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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
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

1 apporportioned in accordance with instructions, rulings or
2 regulations of the secretary;

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

7 (4) compensation of a nonresident taxpayer
8 shall be allocated to this state to the extent that such
9 compensation is for activities, labor or personal services
10 within this state; provided that the compensation may be
11 allocated to the taxpayer's state of residence:

12 (a) if the activities, labor or
13 services are performed in this state for fifteen or fewer
14 days during the taxpayer's taxable year;

15 (b) if the compensation is for
16 activities, labor or services performed for a business in the
17 manufacturing industry in New Mexico that is located within
18 twenty miles of an international border, that has a minimum
19 of five full-time employees who are New Mexico residents,
20 that is not receiving development training funds under
21 Section 21-19-7 NMSA 1978 and that meets the qualifications
22 of one of Items 1) through 4) of this subparagraph: 1) the
23 business had no payroll in New Mexico during the previous
24 calendar year; 2) the business had a payroll in New Mexico
25 for less than the entire previous calendar year, and the

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

16 (c) if the activities, labor or
17 services are performed in this state for disaster- or
18 emergency-related critical infrastructure work in response to
19 a declared state disaster or emergency during a disaster
20 response period, as defined in the Tax Administration Act;

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

24 (6) other deductions and exemptions
25 allowable in computing net income and not specifically

1 allocated in the Uniform Division of Income for Tax Purposes
2 Act shall be equitably allocated or apportioned in accordance
3 with instructions, rulings or regulations of the secretary.

4 B. For the purposes of this section,
5 "non-New Mexico percentage" means the percentage determined
6 by dividing the difference between the taxpayer's net income
7 and the sum of the amounts allocated or apportioned to
8 New Mexico by that net income.

9 C. A taxpayer may claim a credit in an amount
10 equal to the amount of tax determined to be due under Section
11 7-2-7 or 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico
12 percentage."

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

15 "BUSINESS AND EMPLOYEE STATUS DURING DISASTER RESPONSE
16 PERIOD.--

17 A. An out-of-state business that conducts
18 operations within the state for purposes of performing
19 disaster- or emergency-related work in response to a declared
20 state disaster or emergency during the disaster response
21 period shall not be considered to have established a level of
22 presence that would require that business to register, file
23 or remit state or local taxes or fees, including gross
24 receipts taxes or property tax on equipment brought into the
25 state temporarily for use during the disaster response period

1 and subsequently removed from the state. For purposes of any
2 state or local tax on or measured by, in whole or in part,
3 net or gross income or receipts, all activity of the
4 out-of-state business that is conducted in this state
5 pursuant to this section shall be disregarded with respect to
6 any filing requirements for such tax, including the filing
7 required for a unitary or combined group of which the
8 out-of-state business may be a part. For the purpose of
9 apportioning income, revenue or receipts, the performance by
10 an out-of-state business of any work in accordance with this
11 section shall not be sourced to or otherwise impact or
12 increase the amount of income, revenue or receipts
13 apportioned to this state.

14 B. An out-of-state employee shall not be
15 considered to have established residency or a presence in the
16 state that would require that person or that person's
17 employer to file and pay income taxes or to be subjected to
18 tax withholdings or to file and pay any other state or local
19 tax or fee during the disaster response period. This
20 includes any related state or local employer withholding and
21 remittance obligations but does not include any transaction
22 taxes or fees pursuant to Subsection C of this section.

23 C. Out-of-state businesses and out-of-state
24 employees shall be required to pay transaction taxes and
25 fees, including fuel taxes or gross receipts taxes on

1 materials or services consumed or used in the state subject
2 to gross receipts tax, hotel taxes, car rental taxes or fees
3 that the out-of-state affiliated business or out-of-state
4 employee purchases for use or consumption in the state during
5 the disaster response period, unless such taxes are otherwise
6 exempted during a disaster response period.

7 D. An out-of-state business or out-of-state
8 employee that remains in the state after the disaster
9 response period will become subject to the state's normal
10 standards for establishing residency or presence or doing
11 business in the state and will therefore become responsible
12 for any business or employee tax requirements that ensue.

13 E. As used in this section:

14 (1) "critical infrastructure" means
15 property, equipment and related support facilities that
16 service multiple customers or residents, including real and
17 personal property such as buildings, offices, lines, poles,
18 pipes, structures and equipment that is owned or used by:

19 (a) communications networks;

20 (b) electric generation, transmission
21 and distribution systems;

22 (c) natural gas and natural gas liquids
23 gathering, processing, storage, transmission and distribution
24 systems;

25 (d) crude oil and refined product

1 pipelines; and

2 (e) water pipelines;

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

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

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

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

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

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

25 (5) "out-of-state business" means a business

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

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

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

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

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

22 "BUSINESS AND EMPLOYEE STATUS DURING DISASTER RESPONSE
23 PERIOD.--

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

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

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

13 C. As used in this section:

14 (1) "critical infrastructure" means
15 property, equipment and related support facilities that
16 service multiple customers or residents, including real and
17 personal property such as buildings, offices, lines, poles,
18 pipes, structures and equipment that is owned or used by:

19 (a) communications networks;

20 (b) electric generation, transmission
21 and distribution systems;

22 (c) natural gas and natural gas liquids
23 gathering, processing, storage, transmission and distribution
24 systems;

25 (d) crude oil and refined product

1 pipelines; and

2 (e) water pipelines;

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

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

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

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

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

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

25 (5) "out-of-state business" means a business

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

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

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

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

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