

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

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 Subsection B this section,
all business income shall be apportioned to this state by
multiplying the income by a fraction, the numerator of which is
the property factor plus the payroll factor plus the sales
factor and the denominator of which is three.

~~[B. For taxable years beginning prior to January 1,
2020, a taxpayer whose principal business activity is~~

.190591.2

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~manufacturing may elect to have business income apportioned to~~
2 ~~this state by multiplying the income by a fraction, the~~
3 ~~numerator of which is the property factor plus the payroll~~
4 ~~factor plus twice the sales factor and the denominator of which~~
5 ~~is four. To elect the method of apportionment provided by this~~
6 ~~subsection, the taxpayer shall notify the department of the~~
7 ~~election, in writing, no later than the date on which the~~
8 ~~taxpayer files the return for the first taxable year to which~~
9 ~~the election will apply. The election will apply to that~~
10 ~~taxable year and to each taxable year thereafter until the~~
11 ~~taxpayer notifies the department, in writing, that the election~~
12 ~~is terminated, except that the taxpayer shall not terminate the~~
13 ~~election until the method of apportioning business income~~
14 ~~provided by this subsection has been used by the taxpayer for~~
15 ~~at least three consecutive taxable years, including a total of~~
16 ~~at least thirty-six calendar months. Notwithstanding any~~
17 ~~provisions of this subsection to the contrary, the taxpayer~~
18 ~~shall use the method of apportionment provided by Subsection A~~
19 ~~of this section for the taxable year unless:~~

20 ~~(1) the taxpayer's corporate income tax~~
21 ~~liability for the taxable year, computed by the same method of~~
22 ~~apportionment used in the preceding taxable year, exceeds the~~
23 ~~corporate income tax liability for the taxpayer's immediately~~
24 ~~preceding taxable year; or~~

25 ~~(2) the sum of the taxpayer's payroll factor~~

.190591.2

underscored material = new
[bracketed material] = delete

1 ~~and property factor for the taxable year exceeds the sum of the~~
2 ~~taxpayer's payroll factor and property factor for the~~
3 ~~taxpayer's base year. For purposes of this paragraph, "base~~
4 ~~year" means the taxpayer's first taxable year beginning on or~~
5 ~~after January 1, 1991.]~~

6 B. A taxpayer may elect to have business income
7 apportioned to this state in the taxable year by multiplying
8 the income by a fraction, the numerator of which is the total
9 sales of the taxpayer in New Mexico during the taxable year and
10 the denominator of which is the total sales of the taxpayer
11 from any location within or outside of the state during the
12 taxable year.

13 C. A taxpayer electing to have business income
14 apportioned pursuant to Subsection B of this section shall not
15 elect another formula to apportion income for any subsequent
16 taxable year unless the taxpayer requests and the secretary
17 grants prior permission.

18 [~~G.~~] D. For purposes of this section,
19 "manufacturing" means combining or processing components or
20 materials to increase their value for sale in the ordinary
21 course of business, but does not include:

- 22 (1) construction;
23 (2) farming;
24 (3) power generation, except for electricity
25 generation at a facility other than one for which both location

underscored material = new
[bracketed material] = delete

1 approval and a certificate of convenience and necessity are
2 required prior to commencing construction or operation of the
3 facility, pursuant to the Public Utility Act; or

4 (4) processing natural resources, including
5 hydrocarbons."

6 SECTION 2. Section 7-4-17 NMSA 1978 (being Laws 1965,
7 Chapter 203, Section 17) is amended to read:

8 "7-4-17. DETERMINATION OF SALES IN THIS STATE OF TANGIBLE
9 PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR.--Sales of
10 tangible personal property are in this state if:

11 A. the property is delivered or shipped to a
12 purchaser other than the United States government within this
13 state regardless of the f. o. b. point or other conditions of
14 the sale; or

15 B. the property is shipped from an office, store,
16 warehouse, factory or other place of storage in this state and:

17 (1) the purchaser is the United States
18 government; or

19 (2) the taxpayer:

20 (a) is not taxable in the state of the
21 purchaser; and

22
23 (b) did not make an election for
24 apportionment of business income pursuant to Subsection B of
25 Section 7-4-10 NMSA 1978."

.190591.2

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SECTION 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2014.

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2014.