of Taxation for
30 approval of the credit authorized by subsection 1 for the payment.
31 The Department shall, within 20 days after receiving the
32 application, approve or deny the application and provide to the
33 provider notice of the decision and, if the application is approved,
34 the amount of the credit authorized. Upon receipt of notice that
35 the application has been approved, the provider shall provide
36 notice of the approval to the employer.

37 5. Not later than 30 days after the qualified employer receives
38 the notice pursuant to subsection 4, the employee must commence
39 the course of academic or vocational instruction. If the employee



1 does not commence the course of academic or vocational
2 instruction within that time, the qualified provider of the course
3 shall provide notice of the failure to the Department and the
4 employer forfeits any claim to the credit authorized by
5 subsection 1.

6 6. Not later than the date on which the provider of the course
7 of academic or vocational instruction requires payment for the
8 course, the qualified employer must make the payment of money
9 to the qualified provider. If the employer does not make the
10 payment of money to the provider within that time, the provider
11 shall provide notice of the failure to the Department and the
12 employer forfeits any claim to the credit authorized by subsection
13 1. An employer may not claim the credit pursuant to subsection 1
14 until he or she has made the payment pursuant to this subsection.

15 7. The Department shall approve or deny applications for the
16 credit authorized by subsection 1 in the order in which the
17 applications are received.

18 8. The Department may, for each fiscal year, approve
19 applications for the credit authorized by subsection 1 until the
20 total amount of the credits authorized by subsection 1 and
21 subsection 1 of section 3 of this act and approved by the
22 Department is \$2,500,000. The amount of any credit which is
23 forfeited pursuant to subsection 5 or 6 must not be considered in
24 calculating the amount of credits authorized for any fiscal year.

25 9. A credit described in subsection 1 may not be applied
26 retroactively. If the amount of the tax described in subsection 1
27 and otherwise due from a qualified employer is less than the credit
28 to which the employer is entitled pursuant to this section, the
29 employer may, after applying the credit to the extent of the tax
30 otherwise due, carry the balance of the credit forward for not more
31 than 5 years after the end of the calendar year in which the
32 payment is made or until the balance of the credit is applied,
33 whichever is earlier.

34 10. As used in this section:

35 (a) "Qualified employer" or "employer" means an employer:

36 (1) That maintains its principal place of business in this
37 State;

38 (2) That does not employ more than 30 full-time or full-
39 time equivalent employees; and

40 (3) Whose average annual gross receipts do not exceed
41 \$3,500,000 for the 3 years immediately preceding the last day of
42 the month following the calendar quarter for which the credit is
43 claimed.

44 (b) "Qualified provider" or "provider" means an institution of
45 the Nevada System of Higher Education or an accredited



vocational or technical school which provides a course of academic or vocational instruction.

Sec. 2. NRS 363A.130 is hereby amended to read as follows:

363A.130 1. Except as otherwise provided in NRS 360.203, there is hereby imposed an excise tax on each employer at the rate of 2 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

4. In determining the amount of the tax due pursuant to this section, an employer is entitled to subtract from the amount calculated pursuant to subsection 1 a credit in an amount equal to 50 percent of the amount of the commerce tax paid by the employer pursuant to chapter 363C of NRS for the preceding taxable year. The credit may only be used for any of the 4 calendar quarters immediately following the end of the taxable year for which the commerce tax was paid. The amount of credit used for a calendar quarter may not exceed the amount calculated pursuant to subsection 1 for that calendar quarter. Any unused credit may not be carried forward beyond the fourth calendar quarter immediately following the end of the taxable year for which the commerce tax was paid, and a taxpayer is not entitled to a refund of any unused credit.

5. An employer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with NRS 363A.139, to a credit equal to the amount authorized pursuant to NRS 363A.139 against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

6. An employer who, during the calendar quarter for which a return is filed pursuant to this section, makes a payment of money



which qualifies for a credit pursuant to section 1 of this act is entitled to a credit equal to the amount authorized pursuant to section 1 of this act against any tax otherwise due pursuant to this section.

Sec. 3. Chapter 363B of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, a qualified employer who is required to pay a tax pursuant to NRS 363B.110 may receive a credit against the tax otherwise due if the employer pays for an employee who is a Nevada resident to participate in a course of academic or vocational instruction provided by a qualified provider in the manner provided by this section.

2. A credit described in subsection 1 must be in an amount equal to the lesser of:

(a) Fifty percent of the total amount paid by the qualified employer to the qualified provider pursuant to subsection 1 during the year; or

(b) Five hundred dollars per year per employee of the qualified employer who participates in a course of academic or vocational instruction which is paid for as described by subsection 1.

3. A qualified employer is not eligible for the credit described in subsection 1 if the employer requires the employee to reimburse the employer or otherwise pay for any costs or expenses charged by the qualified provider in connection with the course of academic or vocational instruction.

4. To receive the credit authorized by subsection 1, a qualified employer who intends to pay for an employee to participate in a course of academic or vocational instruction must, before making such a payment, notify the qualified provider of the course of the employer's intent to make the payment and to seek the credit authorized by subsection 1. The provider shall, before accepting any such payment, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the payment. The Department shall, within 20 days after receiving the application, approve or deny the application and provide to the provider notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the provider shall provide notice of the approval to the employer.

5. Not later than 30 days after the qualified employer receives the notice pursuant to subsection 4, the employee must commence the course of academic or vocational instruction. If the employee does not commence the course of academic or vocational instruction within that time, the qualified provider of the course shall provide notice of the failure to the Department and the



1 employer forfeits any claim to the credit authorized by
2 subsection 1.

3 6. Not later than the date on which the provider of the course
4 of academic or vocational instruction requires payment for the
5 course, the qualified employer must make the payment of money
6 to the qualified provider. If the employer does not make the
7 payment of money to the provider within that time, the provider
8 shall provide notice of the failure to the Department and the
9 employer forfeits any claim to the credit authorized by subsection
10 1. An employer may not claim the credit pursuant to subsection 1
11 until he or she has made the payment pursuant to this subsection.

12 7. The Department shall approve or deny applications for the
13 credit authorized by subsection 1 in the order in which the
14 applications are received.

15 8. The Department may, for each fiscal year, approve
16 applications for the credit authorized by subsection 1 until the
17 total amount of the credits authorized by subsection 1 and
18 subsection 1 of section 1 of this act and approved by the
19 Department is \$2,500,000. The amount of any credit which is
20 forfeited pursuant to subsection 5 or 6 must not be considered in
21 calculating the amount of credits authorized for any fiscal year.

22 9. A credit described in subsection 1 may not be applied
23 retroactively. If the amount of the tax described in subsection 1
24 and otherwise due from a qualified employer is less than the credit
25 to which the employer is entitled pursuant to this section, the
26 employer may, after applying the credit to the extent of the tax
27 otherwise due, carry the balance of the credit forward for not more
28 than 5 years after the end of the calendar year in which the
29 payment is made or until the balance of the credit is applied,
30 whichever is earlier.

31 10. As used in this section:

32 (a) "Qualified employer" or "employer" means an employer:

33 (1) That maintains its principal place of business in this
34 State;

35 (2) That does not employ more than 30 full-time or full-
36 time equivalent employees; and

37 (3) Whose average annual gross receipts do not exceed
38 \$3,500,000 for the 3 years immediately preceding the last day of
39 the month following the calendar quarter for which the credit is
40 claimed.

41 (b) "Qualified provider" or "provider" means an institution of
42 the Nevada System of Higher Education or an accredited
43 vocational or technical school which provides a course of
44 academic or vocational instruction.



Sec. 4. NRS 363B.110 is hereby amended to read as follows:

363B.110 1. Except as otherwise provided in NRS 360.203, there is hereby imposed an excise tax on each employer at the rate of 1.475 percent of the amount by which the sum of all the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer exceeds \$50,000.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this chapter for that calendar quarter.

4. In determining the amount of the tax due pursuant to this section, an employer is entitled to subtract from the amount calculated pursuant to subsection 1 a credit in an amount equal to 50 percent of the amount of the commerce tax paid by the employer pursuant to chapter 363C of NRS for the preceding taxable year. The credit may only be used for any of the 4 calendar quarters immediately following the end of the taxable year for which the commerce tax was paid. The amount of credit used for a calendar quarter may not exceed the amount calculated pursuant to subsection 1 for that calendar quarter. Any unused credit may not be carried forward beyond the fourth calendar quarter immediately following the end of the taxable year for which the commerce tax was paid, and a taxpayer is not entitled to a refund of any unused credit.

5. An employer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with NRS 363B.119, to a credit equal to the amount authorized pursuant to NRS 363B.119 against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

6. An employer who, during the calendar quarter for which a return is filed pursuant to this section, makes a payment of money which qualifies for a credit pursuant to section 3 of this act is



1 *entitled to a credit equal to the amount authorized pursuant to*
2 *section 3 of this act against any tax otherwise due pursuant to this*
3 *section.*

4 **Sec. 5.** This act becomes effective upon passage and approval
5 for the purpose of adopting any regulations or performing any other
6 preparatory administrative tasks necessary to carry out the
7 provisions of this act, and on January 1, 2020, for all other purposes.

