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SENATE BILL

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; CREATING A CREDIT AGAINST PERSONAL INCOME TAX IN AN AMOUNT EQUAL TO CERTAIN PROPERTY TAXES PAID BY NONRESIDENT EMPLOYEES OF CERTAIN MANUFACTURING, DISTRIBUTION OR LOGISTICS BUSINESSES LOCATED WITHIN TWENTY MILES OF AN INTERNATIONAL BORDER; AMENDING THE PROVISIONS REGARDING ALLOCATION OF INCOME TO ANOTHER STATE.

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

SECTION 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] TAX CREDIT--NONRESIDENT EMPLOYEES OF QUALIFIED BUSINESSES--AMOUNT OF NONRESIDENT PROPERTY TAX.--

A. A nonresident taxpayer who files an individual New Mexico income tax return and who is not a dependent of another individual may claim a tax credit if the taxpayer is an

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1 employee of a business that has qualified pursuant to this  
2 section for the calendar year that includes the last day of the  
3 taxpayer's taxable year. The tax credit provided for in this  
4 section may be referred to as the "nonresident business  
5 employee tax credit".

6 B. The credit claimed pursuant to this section  
7 shall equal the lesser of:

8 (1) the amount of property tax paid by the  
9 taxpayer during the taxable year on the taxpayer's primary  
10 residence located in a state other than New Mexico; or

11 (2) one thousand dollars (\$1,000).

12 C. The nonresident business employee tax credit  
13 shall only be deducted from the taxpayer's New Mexico income  
14 tax liability for the taxable year, and any portion of the  
15 credit that remains unused at the end of the taxable year shall  
16 not be carried forward.

17 D. A taxpayer may claim the nonresident business  
18 employee tax credit only if the property tax paid on the  
19 taxpayer's primary residence has not been included in the  
20 taxpayer's itemized deductions, as defined in Section 63 of the  
21 Internal Revenue Code, for the taxable year.

22 E. A husband and wife who file separate returns for  
23 a taxable year in which they could have filed a joint return  
24 may each claim only one-half of the credit that would have been  
25 allowed on a joint return.

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1           F. For a business to qualify in a calendar year  
2 pursuant to this section, the business shall submit  
3 documentation in a form determined by the department that  
4 includes a list of nonresident employees and that confirms that  
5 the business:

6                   (1) is located in New Mexico within twenty  
7 miles of an international border;

8                   (2) is a manufacturing, distribution or  
9 logistics business;

10                   (3) has a minimum of five full-time employees  
11 who are New Mexico residents; and

12                   (4) meets one of the following criteria:

13                           (a) the business had no payroll in New  
14 Mexico during the previous calendar year;

15                           (b) the business had a payroll in New  
16 Mexico for less than the entire previous calendar year, and the  
17 first payroll of the current calendar year includes payments to  
18 New Mexico residents exceeding the highest monthly payroll for  
19 New Mexico residents in the previous calendar year; or

20                           (c) the business had a payroll in New  
21 Mexico for the entire previous calendar year, and the first  
22 payroll of the current calendar year includes payments to New  
23 Mexico residents exceeding by at least ten percent the first  
24 payroll for New Mexico resident employees of the business in  
25 the previous calendar year.

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1           G. A taxpayer may claim the nonresident business  
2 employee tax credit only for taxable years that begin within  
3 three years of the date that the taxpayer commences employment  
4 at the qualified business.

5           H. As used in this section:

6                   (1) "business" means that portion of a  
7 business entity that is located within twenty miles of an  
8 international border;

9                   (2) "distribution" means the process of  
10 transporting raw materials, components or finished products;

11                   (3) "logistics" means services, including  
12 packing, storage, transportation, document processing and  
13 services needed to distribute products; and

14                   (4) "manufacturing" means combining or  
15 processing components or materials to increase their value for  
16 sale in the ordinary course of business; "manufacturing" does  
17 not include construction, farming or the processing of natural  
18 resources and hydrocarbons."

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

21                   "7-2-11. TAX CREDIT--INCOME ALLOCATION AND  
22 APPORTIONMENT.--

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

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1 (1) during the first taxable year in which an  
2 individual incurs tax liability as a resident, only income  
3 earned on or after the date the individual became a resident  
4 and, in addition, income earned in New Mexico while a  
5 nonresident of New Mexico shall be allocated to New Mexico;

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

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

16 (4) compensation of a nonresident taxpayer  
17 shall be allocated to this state to the extent that such  
18 compensation is for activities, labor or personal services  
19 within this state; provided [~~(a)~~] that if the activities, labor  
20 or services are performed in this state for fifteen or fewer  
21 days during the taxpayer's taxable year, the compensation may  
22 be allocated 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, is not~~  
3 ~~receiving development training funds under Section 21-19-7 NMSA~~  
4 ~~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;]~~

25 (5) gambling winnings of a nonresident shall

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1 be allocated to this state if the gambling winnings arose from  
2 a source within this state; and

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

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

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

17 SECTION 3. DELAYED REPEAL.--Section 1 of this act is  
18 repealed effective January 1, 2022.

19 SECTION 4. APPLICABILITY.--The provisions of this act are  
20 applicable to taxable years beginning on or after January 1,  
21 2012 and prior to January 1, 2022.

22 SECTION 5. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is January 1, 2012.