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BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; PROVIDING FOR USE OF A SINGLE SALES
FACTOR BY CERTAIN TAXPAYERS IN APPORTIONING CORPORATE INCOME TO
THE STATE; PROVIDING FOR COMBINED REPORTING OF CORPORATE INCOME
FOR UNITARY CORPORATIONS; REPEALING CERTAIN TAX CREDITS.

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

SECTION 1. Section 7-2A-8.3 NMSA 1978 (being Laws 1983,
Chapter 213, Section 12, as amended by Laws 1993, Chapter 307,
Section 4 and by Laws 1993, Chapter 309, Section 2) is amended
to read:

"7-2A-8.3. COMBINED RETURNS.--

A. A unitary corporation that is subject to
taxation under the Corporate Income and Franchise Tax Act and
that has not previously filed a combined return pursuant to
this section or a consolidated return pursuant to Section

.190421.2

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
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1 7-2A-8.4 NMSA 1978 [~~may elect to~~] shall file a combined return
2 with other unitary corporations as though the entire combined
3 net income were that of one corporation. The return filed
4 under this method of reporting shall include the net income of
5 all the unitary corporations. Transactions among the unitary
6 corporations may be eliminated by applying the appropriate
7 rules for reporting income for a consolidated federal income
8 tax return. Any corporation that has filed an income tax
9 return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978
10 shall not file pursuant to this section unless the secretary
11 gives prior permission to file on a combined return basis.

12 B. Once corporations have reported net income
13 through a combined return for any taxable year, they shall file
14 combined returns for subsequent taxable years, so long as they
15 remain unitary corporations, unless the corporations elect to
16 file pursuant to Section 7-2A-8.4 NMSA 1978. [~~or unless the~~
17 ~~secretary grants prior permission for one or more of the~~
18 ~~corporations to file individually.~~

19 ~~C. For taxable years beginning on or after January~~
20 ~~1, 1993, no unitary corporation once included in a combined~~
21 ~~return may elect, or be granted permission by the secretary,~~
22 ~~for any subsequent taxable year to separately account pursuant~~
23 ~~to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.]"~~

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

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1 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

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

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underscored material = new
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1 provisions of this subsection to the contrary, the taxpayer
2 shall use the method of apportionment provided by Subsection A
3 of this section for the taxable year unless:

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

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

15 C. A taxpayer whose principal business activity is
16 manufacturing may elect to have business income apportioned to
17 this state beginning in the taxable year following the taxable
18 year in which investments are made as described in this
19 subsection by multiplying the income by a fraction, the
20 numerator of which is the total sales of the taxpayer in New
21 Mexico during the taxable year and the denominator of which is
22 the total sales of the taxpayer from any location within or
23 outside of the state during the taxable year if:

24 (1) the taxpayer has invested in New Mexico in
25 a taxable year beginning on or after January 1, 2014 but not on

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underscored material = new
[bracketed material] = delete

1 or after January 1, 2023, at least one billion dollars
2 (\$1,000,000,000) in capital equipment and facility construction
3 or renovation;

4 (2) the taxpayer has invested in New Mexico in
5 a taxable year beginning on or after January 1, 2014 but not on
6 or after January 1, 2023, at least five hundred million dollars
7 (\$500,000,000) in capital equipment and facility construction
8 or renovation; or

9 (3) the taxpayer has invested in New Mexico in
10 a taxable year beginning on or after January 1, 2014 but not on
11 or after January 1, 2023, at least two hundred fifty million
12 dollars (\$250,000,000) in capital equipment or facility
13 construction or renovation.

14 D. A taxpayer electing to have business income
15 apportioned pursuant to Subsection C of this section may
16 continue that election for a period not to exceed:

17 (1) eight consecutive taxable years from the
18 taxable year an election pursuant to Paragraph (1) of
19 Subsection C of this section is first claimed and approved;

20 (2) four consecutive taxable years from the
21 taxable year an election pursuant to Paragraph (2) of
22 Subsection C of this section is first claimed and approved; or

23 (3) two consecutive taxable years from the
24 taxable year an election pursuant to Paragraph (3) of
25 Subsection C of this section is first claimed and approved.

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underscored material = new
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1 E. A taxpayer electing to have business income
2 apportioned pursuant to Subsection C of this section shall not
3 in the same taxable years for the same capital equipment claim
4 a credit pursuant to the Investment Credit Act.

5 ~~[G.]~~ F. For purposes of this section:

6 (1) "capital equipment" means equipment that
7 is a depreciable asset pursuant to Section 179 of the Internal
8 Revenue Code;

9 (2) "facility construction or renovation"
10 means construction of a new facility specifically to house a
11 manufacturing business activity or expansion or a significant
12 remodeling of an existing facility for manufacturing; and

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

- 16 ~~[(1)]~~ (a) construction;
- 17 ~~[(2)]~~ (b) farming;
- 18 ~~[(3)]~~ (c) power generation, except for
19 electricity generation at a facility other than one for which
20 both location approval and a certificate of convenience and
21 necessity are required prior to commencing construction or
22 operation of the facility, pursuant to the Public Utility Act;
23 or

24 ~~[(4)]~~ (d) processing natural resources,
25 including hydrocarbons."

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