

1 SENATE BILL 465

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 William H. Payne

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10 AN ACT

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

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "7-2-11. TAX CREDIT--INCOME ALLOCATION AND  
20 APPORTIONMENT.--

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

24 (1) during the first taxable year in which an  
25 individual incurs tax liability as a resident, only income

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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

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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

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

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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 but not limited to  
8 gross receipts taxes or property tax on equipment brought into  
9 the state temporarily for use during the disaster response  
10 period and subsequently removed from the state. For purposes  
11 of any state or local tax on or measured by, in whole or in  
12 part, net or gross income or receipts, all activity of the  
13 out-of-state business that is conducted in this state pursuant  
14 to this section shall be disregarded with respect to any filing  
15 requirements for such tax, including the filing required for a  
16 unitary or combined group of which the out-of-state business  
17 may be a part. For the purpose of apportioning income, revenue  
18 or receipts, the performance by an out-of-state business of any  
19 work in 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

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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 but not limited to fuel taxes or gross receipts taxes  
9 on materials or services consumed or used in the state subject  
10 to gross receipts tax, hotel taxes, car rental taxes or fees  
11 that the out-of-state affiliated business or out-of-state  
12 employee purchases for use or consumption in the state during  
13 the 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

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1 facilities that service multiple customers or citizens,  
2 including but not limited to real and personal property such as  
3 buildings, offices, lines, poles, pipes, structures and  
4 equipment;

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

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

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

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

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

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

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1 after the declared state disaster or emergency;

2 (5) "out-of-state business" means a business  
3 entity that, except for disaster- or emergency-related work,  
4 has no presence in the state and that conducts no business in  
5 the state and whose services are requested by a registered  
6 business or by a state or local government for purposes of  
7 performing disaster- or emergency-related work in the state.

8 "Out-of-state business" includes a business entity that is  
9 affiliated with a registered business in the state solely  
10 through common ownership and that has no registrations or tax  
11 filings or nexus in the state other than disaster- or  
12 emergency-related work during the tax year immediately  
13 preceding the declared state disaster or emergency;

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

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

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

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

24 A. An out-of-state business that conducts  
25 operations within the state for purposes of performing

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

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

13 C. As used in this section:

14 (1) "critical infrastructure" means property  
15 and equipment owned or used by communications networks,  
16 electric generation, transmission and distribution systems, gas  
17 distribution systems, water pipelines and related support  
18 facilities that service multiple customers or citizens  
19 including but not limited to 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;

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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

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1 affiliated with a registered business in the state solely  
2 through common ownership 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."