F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 1/31/08
SPONSOR Nava **LAST UPDATED** **HB**

SHORT TITLE Allocation of Income to Other States **SB** 412

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	(861.0)	(593.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
NM Border Authority
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 412 changes the method of allocating income in two ways. First it adds the distribution and logistics industries to the job classifications of certain compensation that can be allocated back to an employee's home state. Under current law, if an employee works for a manufacturer within 20 miles of an international border and that has hired at least five full time New Mexican employees within two years of establishing the business, the employee can allocate his or her income to the state of residence. The business also must satisfy one of the following criteria:

- No payroll in New Mexico last calendar year
- Payroll in NM but not for the whole year and the first payroll of the new calendar year includes payments to New Mexicans exceeding the highest monthly payroll for such residents in the previous year;
- Payroll in NM for the whole previous year and the first monthly payroll includes payments to New Mexicans that exceed by 10 percent the payroll for all employees in 2001 and the payroll for New Mexicans 12 months prior to the commencement of the new year;
- Payroll in NM for the whole previous year but had no payroll within one year prior to January 1, 2001, and the first monthly payroll includes payments to New Mexicans that exceed by 10 percent the payroll for all employees in 2001 and the payroll for New Mexicans 12 months prior to the commencement of the new year;

The requirement that the company not receive development training funds (job training incentive program) has been struck allowing companies to receive this benefit.

Second, it allows employees of federal law enforcement agencies that maintain a facility within 20 miles of an international border where the employee is based at such a facility can allocate compensation from this employment to the taxpayer's home state.

SB412 defines "distribution" as the process of transporting raw materials, components or finished products and "logistics" as services, including packing, transportation, document processing and services needed to distribute products.

The effective date is for tax years beginning on or after January 1, 2009.

FISCAL IMPLICATIONS

TRD has calculated the fiscal impact based on current information but the area in question is poised for rapid growth and this will have a significant impact on the revenues. There has been expansion of the border station and significant increase in border patrol activity. The announced relocation of the Union Pacific refueling depot from El Paso will likely result in many of their existing employees working in New Mexico but maintaining residences in El Paso. There is also a significant development by the Verde Realty Group that includes binational logistics business parks. All of these developments will likely increase the impact of this apportionment credit significantly.

TRD:

> Income tax data for tax year 2005 indicates that 381 individual income taxpayers were nonresidents who worked at an activity within twenty miles from an international border (mainly Las Cruces), paid income taxes to New Mexico and reported adjusted gross income of more than $50,000 (an indication that they either worked for the federal government or a logistics industry). These 381 taxpayers paid an average of $1,902 per return for a total of $724,717. Allocating this income to other states suggests the proposed measure would decrease General Fund revenues by an identical amount. The figure was, however, decreased by 30 percent to $507,000 to reflect the fact that not all taxpayers in the group work for a federal agency or in a logistics industry. The $507,000 figure was then extrapolated by the actual and forecast rates of growth in New Mexico gross state product.

SIGNIFICANT ISSUES

There is only one location that will be able to take advantage of the exemption: the Santa Teresa border station in southern Dona Ana County. This change is expected to help companies in this area recruit employees from nearby El Paso, the nearest population center, where there is no income tax. Santa Teresa is the site of the relocating Union Pacific refueling station which will probably qualify as a distributor as well as the site of Verde Realty's 22,000 acre development which includes a park called Verde Logistics Park (http://www.verdecrs.com/market.php). There is also significant border activity with federal agencies, particularly Border Patrol and Homeland Security.

To date, no company has been able to provide this benefit to its employees due to the complexity of the rules above regarding the New Mexico payroll. While it is unclear if the credit will be useable to distribution and logistics companies, the language will very clearly apply to all employees of a federal agency and there is no local employment restriction for federal agencies.

NM Border Authority:

The intent of the legislation is to provide an incentive for development of new industries and facilities with related new employment in the border area. The incentive is necessary to level the playing field between the border area of New Mexico and adjacent El Paso, Texas, where personal income tax is not imposed.

The proposed bill expands eligible job classifications to include employees of distribution and logistics industries as well as previously eligible manufacturing industries, reflecting the industrial shift along the border from manufacturing to distribution and logistics functions for maquila production in Mexico. The Santa Teresa industrial area has become a minor regional hub for distribution and logistics facilities but suffers a competitive recruitment disadvantage to El Paso because of taxation of employee compensation.

In addition the bill would expand eligibility to include employees of federal homeland security facilities within the border area. Homeland and border security facilities are being greatly expanded along the border with major facilities to be relocated from their current El Paso locations. The New Mexico border area provides access and functional advantages for new federal security facilities but Homeland Security is reluctant to locate in New Mexico without personal taxation relief because of employee resistance and likely attrition of skilled enforcement officers.

TECHNICAL ISSUES

The definition of “logistics” may be too broadly interpreted as all services not just the types listed after the word “including.”

NF/bb