

HOUSE COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 129

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO TAXATION; REQUIRING THE BUSINESS INCOME OF MOST
CORPORATIONS TO BE APPORTIONED TO THIS STATE BY THE SALES
FACTOR; REQUIRING QUALIFYING ENTITIES TO APPORTION BUSINESS
INCOME USING THE THREE-FACTOR FORMULA; ALLOWING QUALIFYING
ENTITIES AN ELECTION TO APPORTION BUSINESS INCOME BY THE SALES
FACTOR, BUT REQUIRING THE ELECTION TO BE PERMANENT ONCE IT IS
MADE.

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 [~~Subsections B and C~~]
Subsection B of this section, all business income shall be
apportioned to this state by multiplying the income by the

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underscoring material = new
[bracketed material] = delete

1 sales factor.

2 B. Except as provided in Subsection C of this
3 section, the business income of a qualifying entity shall be
4 apportioned by multiplying the income by a fraction, the
5 numerator of which is the property factor plus the payroll
6 factor plus the sales factor and the denominator of which is
7 three.

8 ~~[B. If eighty percent or more of the New Mexico~~
9 ~~numerators of the property and payroll factors for a filing~~
10 ~~group, or for a taxpayer that is not a member of a filing~~
11 ~~group, are employed in manufacturing or operating a computer~~
12 ~~processing facility, the filing group or the taxpayer may elect~~
13 ~~to have business income apportioned to this state by~~
14 ~~multiplying the income by the sales factor for the taxable~~
15 ~~year.]~~

16 C. ~~[If a filing group, or a taxpayer that is not a~~
17 ~~member of a filing group, has a headquarters operation in New~~
18 ~~Mexico, the filing group or the taxpayer may elect to have~~
19 ~~business income apportioned to this state by multiplying the~~
20 ~~income by the sales factor; for the taxable year] A qualifying~~
21 entity may elect to have business income apportioned by
22 multiplying the income by the sales factor; provided that, once
23 the election is made, the qualifying entity shall apportion
24 business income in that manner for each taxable year
25 thereafter.

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1 D. To elect the method of apportionment provided by
 2 Subsection ~~[B or]~~ C of this section, ~~[the taxpayer]~~ a
 3 qualifying entity shall notify the department of the election,
 4 in writing, no later than the date on which the ~~[taxpayer]~~
 5 qualifying entity files the return for the first taxable year
 6 to which the election will apply. ~~[The election shall apply as~~
 7 ~~follows:~~

8 ~~(1) if the election is made for taxable years~~
 9 ~~beginning prior to January 1, 2020, to the taxable year in~~
 10 ~~which the election is made and to each taxable year thereafter~~
 11 ~~for three years, or until the taxable year ending prior to~~
 12 ~~January 1, 2020, whichever is earlier;~~

13 ~~(2) if the election is made for a taxable year~~
 14 ~~beginning on or after January 1, 2020, to the taxable year in~~
 15 ~~which the election is made and to each taxable year thereafter~~
 16 ~~until the taxpayer notifies the department, in writing, that~~
 17 ~~the 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 or C of this section~~
 20 ~~has been used by the taxpayer for at least three consecutive~~
 21 ~~taxable years, including a total of at least thirty-six~~
 22 ~~calendar months; and~~

23 ~~(3) if the election is made by a qualifying~~
 24 ~~filing group, the election shall apply to the members of the~~
 25 ~~filing group properly included pursuant to Section 7-2A-8.3~~

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1 NMSA 1978.]

2 E. For purposes of this section:

3 (1) "filing group" means "filing group" as
4 that term is defined in the Corporate Income and Franchise Tax
5 Act; and

6 [~~(2) "headquarters operation" means:~~

7 ~~(a) the center of operations of a
8 business: 1) where corporate staff employees are physically
9 employed; 2) where the centralized functions are primarily
10 performed, including administrative, planning, managerial,
11 human resources, purchasing, information technology and
12 accounting, but not including operating a call center; 3) the
13 function and purpose of which is to manage and direct most
14 aspects and functions of the business operations within a
15 subdivided area of the United States; 4) from which final
16 authority over regional or subregional offices, operating
17 facilities and any other offices of the business are issued;
18 and 5) including national and regional headquarters if the
19 national headquarters is subordinate only to the ownership of
20 the business or its representatives and the regional
21 headquarters is subordinate to the national headquarters; or~~

22 ~~(b) the center of operations of a
23 business: 1) the function and purpose of which is to manage
24 and direct most aspects of one or more centralized functions;
25 and 2) from which final authority over one or more centralized~~

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1 ~~functions is issued;~~

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

5 ~~(a) construction;~~

6 ~~(b) farming;~~

7 ~~(c) power generation; provided that for~~
8 ~~taxable years beginning prior to January 1, 2024,~~

9 ~~"manufacturing" includes electricity generation at a facility~~
10 ~~that does not require location approval and a certificate of~~
11 ~~convenience and necessity prior to commencing construction or~~
12 ~~operation of the facility pursuant to the Public Utility Act;~~

13 ~~(d) processing natural resources,~~
14 ~~including hydrocarbons; or~~

15 ~~(e) processing or preparation of meals~~
16 ~~for immediate consumption; and~~

17 ~~(4) "operating a computer processing facility"~~
18 ~~means managing the necessary and ancillary activities for the~~
19 ~~operation of a facility primarily used to process data or~~
20 ~~information, but does not include managing the operation of~~
21 ~~facilities that are predominantly used to support sales of~~
22 ~~tangible property or the provision of banking, financial or~~
23 ~~professional services]~~

24 (2) "qualifying entity" means the presence of
25 a business unit of a corporation or a group of corporations in

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1 a combined filing group:

2 (a) with one hundred or more employees
3 for whom wages are withheld pursuant to the Withholding Tax
4 Act. The employee measurement date is the first day of the
5 taxable year immediately prior to the taxable year for which
6 the election is made, and shall be certified by audit; and

7 (b) with a cumulative investment in
8 property in New Mexico exceeding fifty million dollars
9 (\$50,000,000). Property owned by the qualifying entity shall
10 be valued at the property's original cost, which shall be
11 deemed to be the basis of the property for federal income tax
12 purposes, prior to any federal adjustments, at the time of
13 acquisition by the qualifying entity and adjusted by subsequent
14 capital additions or improvements thereto and partial
15 disposition thereof, by reason of sale, exchange or
16 abandonment. For purposes of this subparagraph, "cumulative
17 investment in property in New Mexico" means the average value
18 of the taxpayer's real and tangible personal property owned or
19 rented and used in New Mexico during the tax period."

20 SECTION 2. APPLICABILITY.--The provisions of this act
21 apply to taxable years beginning on or after January 1, 2023.

22 SECTION 3. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is January 1, 2024.