

HOUSE BILL 507

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO TAXATION; PHASING IN THE USE OF A SINGLE SALES  
FACTOR BY TAXPAYERS WHOSE PRINCIPAL BUSINESS ACTIVITY IS  
MANUFACTURING OVER FIVE YEARS; EXCLUDING CERTAIN SALES FROM  
BEING APPORTIONED AS SALES IN NEW MEXICO.

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

SECTION 1. Section 7-4-10 NMSA 1978 (being Laws 1993,  
Chapter 153, Section 1, as amended) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. Except as provided in Subsection B of this  
section, all business income shall be apportioned to this state  
by multiplying the income by a fraction, the numerator of which  
is the property factor plus the payroll factor plus the sales  
factor and the denominator of which is three.

~~[B. For taxable years beginning prior to January 1,~~

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1 ~~2020, a taxpayer whose principal business activity is~~  
2 ~~manufacturing may elect to have business income apportioned to~~  
3 ~~this state by multiplying the income by a fraction, the~~  
4 ~~numerator of which is the property factor plus the payroll~~  
5 ~~factor plus twice the sales factor and the denominator of which~~  
6 ~~is four. To elect the method of apportionment provided by this~~  
7 ~~subsection, the taxpayer shall notify the department of the~~  
8 ~~election, in writing, no later than the date on which the~~  
9 ~~taxpayer files the return for the first taxable year to which~~  
10 ~~the election will apply. The election will apply to that~~  
11 ~~taxable year and to each taxable year thereafter until the~~  
12 ~~taxpayer notifies the department, in writing, that the election~~  
13 ~~is terminated, except that the taxpayer shall not terminate the~~  
14 ~~election until the method of apportioning business income~~  
15 ~~provided by this subsection has been used by the taxpayer for~~  
16 ~~at least three consecutive taxable years, including a total of~~  
17 ~~at least thirty-six calendar months. Notwithstanding any~~  
18 ~~provisions of this subsection to the contrary, the taxpayer~~  
19 ~~shall use the method of apportionment provided by Subsection A~~  
20 ~~of this section for the taxable year unless:~~

21 ~~(1) the taxpayer's corporate income tax~~  
22 ~~liability for the taxable year, computed by the same method of~~  
23 ~~apportionment used in the preceding taxable year, exceeds the~~  
24 ~~corporate income tax liability for the taxpayer's immediately~~  
25 ~~preceding taxable year; or~~

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1                   ~~(2) the sum of the taxpayer's payroll factor~~  
2 ~~and property factor for the taxable year exceeds the sum of the~~  
3 ~~taxpayer's payroll factor and property factor for the~~  
4 ~~taxpayer's base year. For purposes of this paragraph, "base~~  
5 ~~year" means the taxpayer's first taxable year beginning on or~~  
6 ~~after January 1, 1991.]~~

7                   B. A taxpayer that is a business engaged in  
8 manufacturing may elect to have business income apportioned to  
9 this state:

10                   (1) in the taxable year beginning on or after  
11 January 1, 2014 and prior to January 1, 2015, by multiplying  
12 the income by a fraction, the numerator of which is twice the  
13 sales factor plus the property factor plus the payroll factor  
14 and the denominator of which is four;

15                   (2) in the taxable year beginning on or after  
16 January 1, 2015 and prior to January 1, 2016, by multiplying  
17 the income by a fraction, the numerator of which is three  
18 multiplied by the sales factor plus the property factor plus  
19 the payroll factor and the denominator of which is five;

20                   (3) in the taxable year beginning on or after  
21 January 1, 2016 and prior to January 1, 2017, by multiplying  
22 the income by a fraction, the numerator of which is seven  
23 multiplied by the sales factor plus one and one-half multiplied  
24 by the property factor plus one and one-half multiplied by the  
25 payroll factor and the denominator of which is ten;

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1                   (4) in the taxable year beginning on or after  
2 January 1, 2017 and prior to January 1, 2018, by multiplying  
3 the income by a fraction, the numerator of which is eight  
4 multiplied by the sales factor plus the property factor plus  
5 the payroll factor and the denominator of which is ten; and

6                   (5) in taxable years beginning on or after  
7 January 1, 2018, by multiplying the income by a fraction, the  
8 numerator of which is the total sales of the taxpayer in New  
9 Mexico during the taxable year and the denominator of which is  
10 the total sales of the taxpayer from any location within or  
11 outside of the state during the taxable year.

12                   C. To elect the method of apportionment provided by  
13 Subsection B of this section, the taxpayer shall notify the  
14 department of the election, in writing, no later than the date  
15 on which the taxpayer files the return for the first taxable  
16 year to which the election will apply. The election shall  
17 apply to that taxable year and to each taxable year thereafter  
18 until the taxpayer notifies the department, in writing, that  
19 the election is terminated, provided that the taxpayer shall  
20 not terminate the election until the method of apportioning  
21 business income provided by Subsection B of this section has  
22 been used by the taxpayer for at least three consecutive  
23 taxable years, including a total of at least thirty-six  
24 calendar months.

25                   ~~[G-]~~ D. For purposes of this section, "business

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1 engaged in manufacturing" means [~~combining or processing~~  
2 ~~components or materials to increase their value for sale in the~~  
3 ~~ordinary course of business, but does not include:~~

4 ~~(1) construction;~~

5 ~~(2) farming;~~

6 ~~(3) power generation, except for electricity~~  
7 ~~generation at a facility other than one for which both location~~  
8 ~~approval and a certificate of convenience and necessity are~~  
9 ~~required prior to commencing construction or operation of the~~  
10 ~~facility, pursuant to the Public Utility Act; or~~

11 ~~(4) processing natural resources, including~~  
12 ~~hydrocarbons] a business classified within the manufacturing  
13 sector as described in the official 2012 United States North  
14 American industry classification system manual."~~

15 SECTION 2. Section 7-4-17 NMSA 1978 (being Laws 1965,  
16 Chapter 203, Section 17) is amended to read:

17 "7-4-17. DETERMINATION OF SALES IN THIS STATE OF TANGIBLE  
18 PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR.--Sales of  
19 tangible personal property are in this state if:

20 A. the property is delivered or shipped to a  
21 purchaser other than the United States government within this  
22 state regardless of the f. o. b. point or other conditions of  
23 the sale; or

24 B. the property is shipped from an office, store,  
25 warehouse, factory or other place of storage in this state and:

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- 1 (1) the purchaser is the United States
- 2 government; or
- 3 (2) the taxpayer:
- 4 (a) is not taxable in the state of the
- 5 purchaser; and
- 6 (b) did not make an election for
- 7 apportionment of business income pursuant to Subsection B of
- 8 Section 7-4-10 NMSA 1978."

9 SECTION 3. APPLICABILITY.--The provisions of this act  
10 apply to taxable years beginning on or after January 1, 2014.

11 SECTION 4. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is January 1, 2014.