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SENATE BILL 90

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Peter Wirth and Ray Begaye

AN ACT

RELATING TO TAXATION; DISTRIBUTING A PORTION OF THE CORPORATE INCOME TAX REVENUE TO THE PUBLIC SCHOOL FUND; AMENDING THE CORPORATE INCOME AND FRANCHISE TAX ACT; REQUIRING COMBINED REPORTING FOR CERTAIN UNITARY CORPORATIONS; REPEALING A SECTION OF THE NMSA 1978 PERTAINING TO CONSOLIDATED RETURNS.

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

Section 1. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public school fund in an amount equal to twenty-five percent of the net receipts attributable to the corporate income tax for taxable years beginning on or after January 1, 2011."

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

5           "7-2A-8.3. COMBINED RETURNS.--

6           A. A unitary corporation that is subject to  
7 taxation under the Corporate Income and Franchise Tax Act [~~and~~  
8 ~~that has not previously filed a combined return pursuant to~~  
9 ~~this section or a consolidated return pursuant to Section~~  
10 ~~7-2A-8.4 NMSA 1978 may elect to~~] shall file a combined return  
11 with other unitary corporations as though the entire combined  
12 net income were that of one corporation. The return filed  
13 under this method of reporting shall include the net income of  
14 all the unitary corporations. Transactions among the unitary  
15 corporations may be eliminated by applying the appropriate  
16 rules for reporting income for a consolidated federal income  
17 tax return. [~~Any corporation that has filed an income tax~~  
18 ~~return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978~~  
19 ~~shall not file pursuant to this section unless the secretary~~  
20 ~~gives prior permission to file on a combined return basis.~~]

21           B. Once corporations have reported net income  
22 through a combined return for any taxable year, they shall file  
23 combined returns for subsequent taxable years, so long as they  
24 remain unitary corporations, [~~unless the corporations elect to~~  
25 ~~file pursuant to Section 7-2A-8.4 NMSA 1978 or~~] unless the

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1 secretary grants prior permission for one or more of the  
2 corporations to file individually.

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

8 C. A unitary corporation whose principal business  
9 activity is manufacturing and that has not previously filed a  
10 combined or consolidated New Mexico corporate income tax return  
11 may elect to file a corporate income tax return as a separate  
12 corporate entity. For the purposes of this subsection,  
13 "manufacturing" means combining or processing components or  
14 materials to increase their value for sale in the ordinary  
15 course of business, but does not include:

16 (1) construction;

17 (2) farming;

18 (3) power generation, except for electricity  
19 generation at a facility other than one for which both location  
20 approval and a certificate of convenience and necessity are  
21 required prior to commencing construction or operation of the  
22 facility, pursuant to the Public Utility Act; or

23 (4) processing natural resources, including  
24 hydrocarbons."

25 Section 3. REPEAL.--Section 7-2A-8.4 NMSA 1978 (being

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underscoring material = new  
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1       Laws 1983, Chapter 213, Section 13, as amended by Laws 1993,  
2       Chapter 307, Section 5 and by Laws 1993, Chapter 309, Section  
3       3) is repealed.

4               Section 4. APPLICABILITY.--The provisions of this act  
5       apply to taxable years beginning on or after January 1, 2011.

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