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SENATE BILL 252

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

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; DELAYING FURTHER REDUCTIONS IN THE  
CORPORATE INCOME TAX RATE FOR TWO YEARS; DELAYING FURTHER  
IMPLEMENTATION OF THE USE OF A SINGLE SALES FACTOR BY  
MANUFACTURING BUSINESSES IN APPORTIONING CORPORATE INCOME FOR  
TWO YEARS; DECLARING AN EMERGENCY.

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

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

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

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

If the net income is:

The tax shall be:

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1 Not over \$500,000 4.8% of net income  
2 Over \$500,000 but not  
3 over \$1,000,000 \$24,000 plus  
4 6.4% of excess  
5 over \$500,000  
6 Over \$1,000,000 \$56,000  
7 plus 7.6% of excess  
8 over \$1,000,000.

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

11 If the net income is: The tax shall be:  
12 Not over \$500,000 4.8% of net income  
13 Over \$500,000 but not  
14 over \$1,000,000 \$24,000 plus  
15 6.4% of excess  
16 over \$500,000  
17 Over \$1,000,000 \$56,000  
18 plus 7.3% of excess  
19 over \$1,000,000.

20 C. For taxable years beginning on or after January 1,  
21 2015 and prior to January 1, [~~2016~~] 2018:

22 If the net income is: The tax shall be:  
23 Not over \$500,000 4.8% of net income  
24 Over \$500,000 but not  
25 over \$1,000,000 \$24,000 plus

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1 6.4% of excess  
2 over \$500,000  
3 Over \$1,000,000 \$56,000  
4 plus 6.9% of excess  
5 over \$1,000,000.

6 D. For taxable years beginning on or after January 1,  
7 [~~2016~~] 2018 and prior to January 1, [~~2017~~] 2019:

8 If the net income is: The tax shall be:  
9 Not over \$500,000 4.8% of net income  
10 Over \$500,000 but not  
11 over \$1,000,000 \$24,000 plus  
12 6.4% of excess  
13 over \$500,000  
14 Over \$1,000,000 \$56,000  
15 plus 6.6% of excess  
16 over \$1,000,000.

17 E. For taxable years beginning on or after January 1,  
18 [~~2017~~] 2019 and prior to January 1, [~~2018~~] 2020:

19 If the net income is: The tax shall be:  
20 Not over \$500,000 4.8% of net income  
21 Over \$500,000 \$24,000 plus  
22 6.2% of excess  
23 over \$500,000.

24 F. For taxable years beginning on or after January 1,  
25 [~~2018~~] 2020:

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1           If the net income is:                               The tax shall be:  
2   Not over \$500,000   4.8% of net income  
3   Over \$500,000   \$24,000 plus  
4   5.9% of excess  
5   over \$500,000."

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

8           "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

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

14           B. A taxpayer whose principal business activity in  
15 New Mexico is manufacturing may elect to have business income  
16 apportioned to this state:

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

22                               (2) in the taxable year beginning on or after  
23 January 1, 2015 and prior to January 1, [~~2016~~] 2018, by  
24 multiplying the income by a fraction, the numerator of which is  
25 three multiplied by the sales factor plus the property factor

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1 plus the payroll factor and the denominator of which is five;

2 (3) in the taxable year beginning on or after  
3 January 1, [~~2016~~] 2018 and prior to January 1, [~~2017~~] 2019, by  
4 multiplying the income by a fraction, the numerator of which is  
5 seven multiplied by the sales factor plus one and one-half  
6 multiplied by the property factor plus one and one-half  
7 multiplied by the payroll factor and the denominator of which  
8 is ten;

9 (4) in the taxable year beginning on or after  
10 January 1, [~~2017~~] 2019 and prior to January 1, [~~2018~~] 2020, by  
11 multiplying the income by a fraction, the numerator of which is  
12 eight multiplied by the sales factor plus the property factor  
13 plus the payroll factor and the denominator of which is ten;  
14 and

15 (5) in taxable years beginning on or after  
16 January 1, [~~2018~~] 2020, by multiplying the income by a  
17 fraction, the numerator of which is the total sales of the  
18 taxpayer in New Mexico during the taxable year and the  
19 denominator of which is the total sales of the taxpayer from  
20 any location within or outside of the state during the taxable  
21 year.

22 C. A taxpayer whose principal business activity in  
23 New Mexico is a headquarters operation may elect to have  
24 business income apportioned to this state by multiplying the  
25 income by a fraction, the numerator of which is the total sales

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1 of the taxpayer in New Mexico during the taxable year and the  
2 denominator of which is the total sales of the taxpayer from  
3 any location within or outside of the state during the taxable  
4 year.

5 D. To elect the method of apportionment provided by  
6 Subsection B or C of this section, the taxpayer shall notify  
7 the department of the election, in writing, no later than the  
8 date on which the taxpayer files the return for the first  
9 taxable year to which the election will apply. The election  
10 will apply to that taxable year and to each taxable year  
11 thereafter until the taxpayer notifies the department, in  
12 writing, that the election is terminated, except that the  
13 taxpayer shall not terminate the election until the method of  
14 apportioning business income provided by Subsection B or C of  
15 this section has been used by the taxpayer for at least three  
16 consecutive taxable years, including a total of at least  
17 thirty-six calendar months. The election will apply to the  
18 separately filed return of the taxpayer or the combined or  
19 consolidated return the taxpayer has elected to be included  
20 pursuant to Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978.

21 E. For purposes of this section:

22 (1) "headquarters operation" means:

23 (a) the center of operations of a business:

24 1) where corporate staff employees are physically employed; 2)

25 where centralized functions are performed, including

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1 administrative, planning, managerial, human resources,  
2 purchasing, information technology and accounting, but not  
3 including operating a call center; 3) the function and purpose  
4 of which is to manage and direct most aspects and functions of  
5 the business operations within a subdivided area of the United  
6 States; 4) from which final authority over regional or  
7 subregional offices, operating facilities and any other offices  
8 of the business are issued; and 5) including national and  
9 regional headquarters if the national headquarters is  
10 subordinate only to the ownership of the business or its  
11 representatives and the regional headquarters is subordinate to  
12 the national headquarters; or

13 (b) the center of operations of a business:

14 1) the function and purpose of which is to manage and direct  
15 most aspects of one or more centralized functions; and 2) from  
16 which final authority over one or more centralized functions is  
17 issued; and

18 (2) "manufacturing" means combining or  
19 processing components or materials to increase their value for  
20 sale in the ordinary course of business, but does not include:

21 (a) construction;

22 (b) farming;

23 (c) power generation, except for electricity  
24 generation at a facility other than one for which both location  
25 approval and a certificate of convenience and necessity are

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1 required prior to commencing construction or operation of the  
2 facility, pursuant to the Public Utility Act; or

3 (d) processing natural resources, including  
4 hydrocarbons."

5 SECTION 3. EMERGENCY.--It is necessary for the public  
6 peace, health and safety that this act take effect immediately.