

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 19

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO DISASTER RESPONSE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978 TO PROVIDE FOR TEMPORARY EXEMPTIONS TO TAXATION AND PROFESSIONAL LICENSURE OF NONRESIDENT PERSONS IN THE STATE FOR DISASTER RESPONSE.

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

underscored material = new
[bracketed material] = delete

1 earned on or after the date the individual became a resident
2 and, in addition, income earned in New Mexico while a
3 nonresident of New Mexico shall be allocated to New Mexico;

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

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

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

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

23 (b) if the compensation is for
24 activities, labor or services performed for a business in the
25 manufacturing industry in New Mexico that is located within

underscored material = new
[bracketed material] = delete

1 twenty miles of an international border, that has a minimum of
2 five full-time employees who are New Mexico residents, that is
3 not receiving development training funds under Section 21-19-7
4 NMSA 1978 and that meets the qualifications of one of Items 1)
5 through 4) of this subparagraph [~~the compensation may be~~
6 ~~allocated to the taxpayer's state of residence~~]: 1) the
7 business had no payroll in New Mexico during the previous
8 calendar year; 2) the business had a payroll in New Mexico for
9 less than the entire previous calendar year, and the first
10 payroll of the new calendar year includes payments to New
11 Mexico residents exceeding the highest monthly payroll for such
12 residents in the previous calendar year; 3) the business had a
13 payroll in New Mexico for the entire previous calendar year,
14 and the first payroll of the new calendar year includes
15 payments to New Mexico residents exceeding by at least ten
16 percent both the payroll for all employees in January 2001 and
17 the payroll for New Mexico residents twelve months prior to the
18 commencement of the new calendar year; or 4) the business had a
19 payroll in New Mexico for the entire previous calendar year,
20 but had no payroll in New Mexico within one year prior to
21 January 1, 2001, and the first payroll of the new calendar year
22 includes payments to New Mexico residents exceeding by at least
23 ten percent the payroll for such residents twelve months
24 earlier; or

25 (c) if the activities, labor or services

.202243.2

underscoring material = new
[bracketed material] = delete

1 are performed in this state for disaster- or emergency-related
2 critical infrastructure work in response to a declared state
3 disaster or emergency during a disaster response period, as
4 defined in the Tax Administration Act;

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

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

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

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

22 SECTION 2. A new section of the Tax Administration Act is
23 enacted to read:

24 "[NEW MATERIAL] BUSINESS AND EMPLOYEE STATUS DURING
25 DISASTER RESPONSE PERIOD.--

underscoring material = new
~~[bracketed material]~~ = delete

1 A. An out-of-state business that conducts
2 operations within the state for purposes of performing
3 disaster- or emergency-related work in response to a declared
4 state disaster or emergency during the disaster response period
5 shall not be considered to have established a level of presence
6 that would require that business to register, file or remit
7 state or local taxes or fees, including gross receipts taxes or
8 property tax on equipment brought into the state temporarily
9 for use during the disaster response period and subsequently
10 removed from the state. For purposes of any state or local tax
11 on or measured by, in whole or in part, net or gross income or
12 receipts, all activity of the out-of-state business that is
13 conducted in this state pursuant to this section shall be
14 disregarded with respect to any filing requirements for such
15 tax, including the filing required for a unitary or combined
16 group of which the out-of-state business may be a part. For
17 the purpose of apportioning income, revenue or receipts, the
18 performance by an out-of-state business of any work in
19 accordance with this section shall not be sourced to or
20 otherwise impact or increase the amount of income, revenue or
21 receipts apportioned to this state.

22 B. An out-of-state employee shall not be considered
23 to have established residency or a presence in the state that
24 would require that person or that person's employer to file and
25 pay income taxes or to be subjected to tax withholdings or to

.202243.2

underscored material = new
~~[bracketed material] = delete~~

1 file and pay any other state or local tax or fee during the
2 disaster response period. This includes any related state or
3 local employer withholding and remittance obligations but does
4 not include any transaction taxes or fees pursuant to
5 Subsection C of this section.

6 C. Out-of-state businesses and out-of-state
7 employees shall be required to pay transaction taxes and fees,
8 including fuel taxes or gross receipts taxes on materials or
9 services consumed or used in the state subject to gross
10 receipts tax, hotel taxes, car rental taxes or fees that the
11 out-of-state affiliated business or out-of-state employee
12 purchases for use or consumption in the state during the
13 disaster response period, unless such taxes are otherwise
14 exempted during a disaster response period.

15 D. An out-of-state business or out-of-state
16 employee that remains in the state after the disaster response
17 period will become subject to the state's normal standards for
18 establishing residency or presence or doing business in the
19 state and will therefore become responsible for any business or
20 employee tax requirements that ensue.

21 E. As used in this section:

22 (1) "critical infrastructure" means property
23 and equipment owned or used by communications networks,
24 electric generation, transmission and distribution systems, gas
25 distribution systems, water pipelines and related support

.202243.2

1 facilities that service multiple customers or residents,
2 including real and personal property such as buildings,
3 offices, lines, poles, pipes, structures and equipment;

4 (2) "declared state disaster or emergency"
5 means a disaster or emergency event for which:

6 (a) a governor's state of emergency
7 proclamation has been issued;

8 (b) a presidential declaration of a
9 federal major disaster or emergency has been issued; or

10 (c) another authorized official of the
11 state receives notification from a registered business of a
12 disaster or emergency and that official designates the event as
13 a declared state disaster or emergency, thereby invoking the
14 provisions of this section;

15 (3) "disaster- or emergency-related work"
16 means repairing, renovating, installing, building, rendering
17 services or conducting other business activities that relate to
18 critical infrastructure that has been damaged, impaired or
19 destroyed by a declared state disaster or emergency;

20 (4) "disaster response period" means a period
21 that begins ten days prior to the first day of the governor's
22 proclamation, the president's declaration or the designation by
23 another authorized official of the state of a declared state
24 disaster or emergency and that extends sixty calendar days
25 after the declared state disaster or emergency;

underscoring material = new
[bracketed material] = delete

1 (5) "out-of-state business" means a business
2 entity that, except for disaster- or emergency-related work,
3 has no presence in the state and that conducts no business in
4 the state and whose services are requested by a registered
5 business or by a state or local government for purposes of
6 performing disaster- or emergency-related work in the state.
7 "Out-of-state business" includes a business entity that is
8 affiliated with a registered business in the state solely
9 through common ownership and that has no registrations or tax
10 filings or nexus in the state other than disaster- or
11 emergency-related work during the tax year immediately
12 preceding the declared state disaster or emergency;

13 (6) "out-of-state employee" means an employee
14 who does not work in the state, except for disaster- or
15 emergency-related work during the disaster response period; and

16 (7) "registered business in the state" means a
17 business entity that is currently registered to do business in
18 the state prior to the declared state disaster or emergency."

19 SECTION 3. A new section of the Emergency Licensing Act
20 is enacted to read:

21 "[NEW MATERIAL] BUSINESS AND EMPLOYEE STATUS DURING
22 DISASTER RESPONSE PERIOD.--

23 A. An out-of-state business that conducts
24 operations within the state for purposes of performing
25 disaster- or emergency-related work in response to a declared

.202243.2

underscoring material = new
~~[bracketed material]~~ = delete

1 state disaster or emergency during the disaster response period
2 shall not be considered to have established a level of presence
3 that would require that business to be subject to any state
4 licensing or registration requirements, including any state or
5 local business licensing or registration requirements or public
6 regulation commission or secretary of state licensing and
7 regulatory requirements.

8 B. An out-of-state employee performing disaster- or
9 emergency-related work during the disaster response period
10 shall not be subject to any state licensing or registration
11 requirements.

12 C. As used in this section:

13 (1) "critical infrastructure" means property
14 and equipment owned or used by communications networks,
15 electric generation, transmission and distribution systems,
16 natural gas and natural gas liquids gathering, processing,
17 storage, transmission and distribution systems, water pipelines
18 and related support facilities that service multiple customers
19 or residents, including real and personal property such as
20 buildings, offices, lines, poles, pipes, structures and
21 equipment;

22 (2) "declared state disaster or emergency"
23 means a disaster or emergency event for which:

24 (a) a governor's state-of-emergency
25 proclamation has been issued;

.202243.2

underscoring material = new
~~[bracketed material] = delete~~

1 (b) a presidential declaration of a
2 federal major disaster or emergency has been issued; or

3 (c) another authorized official of the
4 state receives notification from a registered business of a
5 disaster or emergency and that official designates the event as
6 a declared state disaster or emergency, thereby invoking the
7 provisions of this section;

8 (3) "disaster- or emergency-related work"
9 means repairing, renovating, installing, building, rendering
10 services or conducting other business activities that relate to
11 critical infrastructure that has been damaged, impaired or
12 destroyed by a declared state disaster or emergency;

13 (4) "disaster response period" means a period
14 that begins ten days prior to the first day of the governor's
15 proclamation, the president's declaration or the designation by
16 another authorized official of the state of a declared state
17 disaster or emergency and that extends sixty calendar days
18 after the declared state disaster or emergency;

19 (5) "out-of-state business" means a business
20 entity that, except for disaster- or emergency-related work,
21 has no presence in the state and that conducts no business in
22 the state and whose services are requested by a registered
23 business or by a state or local government for purposes of
24 performing disaster- or emergency-related work in the state.
25 "Out-of-state business" includes a business entity that is

.202243.2

underscoring material = new
~~[bracketed material] = delete~~

1 affiliated with a registered business in the state solely
2 through common ownership and that has no registrations or tax
3 filings or nexus in the state other than disaster- or
4 emergency-related work during the tax year immediately
5 preceding the declared state disaster or emergency;

6 (6) "out-of-state employee" means an employee
7 who does not work in the state, except for disaster- or
8 emergency-related work during the disaster response period; and

9 (7) "registered business in the state" means a
10 business entity that is currently registered to do business in
11 the state prior to the declared state disaster or emergency."