

1 SENATE BILL 545

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Daniel Ivey-Soto

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10 AN ACT

11 RELATING TO TAXATION; PHASING IN THE USE OF A SINGLE SALES
12 FACTOR BY TAXPAYERS WHOSE PRINCIPAL BUSINESS ACTIVITY IS
13 MANUFACTURING OVER FIVE YEARS; EXCLUDING CERTAIN SALES FROM
14 BEING APPORTIONED AS SALES IN NEW MEXICO; PROVIDING A
15 DEFINITION OF "MANUFACTURING" FOR PURPOSES OF THE DEDUCTION OF
16 RECEIPTS FROM SALES TO MANUFACTURERS; REQUIRING EXPORTS OF
17 MANUFACTURED PRODUCTS; CLARIFYING APPLICATION OF THE HIGH-WAGE
18 JOBS TAX CREDIT; DEFINING "BENEFITS" AND "WAGES"; EXTENDING THE
19 CREDIT FOR FIVE YEARS; DECLARING AN EMERGENCY.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

24 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

25 A. Except as provided in Subsection B of this

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1 section, all business income shall be apportioned to this state
2 by multiplying the income by a fraction, the numerator of which
3 is the property factor plus the payroll factor plus the sales
4 factor and the denominator of which is three.

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

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1 ~~(1) the taxpayer's corporate income tax~~
2 ~~liability for the taxable year, computed by the same method of~~
3 ~~apportionment used in the preceding taxable year, exceeds the~~
4 ~~corporate income tax liability for the taxpayer's immediately~~
5 ~~preceding taxable year; or~~

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

12 B. A taxpayer that is a business engaged in
13 manufacturing may elect to have business income apportioned to
14 this state:

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

20 (2) in the taxable year beginning on or after
21 January 1, 2015 and prior to January 1, 2016, by multiplying
22 the income by a fraction, the numerator of which is three
23 multiplied by the sales factor plus the property factor plus
24 the payroll factor and the denominator of which is five;

25 (3) in the taxable year beginning on or after

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1 January 1, 2016 and prior to January 1, 2017, by multiplying
2 the income by a fraction, the numerator of which is seven
3 multiplied by the sales factor plus one and one-half multiplied
4 by the property factor plus one and one-half multiplied by the
5 payroll factor and the denominator of which is ten;

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

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

17 C. To elect the method of apportionment provided by
18 Subsection B of this section, the taxpayer shall notify the
19 department of the election, in writing, no later than the date
20 on which the taxpayer files the return for the first taxable
21 year to which the election will apply. The election shall
22 apply to that taxable year and to each taxable year thereafter
23 until the taxpayer notifies the department, in writing, that
24 the election is terminated, provided that the taxpayer shall
25 not terminate the election until the method of apportioning

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1 business income provided by Subsection B of this section has
2 been used by the taxpayer for at least three consecutive
3 taxable years, including a total of at least thirty-six
4 calendar months.

5 [G.] D. For purposes of this section, "business
6 engaged in manufacturing" means [~~combining or processing~~
7 ~~components or materials to increase their value for sale in the~~
8 ~~ordinary course of business, but does not include:~~

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

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

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

22 "7-4-17. DETERMINATION OF SALES IN THIS STATE OF TANGIBLE
23 PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR.--Sales of
24 tangible personal property are in this state if:

- 25 A. the property is delivered or shipped to a

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1 purchaser other than the United States government within this
2 state regardless of the f. o. b. point or other conditions of
3 the sale; or

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

6 (1) the purchaser is the United States
7 government; or

8 (2) the taxpayer:

9 (a) is not taxable in the state of the
10 purchaser; and

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

14 SECTION 3. Section 7-9-46 NMSA 1978 (being Laws 1969,
15 Chapter 144, Section 36, as amended) is amended to read:

16 "7-9-46. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
17 GROSS RECEIPTS--SALES TO MANUFACTURERS.--

18 A. Receipts from selling tangible personal property
19 may be deducted from gross receipts or from governmental gross
20 receipts if the sale is made to a person engaged in the
21 business of manufacturing who delivers a nontaxable transaction
22 certificate to the seller. The buyer delivering the nontaxable
23 transaction certificate must incorporate the tangible personal
24 property as an ingredient or component part of the product that
25 the buyer is in the business of manufacturing.

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1 B. Receipts from selling tangible personal property
2 that is a consumable and used in such a way that it is consumed
3 in the manufacturing process of a product, provided that the
4 tangible personal property is not a tool or equipment used to
5 create the manufactured product, to a ~~[person]~~ business that is
6 engaged in [the business of] manufacturing that product in New
7 Mexico, that exported for sale or use outside of New Mexico at
8 least fifty percent of the product manufactured in New Mexico
9 during the previous taxable year for income tax purposes and
10 ~~[who]~~ that delivers a nontaxable transaction certificate to the
11 seller may be deducted in the following percentages from gross
12 receipts or from governmental gross receipts:

- 13 (1) twenty percent of receipts received prior
14 to January 1, 2014;
- 15 (2) forty percent of receipts received in
16 calendar year 2014;
- 17 (3) sixty percent of receipts received in
18 calendar year 2015;
- 19 (4) eighty percent of receipts received in
20 calendar year 2016; and
- 21 (5) one hundred percent of receipts received
22 on or after January 1, 2017.

23 C. The purpose of the deductions provided in this
24 section is to encourage manufacturing businesses to locate in
25 New Mexico and to reduce the tax burden, including reducing

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1 pyramiding, on the tangible personal property that is consumed
2 in the manufacturing process and that is purchased by
3 manufacturing businesses in New Mexico.

4 D. The department shall annually report to the
5 revenue stabilization and tax policy committee the aggregate
6 amount of deductions taken pursuant to this section, the number
7 of taxpayers claiming each of the deductions and any other
8 information that is necessary to determine that the deductions
9 are performing the purposes for which they are enacted.

10 E. A taxpayer deducting gross receipts pursuant to
11 this section shall report the amount deducted separately for
12 each deduction provided in this section and attribute the
13 amount of the deduction to the appropriate authorization
14 provided in this section in a manner required by the department
15 that facilitates the evaluation by the legislature of the
16 benefit to the state of these deductions.

17 F. As used in Subsection B of this section:

18 (1) "business engaged in manufacturing" means
19 a business classified within the manufacturing sector as
20 described in the official 2012 United States North American
21 industry classification system manual; and

22 (2) "consumable" means tangible personal
23 property that is incorporated into, destroyed or transformed in
24 the process of manufacturing a product, including electricity,
25 fuels, manufacturing supplies, chemicals, gases and other

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1 tangibles used to manufacture a product."

2 SECTION 4. Section 7-9G-1 NMSA 1978 (being Laws 2004,
3 Chapter 15, Section 1, as amended) is amended to read:

4 "7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING
5 HIGH-WAGE JOBS.--

6 A. A taxpayer who is an eligible employer may apply
7 for, and the taxation and revenue department may allow, a tax
8 credit for each new high-wage economic-based job. The credit
9 provided in this section may be referred to as the "high-wage
10 jobs tax credit".

11 B. The purpose of the high-wage jobs tax credit is
12 to provide an incentive for urban and rural businesses to
13 create and fill new high-wage jobs in New Mexico.

14 [~~B-~~] C. The high-wage jobs tax credit may be
15 claimed and allowed in an amount equal to ten percent of the
16 wages and benefits distributed to an eligible employee in a new
17 high-wage economic-based job, but shall not exceed twelve
18 thousand dollars (\$12,000) per job per qualifying period.

19 [~~G-~~] D. The high-wage jobs tax credit may be
20 claimed by an eligible employer for each new high-wage
21 economic-based job performed for the [~~year~~] qualifying period
22 in which the new high-wage economic-based job is created and
23 for the three following qualifying periods. A taxpayer shall
24 apply for approval for the credit within one year following the
25 end of the calendar year in which the qualifying period closes.

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1 ~~[D-]~~ E. A new high-wage economic-based job shall
2 not be eligible for a credit pursuant to this section unless
3 the eligible employer's total number of employees ~~[with new~~
4 ~~high-wage economic-based jobs]~~ on the last day of the
5 qualifying period at the location at which the job is performed
6 or based is at least one more than the number on the day prior
7 to the date the new high-wage economic-based job was created.

8 F. A new high-wage economic-based job shall not be
9 eligible for a credit pursuant to this section if:

10 (1) the new high-wage economic-based job is
11 created due to a business merger or acquisition or other change
12 in business organization;

13 (2) the eligible employee was terminated from
14 employment in New Mexico by another employer involved in the
15 business merger or acquisition or other change in business
16 organization with the taxpayer; and

17 (3) the new high-wage economic-based job is
18 performed by:

19 (a) the person who performed the job or
20 its functional equivalent prior to the business merger or
21 acquisition or other change in business organization; or

22 (b) a person replacing the person who
23 performed the job or its functional equivalent prior to a
24 business merger or acquisition or other change in business
25 organization.

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1 G. Notwithstanding the provisions of Subsection F
2 of this section, a new high-wage economic-based job that was
3 created by another employer and for which an application for
4 the high-wage jobs tax credit was received and is under review
5 by the taxation and revenue department prior to the time of the
6 business merger or acquisition or other change in business
7 organization shall remain eligible for the high-wage jobs tax
8 credit for the balance of the qualifying periods. The new
9 employer that results from a business merger or acquisition or
10 other change in business organization may only claim the high-
11 wage jobs tax credit for the balance of the qualifying period
12 for which the qualifying job is otherwise eligible.

13 H. A job shall not be eligible for a credit
14 pursuant to this section if the job is created due to an
15 eligible employer entering into a contract or becoming a
16 subcontractor to a contract with a governmental entity that
17 replaces one or more entities performing functionally
18 equivalent services for the governmental entity unless the job
19 is a new high-wage economic-based job that was not being
20 performed by an employee of the replaced entity.

21 ~~[E.]~~ I. With respect to each new high-wage
22 economic-based job for which an eligible employer seeks the
23 high-wage jobs tax credit, the employer shall certify:

24 (1) the amount of wages and benefits paid to
25 each eligible employee in a new high-wage economic-based job

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1 during each qualifying period;

2 (2) the number of weeks the position was
3 occupied during the qualifying period;

4 (3) whether the new high-wage economic-based
5 job was in a municipality with a population of [~~forty~~] sixty
6 thousand or more or with a population of less than [~~forty~~]
7 sixty thousand according to the most recent federal decennial
8 census and whether the job was in the unincorporated area of a
9 county; and

10 (4) the total number of employees employed by
11 the employer at the job location on the day prior to the
12 qualifying period and on the last day of the qualifying period.

13 [~~F.~~] J. To receive a high-wage jobs tax credit with
14 respect to any qualifying period, an eligible employer shall
15 apply to the taxation and revenue department on forms and in
16 the manner prescribed by the department. The application shall
17 include a certification made pursuant to Subsection [~~F~~] I of
18 this section.

19 [~~G.~~] K. The credit provided in this section may be
20 deducted from the modified combined tax liability of a
21 taxpayer. If the credit exceeds the modified combined tax
22 liability of the taxpayer, the excess shall be refunded to the
23 taxpayer.

24 [~~H.~~] L. The economic development department shall
25 report to the appropriate interim legislative committee before

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1 November 1 of each year the cost of this tax credit to the
2 state and its impact on company recruitment and job creation.

3 [~~F.~~] M. As used in this section:

4 [~~(1) "benefits" means any employee benefit~~
5 ~~plan as defined in Title 1, Section 3 of the federal Employee~~
6 ~~Retirement Income Security Act of 1974, 29 U.S.C. 1002;]~~

7 (1) "benefits" means all remuneration for work
8 performed that is provided to an employee in whole or in part
9 by the employer, other than wages, including insurance
10 programs, health care, medical, dental and vision plans, life
11 insurance, employer contributions to pensions, such as a
12 401(k), and employer-provided services, such as child care,
13 offered by an employer to the employee. "Benefits" does not
14 include the employer's share of payroll taxes, social security
15 or medicare contributions, federal or state unemployment
16 insurance contributions or workers' compensation;

17 (2) "eligible employee" means an individual
18 who is employed in New Mexico by an eligible employer and who
19 is a resident of New Mexico; "eligible employee" does not
20 include an individual who:

21 (a) bears any of the relationships
22 described in Paragraphs (1) through (8) of 26 U.S.C. Section
23 152(a) to the employer or, if the employer is a corporation, to
24 an individual who owns, directly or indirectly, more than fifty
25 percent in value of the outstanding stock of the corporation

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1 or, if the employer is an entity other than a corporation, to
2 an individual who owns, directly or indirectly, more than fifty
3 percent of the capital and profits interest in the entity;

4 (b) if the employer is an estate or
5 trust, is a grantor, beneficiary or fiduciary of the estate or
6 trust or is an individual who bears any of the relationships
7 described in Paragraphs (1) through (8) of 26 U.S.C. Section
8 152(a) to a grantor, beneficiary or fiduciary of the estate or
9 trust;

10 (c) is a dependent, as that term is
11 described in 26 U.S.C. Section 152(a)(9), of the employer or,
12 if the taxpayer is a corporation, of an individual who owns,
13 directly or indirectly, more than fifty percent in value of the
14 outstanding stock of the corporation or, if the employer is an
15 entity other than a corporation, of an individual who owns,
16 directly or indirectly, more than fifty percent of the capital
17 and profits interest in the entity or, if the employer is an
18 estate or trust, of a grantor, beneficiary or fiduciary of the
19 estate or trust; or

20 (d) is working or has worked as an
21 employee or as an independent contractor for an entity that
22 directly or indirectly owns stock in a corporation of the
23 eligible employer or other interest of the eligible employer
24 that represents fifty percent or more of the total voting power
25 of that entity or has a value equal to fifty percent or more of

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1 the capital and profits interest in the entity;

2 (3) "eligible employer" means an employer
3 that:

4 (a) [~~made~~] exported more than fifty
5 percent of its [~~sales~~] goods or services produced in New Mexico
6 to persons outside New Mexico during the most recent twelve
7 months of the employer's modified combined tax liability
8 reporting periods ending prior to claiming a high-wage jobs tax
9 credit; or

10 (b) is certified by the economic
11 development department to be eligible for development training
12 program assistance pursuant to Section 21-19-7 NMSA 1978;

13 (4) "modified combined tax liability" means
14 the total liability for the reporting period for the gross
15 receipts tax imposed by Section 7-9-4 NMSA 1978 together with
16 any tax collected at the same time and in the same manner as
17 the gross receipts tax, such as the compensating tax, the
18 withholding tax, the interstate telecommunications gross
19 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
20 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
21 minus the amount of any credit other than the high-wage jobs
22 tax credit applied against any or all of these taxes or
23 surcharges; but "modified combined tax liability" excludes all
24 amounts collected with respect to local option gross receipts
25 taxes;

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1 (5) "new high-wage economic-based job" means a
2 new job created in New Mexico by an eligible employer on or
3 after July 1, 2004 and prior to July 1, [~~2015~~] 2020 that is
4 occupied for at least forty-eight weeks of a qualifying period
5 by an eligible employee who is paid wages calculated for the
6 qualifying period to be at least:

7 (a) for a new high-wage economic-based
8 job created prior to July 1, 2015: 1) forty thousand dollars
9 (\$40,000) if the job is performed or based in or within ten
10 miles of the external boundaries of a municipality with a
11 population of [~~forty~~] sixty thousand or more according to the
12 most recent federal decennial census or in a class H county;
13 and [~~(b)~~] 2) twenty-eight thousand dollars (\$28,000) if the job
14 is performed or based in a municipality with a population of
15 less than [~~forty~~] sixty thousand according to the most recent
16 federal decennial census or in the unincorporated area of a
17 county other than a class H county; and

18 (b) for a new high-wage economic-based
19 job created on or after July 1, 2015: 1) sixty-five thousand
20 dollars (\$65,000) if the job is performed or based in or within
21 ten miles of the external boundaries of a municipality with a
22 population of sixty thousand or more according to the most
23 recent federal decennial census or in a class H county; and 2)
24 forty thousand dollars (\$40,000) if the job is performed or
25 based in a municipality with a population of less than sixty

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1 thousand according to the most recent federal decennial census
2 or in the unincorporated area of a county other than a class H
3 county;

4 (6) "qualifying period" means the period of
5 twelve months beginning on the day an eligible employee begins
6 working in a new high-wage economic-based job or the period of
7 twelve months beginning on the anniversary of the day an
8 eligible employee began working in a new high-wage economic-
9 based job; and

10 (7) "wages" means [~~wages as defined in~~
11 ~~Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(e)] all
12 compensation paid by an eligible employer to an eligible
13 employee through the employer's payroll system, including those
14 wages that the employee elects to defer or redirect or the
15 employee's contribution to a 401(k) or cafeteria plan program,
16 but "wages" does not include benefits or the employer's share
17 of payroll taxes."~~

18 SECTION 5. APPLICABILITY.--The provisions of:

19 A. Sections 1 and 2 of this act shall apply to
20 taxable years beginning on or after January 1, 2014;

21 B. Section 3 of this act shall apply to gross
22 receipts received on or after July 1, 2013; and

23 C. Section 4 of this act shall apply credit claims
24 received on or after January 1, 2013 and to reporting periods
25 beginning on or after January 1, 2013.

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SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of:

A. Sections 1 and 2 of this act is January 1, 2014; and

B. Section 3 of this act is July 1, 2013.

SECTION 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.