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

ORIGINAL DATE 02/11/09
SPONSOR Cote **LAST UPDATED** 03/09/09 **HB** 430/aHBIC/aHTRC

SHORT TITLE Border Business Employee Income Tax Credit **SB**

ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
		($31.0)	Recurring	General fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB429

SOURCES OF INFORMATION
LFC Files

Responses Received From
NM Border Authority (NMBA)/ Economic Development Department (EDD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HTRC amendment

The House Taxation and Revenue Committee amended House bill 430 as amended by the House Business and Industry Committee changing the maximum amount of property tax that can be deducted from $1,975 to $1,000.

Synopsis of HBIC amendment

The House Business and Industry Committee amended House Bill 430 addressing the issue of taxpayers who already deduct the property tax from their federal tax return. The amendment would not allow the credit if it has been itemized on the federal return.

Synopsis of Original Bill

House Bill 430 creates the nonresident business employee tax credit" which is the lesser of $1,975 and the amount of property tax the taxpayer who is employed by a qualified business paid for a primary residence located in another state. The credit can only be against current tax year liability and is not refundable nor can it be carried forward.

The credit replaces statutes that apportioned income for non resident employees of certain businesses on the border [Section 7-2-11(A.4.b) NMSA 1978]. The credit is effective for tax years 2010 to 2020.

A qualified business is one that is located within 20 miles of an international border, is engaged in manufacturing, distribution or logistics, does not qualify for the locomotive fuel deduction, has a minimum of five employees and is a new employer. A new employer is defined as one with no payroll in the prior year, had some payroll last year but payroll at the beginning of the current year has a higher ratio of payments to NM residents compared to prior year's highest monthly payroll, or had a payroll for the entire prior year and the first payroll of the current year includes at least 10 percent higher payments to NM residents than the first payroll of the prior year.

FISCAL IMPLICATIONS

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TRD:

The most recently available personal income tax data (tax year 2007) indicates that 985 nonresident taxpayers lived in El Paso County, Texas and claimed New Mexico wages of more than $50,000 (an indication that the taxpayer works in manufacturing, logistics, or distribution). Ongoing construction of manufacturing plants in Mexico across the border from the Santa Teresa, NM port-of-entry is expected to increase Santa Teresa logistics and distribution employment. We thus assume logistics, manufacturing, and distribution employment will be higher than 2007 levels by 30% in 2009, 40% in 2010, 50% in 2011, and 60% in 2012. A turnover rate of 17% is assumed, and 20% of individuals are assumed to work at qualifying businesses. According to the Tax Foundation, approximately 45% of Texans with adjusted gross income between $50 and $75 thousand itemize deductions and are therefore assumed to be ineligible for the credit. Additionally, approximately 18% of individuals are estimated to have sufficient tax liability to use the full credit; the remaining 82% are assumed to be able to use 15% of the credit. Additional revenue impacts may occur if businesses move to New Mexico as a result of the tax incentive.

Estimated Revenue Impact*						R or NR**	Fund(s) Affected
FY2009	FY2010	FY2011	FY2012	FY2013	FY 09-13		
0	0	(31)	(45)	(50)	(126)	R	General Fund

Source: TRD

The section of the income apportionment statute that is being deleted does not have fiscal impact because it has not been used.

SIGNIFICANT ISSUES

This creates a credit against property taxes in another state even though there is already a deduction for taxes paid to other states as part of the personal income tax form. TRD reports that generally, wages earned in a state are taxable by that state and not the state where the taxpayer is a resident. New Mexico follows this rule, which reflects the fact that workers receive the benefit of public services in their place of employment. The proposed credit could largely remove any New Mexico tax on qualifying nonresidents.

The Border Authority claims that industry does not want to move to New Mexico because of the perception that taxes will be higher. It is true that Texas has no income tax but in El Paso, taxes on purchases (sales, gas, cigarettes, cars) and property are all higher than in Las Cruces, the closest metro area to the border area.

Major Taxes	Las Cruces	El Paso
Personal Income	0.049	
Sales	7.125	8.250
Property	0.009	0.031
Gasoline	0.170	0.200
Cigarettes	0.910	1.410
Motor Vehicle Excise	3.000	6.250

NMBA:

The continued growth of the maquiladora (twin-plant) industry in Chihuahua and its expansion towards New Mexico has increased interest in our border region as a support base for that industry. Changes in the way that the industry receives and distributes products have made distribution and transport logistics facilities located nearby in the U.S. a much larger segment of the support base.

The interest is being fueled by new mega-manufacturing plants such as those belonging to Electrolux and Foxconn, which is constructing the largest twin-plant in the history of Mexico immediately across the border from the Santa Teresa port-of-entry. The first phase of the Foxconn facility will begin operations in February 2009 and will employ as many as 9,000 persons by the end of this year. Foxconn intends to construct three million square feet of facilities and employ 20,000 persons at this site within four years.

The labor pool in New Mexico is not yet large enough to provide sufficient workers for employers now located in the border region. New distributors, and logistics firms—as well as firms now located in El Paso—continue to be reluctant to set up support operations for new industry, including Foxconn, in New Mexico because employees who live in Texas would be subject to New Mexico personal income taxes. In fact, despite inquiries concerning setting up facilities in New Mexico, there have been no commitments from Foxconn suppliers because of the personal income tax issue.

The proposed legislation would provide the incentive for the location of distribution, and logistics firms in the southern New Mexico border region at a critical time, just as the mega-maquiladoras need the services.

RELATIONSHIP

Relates to HB429 which establishes a similar credit for federal law enforcement facility employees.

TECHNICAL ISSUES

TRD reports that if the business does not meet the requirements of subsection E on page 2, a person who would otherwise qualify for the credit would not receive it. The bill is not clear on when the Department would require documentation.

NF/mt:svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc