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HOUSE BILL 216

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

Jason C. Harper

AN ACT

RELATING TO TAXATION; CREATING A FLAT CORPORATE INCOME TAX RATE; REQUIRING ALL BUSINESS INCOME TO BE APPORTIONED BY THE SINGLE SALES FACTOR; REPEALING SECTIONS OF THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT.

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

<del>[If the taxable income is:</del>	<del>The tax shall be:</del>
<del>Not over \$500,000</del>	<del>4.8% of taxable income</del>
<del>Over \$500,000</del>	<del>\$24,000 plus 5.9% of excess over \$500,000]</del>

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1 five and nine-tenths percent of taxable income."

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

4 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--~~[A. Except~~  
5 ~~as provided in Subsections B and C of this section]~~ All  
6 business income shall be apportioned to this state by  
7 multiplying the income by ~~[a fraction, the numerator of which~~  
8 ~~is the property factor plus the payroll factor plus]~~ the sales  
9 factor ~~[and the denominator of which is three.~~

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

18 C. ~~If a filing group, or a taxpayer that is not a~~  
19 ~~member of a filing group, has a headquarters operation in New~~  
20 ~~Mexico, the filing group or the taxpayer may elect to have~~  
21 ~~business income apportioned to this state by multiplying the~~  
22 ~~income by the sales factor for the taxable year.~~

23 D. ~~To elect the method of apportionment provided by~~  
24 ~~Subsection B or C of this section, the taxpayer shall notify~~  
25 ~~the department of the election, in writing, no later than the~~

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1 ~~date on which the taxpayer files the return for the first~~  
2 ~~taxable year to which the election will apply. The election~~  
3 ~~shall apply as follows:~~

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

9 ~~(2) if the election is made for a taxable year~~  
10 ~~beginning on or after January 1, 2020, to the taxable year in~~  
11 ~~which the election is made and to each taxable year thereafter~~  
12 ~~until the taxpayer notifies the department, in writing, that~~  
13 ~~the election is terminated, except that the taxpayer shall not~~  
14 ~~terminate the election until the method of apportioning~~  
15 ~~business income provided by Subsection B or C of this section~~  
16 ~~has been used by the taxpayer for at least three consecutive~~  
17 ~~taxable years, including a total of at least thirty-six~~  
18 ~~calendar months; and~~

19 ~~(3) if the election is made by a qualifying~~  
20 ~~filing group, the election shall apply to the members of the~~  
21 ~~filing group properly included pursuant to Section 7-2A-8.3~~  
22 ~~NMSA 1978.~~

23 ~~E. For purposes of this section:~~

24 ~~(1) "filing group" means "filing group" as~~  
25 ~~that term is defined in the Corporate Income and Franchise Tax~~

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1 Act;

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

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

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

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

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1 in this state, the taxpayer may petition for, or the department  
2 may require, in respect to all or any part of the taxpayer's  
3 business activity, if reasonable:

4 A. separate accounting;

5 ~~[B. the exclusion of any one or more of the~~  
6 ~~factors;~~

7 ~~C. the inclusion of one or more additional factors~~  
8 ~~which will fairly represent the taxpayer's business activity in~~  
9 ~~this state] or~~

10 ~~[D.]~~ B. the employment of any other method to  
11 effectuate an equitable allocation and apportionment of the  
12 taxpayer's income."

13 SECTION 4. REPEAL.--Sections 7-4-11 through 7-4-15 NMSA  
14 1978 (being Laws 1965, Chapter 203, Sections 11 through 15, as  
15 amended) are repealed.

16 SECTION 5. APPLICABILITY.--The provisions of Sections 1  
17 through 3 of this act apply to taxable years beginning on or  
18 after January 1, 2025.

19 SECTION 6. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is January 1, 2025.

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