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SENATE BILL 443

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

John M. Sapien and Ben Lujan

AN ACT

RELATING TO TAXATION; PROVIDING AN ELECTION FOR A SINGLE
WEIGHTED SALES FACTOR FOR CERTAIN TAXPAYERS THAT INVEST IN
MANUFACTURING ACTIVITY IN NEW MEXICO.

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 or C of 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

.184435.4

underscored material = new
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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

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underscored material = new
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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 C. A taxpayer whose principal business activity is
7 manufacturing may elect to have business income apportioned to
8 this state beginning in the taxable year following the year in
9 which investments are made as described in this subsection by
10 multiplying the income by a fraction, the numerator of which is
11 the total sales of the taxpayer in New Mexico during the
12 taxable year and the denominator of which is the total sales of
13 the taxpayer from any location within or outside of the state
14 during the taxable year if:

15 (1) the taxpayer has invested in New Mexico in
16 a taxable year beginning on or after January 1, 2012 but not
17 after December 31, 2020, at least one billion dollars
18 (\$1,000,000,000) in capital equipment and facility construction
19 or renovation;

20 (2) the taxpayer has invested in New Mexico in
21 a taxable year beginning on or after January 1, 2012 but not
22 after December 31, 2020, at least five hundred million dollars
23 (\$500,000,000) in capital equipment and facility construction
24 or renovation; or

25 (3) the taxpayer has invested in New Mexico in

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underscored material = new
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1 a taxable year beginning on or after January 1, 2012 but not
2 after December 31, 2020, at least two hundred fifty million
3 dollars (\$250,000,000) in capital equipment and facility
4 construction or renovation.

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

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

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

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

17 E. A taxpayer electing to have business income
18 apportioned pursuant to Subsection C of this section shall not
19 in the same taxable years for the same capital equipment claim
20 a credit pursuant to the Investment Credit Act.

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

22 (1) "capital equipment" means equipment that
23 is a depreciable asset pursuant to Section 179 of the Internal
24 Revenue Code;

25 (2) "facility construction or renovation"

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1 means construction of a new facility specifically to house a
2 manufacturing business activity or expansion or significant
3 remodeling of an existing facility for manufacturing; and

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

7 [~~1~~] (a) construction;

8 [~~2~~] (b) farming;

9 [~~3~~] (c) power generation, except for
10 electricity generation at a facility other than one for which
11 both location approval and a certificate of convenience and
12 necessity are required prior to commencing construction or
13 operation of the facility, pursuant to the Public Utility Act;
14 or

15 [~~4~~] (d) processing natural resources,
16 including hydrocarbons."

17 SECTION 2. APPLICABILITY.--The provisions of Section 1 of
18 this act apply to taxable years beginning on or after January
19 1, 2012.

20 SECTION 3. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is January 1, 2012.