REFERENCE TITLE: tax credits; capital investments; employment

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

HB 2272

Introduced by
Representative Forese

AN ACT

AMENDING SECTIONS 20-224.03, 41-1518, 43-1074, 43-1074.02 AND 43-1161, ARIZONA REVISED STATUTES; RELATING TO TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 20-224.03, Arizona Revised Statutes, is amended to read:

20-224.03. Premium tax credit for new employment

A. For taxable years beginning from and after June 30, 2011 through December 31, 2019, a credit is allowed against the premium tax liability imposed pursuant to section 20-224, 20-837, 20-1010, 20-1060 or 20-1097.07 for net increases in full-time employees residing in this state and hired in qualified employment positions in this state as computed and certified by the Arizona commerce authority pursuant to section 41-1525. A tax credit is not allowed against the portion of the tax payable to the fire fighters' relief and pension fund pursuant to section 20-224 or the portion of the tax payable to the public safety personnel retirement system pursuant to section 20-224.01.

B. Subject to subsection F of this section, the amount of the tax credit is equal to:

1. Three thousand dollars for each full-time employee hired in a qualified employment position in the first year or partial year of employment. Employees hired in the last ninety days of the taxable year are excluded for that taxable year and are considered to be new employees in the following taxable year.

2. Three thousand dollars for each full-time employee in a qualified employment position for the full taxable year in the second year of continuous employment.

3. Three thousand dollars for each full-time employee in a qualified employment position for the full taxable year in the third year of continuous employment.

C. The capital investment and the new qualified employment positions requirements of section 41-1525, subsection B must be accomplished within twelve months after the start of the required capital investment. No credit may be claimed until both requirements are met. A business that meets the requirements of section 41-1525, subsection B for a location is eligible to claim first year credits for three years beginning with the taxable year in which those requirements are completed. Employees hired at the location before the beginning of the taxable year but during the twelve-month period allowed in this subsection are considered to be new employees for the taxable year in which all of those requirements are completed. The employees that are considered to be new employees for the taxable year under this subsection shall not be included in the average number of full-time employees during the immediately preceding taxable year until the taxable year in which all of the requirements of section 41-1525, subsection B are completed. An employee working at a temporary work site in this state while the designated location is under construction is considered to be working at the designated location if all of the following occur:

1. The employee is hired after the start of the required investment at the designated location.

2. The employee is hired to work at the designated location after it is completed.

3. The payroll for the employees destined for the designated location is segregated from other employees.

4. The employee is moved to the designated location within thirty days after its completion.

D. To qualify for a credit under this section, the insurer and the employment positions must meet the requirements prescribed by section 41-1525.

E. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was claimed and allowed in the first year.

F. The net increase in the number of qualified employment positions is the lesser of the total number of filled qualified employment positions created at the designated location or locations during the taxable year or the difference between the average number of full-time employees in this state in the current taxable year and the average number of full-time employees in this state during the immediately preceding taxable year. The net increase in the number of qualified employment positions computed under this subsection may not exceed the difference between the average number of full-time employees in this state in the current taxable year and the average number of full-time employees in this state during the immediately preceding taxable year.

G. A taxpayer who claims a credit under section 20-224.04 shall not claim a credit under this section with respect to the same employment positions.

H. If the allowable tax credit exceeds the state premium tax liability, the amount of the claim not used as an offset against the state premium tax liability may be carried forward as a tax credit against subsequent years' state premium tax liability for a period not exceeding five taxable years.

I. If the business is sold or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim first year credits only for the qualified employment positions that it created and filled with an eligible employee after the purchase or reorganization was complete. If a person purchases a taxpayer that had qualified for first or second year credits or if an insurance business changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim the second or third year credits if it meets other eligibility requirements of this section. Credits for which a taxpayer qualified before the changes described in this subsection are terminated and lost at the time the changes are implemented.

J. An insurer that claims a tax credit against state premium tax liability is not required to pay any additional retaliatory tax imposed pursuant to section 20-230 as a result of claiming that tax credit.

K. A failure to timely report and certify to the Arizona commerce authority the information prescribed by section 41-1525, subsection E and in the manner prescribed by section 41-1525, subsection F disqualifies the insurer from the credit under this section. The department of insurance shall require written evidence of the timely report to the Arizona commerce authority.

L. A tax credit under this section is subject to recovery for a violation described in section 41-1525, subsection H.

M. The department may adopt rules necessary for the administration of this section.

N. FOR THE PURPOSES OF SUBSECTION B, PARAGRAPHS 2 AND 3 OF THIS SECTION, THE FAILURE OF THE SAME FULL-TIME EMPLOYEE TO REMAIN EMPLOYED THROUGHOUT THE ENTIRE SECOND OR THIRD YEAR DOES NOT DISQUALIFY THE TAXPAYER FROM THE CREDIT FOR THE QUALIFIED EMPLOYMENT POSITION AS DEFINED IN SECTION 41-1525 IF A SUCCESSOR FULL-TIME EMPLOYEE IS EMPLOYED IN THE QUALIFIED EMPLOYMENT POSITION AND THE POSITION IS NOT VACANT FOR MORE THAN NINETY DAYS DURING THE PERIOD FROM THE FIRST DAY OF THE SECOND YEAR THROUGH THE LAST DAY OF THE THIRD YEAR.

Sec. 2. Section 41-1518, Arizona Revised Statutes, is amended to read:

41-1518. Capital investment incentives; evaluation; certification; definitions

A. The Arizona commerce authority shall receive and evaluate applications that are submitted by qualified investors to receive a tax credit pursuant to section 43-1074.02 for qualified investments made in a qualified small business and certify to the department of revenue the names, amounts and other relevant information relating to the applicants.

B. To be eligible for a tax credit pursuant to this section and section 43-1074.02, a qualified investor shall file an application with the authority within ~~thirty~~ NINETY days after making a qualified investment. The application, on a form prescribed by the authority, shall include:

1. The name, address and federal income tax identification number of the applicant.

2. The name and federal employer identification number of the qualified small business that received a qualified investment made by the applicant.

3. The date the qualified investment was made.

4. Any additional information that the authority requires.

C. As part of the application, the applicant and the qualified small business that receives the investment shall each provide written authorization pursuant to section 42-2003 designating the authority as eligible to receive tax information from the department of revenue for the purpose of determining if any misrepresentations exist on the application.

The authorization shall limit disclosure to income tax information for the latest two years for which returns were filed with the department of revenue preceding the date the application is filed and for all tax years through the year in which the investment was made for which a return was not filed as of the date of the application. The applicant shall also provide in the written authorization income tax information for all tax years in which the applicant could claim or carry forward the credit pursuant to this section, but limited to the tax years in which the applicant actually claims a credit or carries forward a credit on a return filed with the department of revenue. An applicant who has an individual ownership interest as a co-owner of a business who may be entitled to a pro rata share of the credit pursuant to section 43-1074.02, subsection E shall provide a written authorization with content similar to the authorization, and in the same manner as, any other applicant is required to provide.

D. The authority shall review and make a determination with respect to each application within ninety days after receiving the application. The authority may request additional information from the applicant in order to make an informed decision regarding the eligibility of the qualified investor or qualified small business.

E. Subject to subsection F of this section, the authority shall authorize tax credits for each qualified investor who makes a qualified investment in a qualified small business. The amount of the credit shall be:

1. If the qualified investment is made in a qualified small business that maintains its principal place of business in a rural county of this state or is a bioscience enterprise, twelve per cent of the amount of the investment per year for the first and second taxable years after the investment is made and eleven per cent of the amount of the investment for the third taxable year after the year in which the investment is made.

2. If the qualified investment is made in a qualified small business other than a business described in paragraph 1 of this subsection, ten per cent of the amount of the investment for each of the three taxable years after the year in which the investment is made.

F. The authority shall not authorize tax credits under this section after June 30, ~~2016~~ 2021. The authority shall not certify tax credits under this section exceeding ~~twenty~~ FORTY million dollars. Tax credits that expire after certification or that are otherwise not timely used by the qualified investor for whom they were originally authorized shall be included in the ~~twenty~~ FORTY million dollar limitation. If qualifying applications exceed ~~twenty~~ FORTY million dollars, the authority shall authorize credits in the order of the date and time that the applications are received by the authority, as evidenced by the time and date stamped on the application when received by the authority. All applications shall be filed ~~in person at~~ ON A FORM AND IN THE MANNER PRESCRIBED BY the Arizona commerce authority. If an application is received that, if authorized, would require the authority to exceed the ~~twenty~~ FORTY million dollar limit, the authority shall only grant the applicant the remaining amount of tax credits that would not exceed the ~~twenty~~ FORTY million dollar limit. After the authority authorizes ~~twenty~~ FORTY million dollars in tax credits, the authority shall deny any subsequent applications that are received. The authority shall certify to the qualified investor and to the department of revenue the amount of the tax credit that is authorized for purposes of section 43-1074.02 for each taxable year described in subsection E of this section.

G. The total of all qualified investments in any calendar year by a qualified investor and its affiliates in qualified small businesses that are eligible for a tax credit pursuant to this section and section 43-1074.02 shall not exceed ~~two hundred fifty~~ FIVE HUNDRED thousand dollars. The maximum amount of qualified investments in a single qualified small business for which the authority may authorize tax credits under this section shall not exceed an aggregate of two million dollars in investments for all taxable years. If applications for tax credits are received for investments that exceed the limits prescribed by this subsection for any qualified small business, the authority shall authorize credits in the order of the date and time that the applications are received by the authority. If an application is received that, if authorized, would require the authority to authorize tax credits for any investment in a qualified small business that would cause the total qualified investments in the business to exceed the limits prescribed by this subsection, the authority shall only grant the applicant the remaining amount of tax credits that would not exceed the limits prescribed by this subsection.

H. The qualified investor shall file a return claiming the tax credit with the department of revenue for application against income tax pursuant to section 43-1074.02 by the due date of the return, including extensions, for the tax year in which the credit is available. If the qualified investor fails to timely file a return claiming the credit for a taxable year, the credit expires for that taxable year and there shall be no carryforward of the expired credit. If a qualified investor includes co-owners of a business who qualify for individual pro rata shares of the credit pursuant to section 43-1074.02, subsection E, each individual owner shall file a return claiming the tax credit with the department of revenue by the due date of the return, including extensions, for the tax year in which the credit is available. If an individual co-owner fails to timely file a return claiming the credit for a taxable year, the credit expires for that taxable year and there shall be no carryforward of the expired credit. Credits that expire or that otherwise are not timely used by the qualified investor or by the individual co-owner of a business for whom the credits were originally authorized shall not be reissued.

I. On receiving an application for a tax credit from a qualified investor, or a written request for certification as a qualified small business from a corporation, limited liability company, partnership or other business entity, the authority shall determine whether the corporation, limited liability company, partnership or other business entity that is named in the application or written request is a qualified small business. The authority shall determine if the business is a bioscience enterprise and if the business maintains its principal place of business in a rural county in this state. After determining the qualifications, the authority shall certify the qualified small business as being eligible to receive qualified investments for purposes of this section. The certification is valid for one year, but the authority may revoke the certification at any time or refuse to renew the certification if the business fails to maintain the required qualifications. If a qualified small business fails to maintain the qualifications, the business shall notify the authority within five business days of failing to meet the qualifications. The authority shall revoke the certification of the business and may assess a penalty against the business entity equal to the amount of the tax credits authorized after the business failed to meet the qualifications. The penalty shall be deposited into the state general fund. If the certification is revoked or expires, subsequent investments in the business do not qualify for a tax credit pursuant to this section and section 43-1074.02. All tax credits that are issued before any expiration or revocation of the certification shall remain valid. Any application for a tax credit shall not be denied on the basis of the expiration or revocation of the certification if the investment was made before the date of the expiration or revocation.

J. The authority shall provide to the department of revenue necessary information required to administer this section and section 43-1074.02. If the authority subsequently discovers that an applicant who received a tax credit misrepresented information on the application, the authority shall immediately notify the department of revenue and provide the department of revenue all information that relates to that applicant. If the department of revenue determines that there has been a misrepresentation on the application, the department of revenue shall deny the credit if the misrepresentation relates to whether the applicant was a qualified investor or made a qualified investment. If the misrepresentation relates to whether the investment was made to:

1. A qualified small business, the department of revenue shall deny the credit only if the applicant knew or should have known at any time before the certification that the representation was false.

2. A bioscience enterprise or a business that maintains its principal place of business in a rural county in this state, the department of revenue shall decrease the amount of the credit that would have been allowed under subsection E, paragraph 1 of this section to the amount allowed under subsection E, paragraph 2 of this section only if the applicant knew or should have known at any time before the certification that the representation was false.

K. For the purposes of this section:

1. "Affiliate" means any person or entity that controls, that is controlled by or that is under common control with another person or entity. For the purposes of this paragraph, "control" means the power to determine the policies of an entity whether through ownership of voting securities, by contract or otherwise.

2. "Asset" means any owned property that has value including financial assets and physical assets. Intellectual property shall not be included when determining total assets.

3. "Bioscience enterprise" means a business whose activity is related to bioscience as determined by the authority or any corporation, partnership, limited liability company or other business entity that is primarily engaged in a business that conducts research, development, manufacture, marketing, sale and licensing of products, services and solutions relating to either of the following:

(a) Medical, pharmaceutical, nutraceutical, bioengineering, biomechanical, bioinformatics or other life-science based applications.

(b) Applications of modern biological, bioengineering, biomechanical or bioinformatics technologies in the fields of human, plant or animal health, agriculture, defense, homeland security or the environment.

4. "Qualified investment" means an investment in an equity security that meets all of the following requirements:

(a) The equity security shall be common stock, preferred stock, an interest in a partnership or limited liability company, a security that is convertible into an equity security or any other equity security as determined by the authority.

(b) The investment shall be at least twenty-five thousand dollars.

(c) The qualified investor and its affiliates do not hold, of record or beneficially, immediately before making an investment, equity securities possessing more than thirty per cent of the total voting power of all equity securities of the qualified small business.

5. "Qualified investor" means an individual, limited liability company, partnership, S corporation as defined in section 1361 of the internal revenue code or other business entity that makes a qualified investment in a qualified small business. Qualified investor does not mean a corporation that is subject to tax under title 43, chapter 11.

6. "Qualified small business" means a corporation, limited liability company, partnership or other business entity that:

(a) Maintains at least a portion of its operations at an office or manufacturing or research facility located in this state.

(b) Has at least two principal full-time equivalent employees who are residents in this state. For the purposes of this subdivision, "principal" means a person whose sole responsibility is not administrative.

(c) Does not engage in any activities that involve human cloning or embryonic stem cell research.

(d) Has total assets not exceeding two million dollars through December 31, 2011 or ten million dollars beginning from and after December 31, 2011, excluding any investment made under this section.

(e) Has not exceeded the limitation on qualified investments prescribed by subsection G of this section.

(f) Does not have a principal business involving activities excluded by the authority. The authority shall provide a list of excluded businesses to any person on request.

7. "Rural county" means a county that has a population of seven hundred fifty thousand or fewer persons.

Sec. 3. Section 43-1074, Arizona Revised Statutes, is amended to read:

43-1074. Credit for new employment

A. For taxable years beginning from and after June 30, 2011, a credit is allowed against the taxes imposed by this title for net increases in full-time employees residing in this state and hired in qualified employment positions in this state as computed and certified by the Arizona commerce authority pursuant to section 41-1525.

B. Subject to subsection F of this section, the amount of the credit is equal to:

1. Three thousand dollars for each full-time employee hired in a qualified employment position in the first year or partial year of employment. Employees hired in the last ninety days of the taxable year are excluded for that taxable year and are considered to be new employees in the following taxable year.

2. Three thousand dollars for each full-time employee in a qualified employment position for the full taxable year in the second year of continuous employment.

3. Three thousand dollars for each full-time employee in a qualified employment position for the full taxable year in the third year of continuous employment.

C. The capital investment and the new qualified employment positions requirements of section 41-1525, subsection B must be accomplished within twelve months after the start of the required capital investment. No credit may be claimed until both requirements are met. A business that meets the requirements of section 41-1525, subsection B for a location is eligible to claim first year credits for three years beginning with the taxable year in which those requirements are completed. Employees hired at the location before the beginning of the taxable year but during the twelve-month period allowed in this subsection are considered to be new employees for the taxable year in which all of those requirements are completed. The employees that are considered to be new employees for the taxable year under this subsection shall not be included in the average number of full-time employees during the immediately preceding taxable year until the taxable year in which all of the requirements of section 41-1525, subsection B are completed. An employee working at a temporary work site in this state while the designated location is under construction is considered to be working at the designated location if all of the following occur:

1. The employee is hired after the start of the required investment at the designated location.

2. The employee is hired to work at the designated location after it is completed.

3. The payroll for the employees destined for the designated location is segregated from other employees.

4. The employee is moved to the designated location within thirty days after its completion.

D. To qualify for a credit under this section, the taxpayer and the employment positions must meet the requirements prescribed by section 41-1525.

E. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was claimed and allowed in the first year.

F. The net increase in the number of qualified employment positions is the lesser of the total number of filled qualified employment positions created at the designated location or locations during the taxable year or the difference between the average number of full-time employees in this state in the current taxable year and the average number of full-time employees in this state during the immediately preceding taxable year. The net increase in the number of qualified employment positions computed under this subsection may not exceed the difference between the average number of full-time employees in this state in the current taxable year and the average number of full-time employees in this state during the immediately preceding taxable year.

G. A taxpayer who claims a credit under section 43-1079 or 43-1083.01 shall not claim a credit under this section with respect to the same employment positions.

H. If the allowable tax credit exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against the income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not exceeding five taxable years.

I. Co-owners of a business, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

J. If the business is sold or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim first year credits only for the qualified employment positions that it created and filled with an eligible employee after the purchase or reorganization was complete. If a person purchases a taxpayer that had qualified for first or second year credits or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim the second or third year credits if it meets other eligibility requirements of this section. Credits for which a taxpayer qualified before the changes described in this subsection are terminated and lost at the time the changes are implemented.

K. A failure to timely report and certify to the Arizona commerce authority the information prescribed by section 41-1525, subsection E, and in the manner prescribed by section 41-1525, subsection F disqualifies the taxpayer from the credit under this section. The department shall require written evidence of the timely report to the Arizona commerce authority.

L. A tax credit under this section is subject to recovery for a violation described in section 41-1525, subsection H.

M. FOR THE PURPOSES OF SUBSECTION B, PARAGRAPHS 2 AND 3 OF THIS SECTION, THE FAILURE OF THE SAME FULL-TIME EMPLOYEE TO REMAIN EMPLOYED THROUGHOUT THE ENTIRE SECOND OR THIRD YEAR DOES NOT DISQUALIFY THE TAXPAYER FROM THE CREDIT FOR THE QUALIFIED EMPLOYMENT POSITION AS DEFINED IN SECTION 41-1525 IF A SUCCESSOR FULL-TIME EMPLOYEE IS EMPLOYED IN THE QUALIFIED EMPLOYMENT POSITION AND THE POSITION IS NOT VACANT FOR MORE THAN NINETY DAYS DURING THE PERIOD FROM THE FIRST DAY OF THE SECOND YEAR THROUGH THE LAST DAY OF THE THIRD YEAR.

Sec. 4. Section 43-1074.02, Arizona Revised Statutes, is amended to read:

43-1074.02. Credit for investment in qualified small businesses

A. For taxable years beginning from and after December 31, 2006 through December 31, ~~2019~~ 2024, a credit is allowed against the taxes imposed by this title for investment made after June 30, 2006 in qualified small businesses. The amount of the credit is the amount determined and authorized by the Arizona commerce authority as provided by section 41-1518.

B. To claim the credit under this section, the taxpayer shall attach to its tax return a copy of the Arizona commerce authority certification provided pursuant to section 41-1518. No credit is allowed under this section unless the taxpayer provides the certification.

C. The basis of any investment with respect to which the taxpayer has claimed a credit under this section shall be reduced by the amount of the credit claimed with respect to that investment.

D. If the allowable tax credit exceeds the taxes due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the claim not used to offset the taxes under this title may be carried forward to the next three consecutive taxable years as a credit against subsequent years' income tax liability.

E. Individuals who are co-owners of a business, including partners in a partnership and shareholders of an S corporation as defined in section 1361 of the internal revenue code, may each claim only their individual pro rata shares of the credit allowed under this section based on their ownership interests. The total of the credits allowed all such owners may not exceed the amount that would have been allowed a sole owner.

F. If the department of revenue determines that there has been a misrepresentation on an application submitted to the Arizona commerce authority under section 41-1518, the department of revenue shall deny the credit if the misrepresentation relates to whether the applicant was a qualified investor or made a qualified investment. If the misrepresentation relates to whether the investment was made to:

1. A qualified small business, the department of revenue shall deny the credit only if the applicant knew or should have known at any time before the certification that the representation was false.

2. A bioscience enterprise or a business that maintains its principal place of business in a rural county in this state, the department of revenue shall decrease the amount of the credit that would have been allowed only if the applicant knew or should have known at any time before the certification that the representation was false.

Sec. 5. Section 43-1161, Arizona Revised Statutes, is amended to read:

43-1161. Credit for new employment

A. For taxable years beginning from and after June 30, 2011, a credit is allowed against the taxes imposed by this title for net increases in full-time employees residing in this state and hired in qualified employment positions in this state as computed and certified by the Arizona commerce authority pursuant to section 41-1525.

B. Subject to subsection F of this section, the amount of the credit is equal to:

1. Three thousand dollars for each full-time employee hired in a qualified employment position in the first year or partial year of employment. Employees hired in the last ninety days of the taxable year are excluded for that taxable year and are considered to be new employees in the following taxable year.

2. Three thousand dollars for each full-time employee in a qualified employment position for the full taxable year in the second year of continuous employment.

3. Three thousand dollars for each full-time employee in a qualified employment position for the full taxable year in the third year of continuous employment.

C. The capital investment and the new qualified employment positions requirements of section 41-1525, subsection B must be accomplished within twelve months after the start of the required capital investment. No credit may be claimed until both requirements are met. A business that meets the requirements of section 41-1525, subsection B for a location is eligible to claim first year credits for three years beginning with the taxable year in which those requirements are completed. Employees hired at the location before the beginning of the taxable year but during the twelve-month period allowed in this subsection are considered to be new employees for the taxable year in which all of those requirements are completed. The employees that are considered to be new employees for the taxable year under this subsection shall not be included in the average number of full-time employees during the immediately preceding taxable year until the taxable year in which all of the requirements of section 41-1525, subsection B are completed. An employee working at a temporary work site in this state while the designated location is under construction is considered to be working at the designated location if all of the following occur:

1. The employee is hired after the start of the required investment at the designated location.

2. The employee is hired to work at the designated location after it is completed.

3. The payroll for the employees destined for the designated location is segregated from other employees.

4. The employee is moved to the designated location within thirty days after its completion.

D. To qualify for a credit under this section, the taxpayer and the employment positions must meet the requirements prescribed by section 41-1525.

E. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was claimed and allowed in the first year.

F. The net increase in the number of qualified employment positions is the lesser of the total number of filled qualified employment positions created at the designated location or locations during the taxable year or the difference between the average number of full-time employees in this state in the current taxable year and the average number of full-time employees in this state during the immediately preceding taxable year. The net increase in the number of qualified employment positions computed under this subsection may not exceed the difference between the average number of full-time employees in this state in the current taxable year and the average number of full-time employees in this state during the immediately preceding taxable year.

G. A taxpayer ~~who~~ THAT claims a credit under section 43-1164.01 or 43-1167 shall not claim a credit under this section with respect to the same employment positions.

H. If the allowable tax credit exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against the income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not exceeding five taxable years.

I. Co-owners of a business, including corporate partners in a partnership, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

J. If the business is sold or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim first year credits only for the qualified employment positions that it created and filled with an eligible employee after the purchase or reorganization was complete. If a person purchases a taxpayer that had qualified for first or second year credits or changes ownership through reorganization, stock purchase or merger, the new taxpayer may claim the second or third year credits if it meets other eligibility requirements of this section. Credits for which a taxpayer qualified before the changes described in this subsection are terminated and lost at the time the changes are implemented.

K. A failure to timely report and certify to the Arizona commerce authority the information prescribed by section 41-1525, subsection E, and in the manner prescribed by section 41-1525, subsection F disqualifies the taxpayer from the credit under this section. The department shall require written evidence of the timely report to the Arizona commerce authority.

L. A tax credit under this section is subject to recovery for a violation described in section 41-1525, subsection H.

M. FOR THE PURPOSES OF SUBSECTION B, PARAGRAPHS 2 AND 3 OF THIS SECTION, THE FAILURE OF THE SAME FULL-TIME EMPLOYEE TO REMAIN EMPLOYED THROUGHOUT THE ENTIRE SECOND OR THIRD YEAR DOES NOT DISQUALIFY THE TAXPAYER FROM THE CREDIT FOR THE QUALIFIED EMPLOYMENT POSITION AS DEFINED IN SECTION 41-1525 IF A SUCCESSOR FULL-TIME EMPLOYEE IS EMPLOYED IN THE QUALIFIED EMPLOYMENT POSITION AND THE POSITION IS NOT VACANT FOR MORE THAN NINETY DAYS DURING THE PERIOD FROM THE FIRST DAY OF THE SECOND YEAR THROUGH THE LAST DAY OF THE THIRD YEAR.