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SENATE BILL 541

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Cynthia L. Nava

AN ACT

**RELATING TO TAXATION; AMENDING THE INCOME TAX ACT TO PROVIDE
FOR ALLOCATION OF CERTAIN INCOME OF NONRESIDENTS EARNED IN NEW
MEXICO WITHIN FIFTEEN MILES OF AN INTERNATIONAL BORDER.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 7-2-11 NMSA 1978 (being Laws 1965,
Chapter 202, Section 9, as amended) is amended to read:**

**"7-2-11. TAX CREDIT--INCOME ALLOCATION AND
APPORTIONMENT. --**

**A. Net income of any individual having income that
is taxable both within and without this state shall be
apportioned and allocated as follows:**

**(1) during the first taxable year in which an
individual incurs tax liability as a resident, only income
earned on or after the date the individual became a resident**

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1 and, in addition, income earned in New Mexico while a
2 nonresident of New Mexico shall be allocated to New Mexico;

3 (2) except as provided otherwise in Paragraph
4 (1) of this subsection, income other than compensation or
5 gambling winnings shall be allocated and apportioned as
6 provided in the Uniform Division of Income for Tax Purposes
7 Act, but if the income is not allocated or apportioned by that
8 act, then it may be allocated or apportioned in accordance
9 with instructions, rulings or regulations of the secretary;

10 (3) except as provided otherwise in Paragraph
11 (1) of this subsection, compensation and gambling winnings of
12 a resident taxpayer shall be allocated to this state;

13 (4) compensation of a nonresident taxpayer
14 shall be allocated to this state to the extent that such
15 compensation is for activities, labor or personal services
16 within this state; provided:

17 (a) if the activities, labor or
18 services are performed in this state for fifteen or fewer days
19 during the taxpayer's taxable year, the compensation may be
20 allocated to the taxpayer's state of residence; and

21 (b) if the compensation is for
22 activities, labor or services performed for a business in the
23 manufacturing industry in New Mexico that is located within
24 fifteen miles of an international border and that either has a
25 total payroll in New Mexico for New Mexico residents for the

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1 calendar year in which the taxable year begins that is at
2 least ten percent greater than the prior calendar year or has
3 a payroll in New Mexico for New Mexico residents for the
4 calender year in which the taxable year begins and had no such
5 payroll in the prior calendar year, the compensation may be
6 allocated to the taxpayer's state of residence. For purposes
7 of this subparagraph, "business" means a person who has five
8 or more full-time employees in New Mexico;

9 (5) gambling winnings of a nonresident shall
10 be allocated to this state if the gambling winnings arose from
11 a source within this state; and

12 (6) other deductions and exemptions allowable
13 in computing net income and not specifically allocated in the
14 Uniform Division of Income for Tax Purposes Act shall be
15 equitably allocated or apportioned in accordance with
16 instructions, rulings or regulations of the secretary.

17 B. For the purposes of this section, "non-New
18 Mexico percentage" means the percentage determined by dividing
19 the difference between the taxpayer's net income and the sum
20 of the amounts allocated or apportioned to New Mexico by that
21 net income.

22 C. A taxpayer may claim a credit in an amount
23 equal to the amount of tax determined to be due under Section
24 7-2-7 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico
25 percentage. "

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Section 2. APPLICABILITY. -- The provisions of this act
apply to taxable years beginning on or after January 1, 2001.