

1 SENATE BILL 22

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Peter Wirth and Jason C. Harper

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8 FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

9  
10 AN ACT

11 RELATING TO TAXATION; AMENDING THE UNIFORM DIVISION OF INCOME  
12 FOR TAX PURPOSES ACT TO DETERMINE IN-STATE SALES OF INTANGIBLES  
13 AND SERVICES BASED ON MARKET SOURCING RATHER THAN COST OF  
14 PERFORMANCE.

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

17 SECTION 1. Section 7-4-18 NMSA 1978 (being Laws 1965,  
18 Chapter 203, Section 18) is amended to read:

19 "7-4-18. DETERMINATION OF SALES IN THIS STATE OF  
20 SERVICES AND OTHER [~~THAN TANGIBLE PERSONAL~~] PROPERTY FOR  
21 INCLUSION IN SALES FACTOR.--

22 A. Sales, other than sales [~~of tangible personal~~  
23 ~~property~~] described in Section 7-4-17 NMSA 1978, are in this  
24 state [~~if~~

25 ~~A. the income-producing activity is performed in~~

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1 ~~this state; or~~

2 ~~B. the income-producing activity is performed both~~  
3 ~~in and outside this state and a greater proportion of the~~  
4 ~~income-producing activity is performed in this state than in~~  
5 ~~any other state based on costs of performance]:~~

6 (1) in the case of sale, rental, lease or  
7 license of real property, if and to the extent the real  
8 property is located in this state;

9 (2) in the case of rental, lease or license of  
10 tangible personal property, if and to the extent the tangible  
11 personal property is located in this state;

12 (3) in the case of sale of a service, if and  
13 to the extent the service is delivered to a location in this  
14 state; and

15 (4) in the case of sale, rental, lease or  
16 license of intangible property, if and to the extent the  
17 intangible property is used in this state.

18 B. If the state or states of assignment under  
19 Subsection A of this section cannot be determined, the state or  
20 states of assignment shall be reasonably approximated.

21 C. If the taxpayer is not taxable in a state to  
22 which a sale is assigned pursuant to Subsection A of this  
23 section or if the state of assignment cannot be determined or  
24 reasonably approximated pursuant to Subsection B of this  
25 section, that sale shall be excluded from the numerator and

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denominator of the sales factor.

D. The department may promulgate rules as necessary or appropriate to carry out the purposes of this section."

**SECTION 2. APPLICABILITY.**--The provisions of this act apply to taxable years beginning on or after January 1, 2017.