

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 277

3 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

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10 AN ACT

11 RELATING TO TAXATION; DECREASING CERTAIN CORPORATE INCOME TAX
12 RATES OVER THREE YEARS; PHASING IN USE OF A SINGLE SALES FACTOR
13 BY CERTAIN TAXPAYERS IN APPORTIONING CORPORATE INCOME TO THE
14 STATE OVER THREE YEARS; EXCLUDING CERTAIN SALES FROM BEING
15 APPORTIONED AS SALES IN NEW MEXICO.

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

18 SECTION 1. Section 7-2A-5 NMSA 1978 (being Laws 1981,
19 Chapter 37, Section 38, as amended) is amended to read:

20 "7-2A-5. CORPORATE INCOME TAX RATES.--The corporate
21 income tax imposed on corporations by Section 7-2A-3 NMSA 1978
22 shall be at the rates specified in the following [~~table~~]
23 tables:

24 A. For taxable years beginning prior to January 1,
25 2014:

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SCORC/SB 277

1	If the net income is:	The tax shall be:
2	Not over \$500,000	4.8% of net income
3	Over \$500,000 but not	
4	over \$1,000,000	\$24,000 plus
5		6.4% of excess
6		over \$500,000
7	Over \$1,000,000	\$56,000
8		plus 7.6% of excess
9		over \$1,000,000.

10 B. For taxable years beginning on or after January 1,
11 2014 and prior to January 1, 2015:

12	<u>If the net income is:</u>	<u>The tax shall be:</u>
13	<u>Not over \$500,000</u>	<u>4.8% of net income</u>
14	<u>Over \$500,000 but not</u>	
15	<u>over \$1,000,000</u>	<u>\$24,000 plus</u>
16		<u>5.9% of excess</u>
17		<u>over \$500,000</u>
18	<u>Over \$1,000,000</u>	<u>\$53,500</u>
19		<u>plus 6.7% of excess</u>
20		<u>over \$1,000,000.</u>

21 C. For taxable years beginning on or after January 1,
22 2015 and prior to January 1, 2016:

23	<u>If the net income is:</u>	<u>The tax shall be:</u>
24	<u>Not over \$500,000</u>	<u>4.8% of net income</u>
25	<u>Over \$500,000 but not</u>	

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underscored material = new
[bracketed material] = delete

1 over \$1,000,000 \$24,000 plus
 2 5.4% of excess
 3 over \$500,000
 4 Over \$1,000,000 \$51,000
 5 plus 5.8% of excess
 6 over \$1,000,000.

7 D. For taxable years beginning on or after January 1,
 8 2016:

9 <u>If the net income is:</u>	<u>The tax shall be:</u>
10 <u>Not over \$500,000</u>	<u>4.8% of net income</u>
11 <u>Over \$500,000</u>	<u>\$24,000 plus</u>
12 <u>4.9% of excess</u>	
13 <u>over \$500,000."</u>	

14 SECTION 2. Section 7-4-10 NMSA 1978 (being Laws 1993,
 15 Chapter 153, Section 1, as amended) is amended to read:

16 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

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

22 ~~[B. For taxable years beginning prior to January 1,~~
 23 ~~2020, a taxpayer whose principal business activity is~~
 24 ~~manufacturing may elect to have business income apportioned to~~
 25 ~~this state by multiplying the income by a fraction, the~~

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 [bracketed material] = delete

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

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

23 ~~(2) the sum of the taxpayer's payroll factor and~~
24 ~~property factor for the taxable year exceeds the sum of the~~
25 ~~taxpayer's payroll factor and property factor for the~~

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1 taxpayer's base year. For purposes of this paragraph, "base
2 year" means the taxpayer's first taxable year beginning on or
3 after January 1, 1991.

4 C. For purposes of this section, "manufacturing"
5 means combining or processing components or materials to
6 increase their value for sale in the ordinary course of
7 business, but does not include:

8 (1) construction;

9 (2) farming;

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

15 (4) processing natural resources, including
16 hydrocarbons.]

17 B. A taxpayer may elect to have business income
18 apportioned to this state:

19 (1) in the taxable year beginning on or after
20 January 1, 2014 and prior to January 1, 2015, by multiplying
21 the income by a fraction, the numerator of which is twice the
22 sales factor plus the property factor plus the payroll factor
23 and the denominator of which is four;

24 (2) in the taxable year beginning on or after
25 January 1, 2015 and prior to January 1, 2016, by multiplying

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1 the income by a fraction, the numerator of which is eight
2 multiplied by the sales factor plus the property factor plus
3 the payroll factor and the denominator of which is ten; and
4 (3) in taxable years beginning on or after
5 January 1, 2016, by multiplying the income by a fraction, the
6 numerator of which is the total sales of the taxpayer in New
7 Mexico during the taxable year and the denominator of which is
8 the total sales of the taxpayer from any location within or
9 outside of the state during the taxable year.

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

23 SECTION 3. Section 7-4-17 NMSA 1978 (being Laws 1965,
24 Chapter 203, Section 17) is amended to read:

25 "7-4-17. DETERMINATION OF SALES IN THIS STATE OF TANGIBLE

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1 PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR.--Sales of
2 tangible personal property are in this state if:

3 A. the property is delivered or shipped to a
4 purchaser other than the United States government within this
5 state regardless of the f. o. b. point or other conditions of
6 the sale; or

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

9 (1) the purchaser is the United States
10 government; or

11 (2) the taxpayer:
12 (a) is not taxable in the state of the
13 purchaser; and

14 (b) did not make an election for
15 apportionment of business income pursuant to Subsection B of
16 Section 7-4-10 NMSA 1978."

17 SECTION 4. APPLICABILITY.--The provisions of this act
18 apply to taxable years beginning on or after January 1, 2014.

19 SECTION 5. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is January 1, 2014.