

AN ACT  
RELATING TO TAXATION; AMENDING THE INCOME TAX ACT TO PROVIDE  
FOR ALLOCATION OF CERTAIN INCOME OF NONRESIDENTS EARNED IN  
NEW MEXICO WITHIN TWENTY 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 and, in addition, income earned in New Mexico while  
a nonresident of New Mexico shall be allocated to New  
Mexico;

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

regulations of the secretary;

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

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

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

(b) if the compensation is for activities, labor or services performed for a business in the manufacturing industry in New Mexico that is located within twenty miles of an international border, that has a minimum of five full-time employees who are New Mexico residents, is not receiving development training funds under Section

21-19-7 NMSA 1978 and that meets the qualifications of one of Items 1) through 4) of this subparagraph, the compensation may be allocated to the taxpayer's state of residence: 1) the business had no payroll in New Mexico during the previous calendar year; 2) the business had a payroll in New Mexico for less than the entire previous

calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding the highest monthly payroll for such residents in the previous calendar year; 3) the business had a payroll in New Mexico for the entire previous calendar year, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent both the payroll for all employees in January 2001 and the payroll for New Mexico residents twelve months prior to the commencement of the new calendar year; or 4) the business had a payroll in New Mexico for the entire previous calendar year, but had no payroll in New Mexico within one year prior to January 1, 2001, and the first payroll of the new calendar year includes payments to New Mexico residents exceeding by at least ten percent the payroll for such residents twelve months earlier;

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

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

B. For the purposes of this section, "non-New

Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.

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

Section 2. APPLICABILITY. --The provisions of this act apply to taxable years beginning on or after January 1, 2002.

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