

1 SENATE BILL 256

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Clemente Sanchez

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; AMENDING THE UNIFORM DIVISION OF INCOME
12 FOR TAX PURPOSES ACT TO CLARIFY THE DEFINITION OF
13 "MANUFACTURING".

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

19 A. Except as provided in Subsections B and C of
20 this section, all business income shall be apportioned to this
21 state by multiplying the income by a fraction, the numerator of
22 which is the property factor plus the payroll factor plus the
23 sales factor and the denominator of which is three.

24 B. If eighty percent or more of the New Mexico
25 numerators of the property and payroll factors for a filing

.217156.2

underscored material = new
[bracketed material] = delete

1 group, or for a taxpayer that is not a member of a filing
2 group, are employed in manufacturing, the filing group or the
3 taxpayer may elect to have business income apportioned to this
4 state by multiplying the income by the sales factor for the
5 taxable year.

6 C. If a filing group, or a taxpayer that is not a
7 member of a filing group, has a headquarters operation in New
8 Mexico, the filing group or the taxpayer may elect to have
9 business income apportioned to this state by multiplying the
10 income by the sales factor for the taxable year.

11 D. To elect the method of apportionment provided by
12 Subsection B or C of this section, the taxpayer shall notify
13 the department of the election, in writing, no later than the
14 date on which the taxpayer files the return for the first
15 taxable year to which the election will apply. The election
16 shall apply as follows:

17 (1) if the election is made for taxable years
18 beginning prior to January 1, 2020, to the taxable year in
19 which the election is made and to each taxable year thereafter
20 for three years, or until the taxable year ending prior to
21 January 1, 2020, whichever is earlier;

22 (2) if the election is made for a taxable year
23 beginning on or after January 1, 2020, to the taxable year in
24 which the election is made and to each taxable year thereafter
25 until the taxpayer notifies the department, in writing, that

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

1 the election is terminated, except that the taxpayer shall not
2 terminate the election until the method of apportioning
3 business income provided by Subsection B or C of this section
4 has been used by the taxpayer for at least three consecutive
5 taxable years, including a total of at least thirty-six
6 calendar months; and

7 (3) if the election is made by a qualifying
8 filing group, the election shall apply to the members of the
9 filing group properly included pursuant to Section 7-2A-8.3
10 NMSA 1978.

11 E. For purposes of this section:

12 (1) "filing group" means "filing group" as
13 that term is defined in the Corporate Income and Franchise Tax
14 Act;

15 (2) "headquarters operation" means:

16 (a) the center of operations of a
17 business: 1) where corporate staff employees are physically
18 employed; 2) where the centralized functions are primarily
19 performed, including administrative, planning, managerial,
20 human resources, purchasing, information technology and
21 accounting, but not including operating a call center; 3) the
22 function and purpose of which is to manage and direct most
23 aspects and functions of the business operations within a
24 subdivided area of the United States; 4) from which final
25 authority over regional or subregional offices, operating

.217156.2

underscored material = new
[bracketed material] = delete

1 facilities and any other offices of the business are issued;
2 and 5) including national and regional headquarters if the
3 national headquarters is subordinate only to the ownership of
4 the business or its representatives and the regional
5 headquarters is subordinate to the national headquarters; or

6 (b) the center of operations of a
7 business: 1) the function and purpose of which is to manage
8 and direct most aspects of one or more centralized functions;
9 and 2) from which final authority over one or more centralized
10 functions is issued;

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

15 (a) construction;
16 (b) farming;
17 (c) electric power generation for which
18 both location approval and a certificate of convenience and
19 necessity are required prior to commencing construction or
20 operation of the facility, pursuant to the Public Utility Act;

21 (d) processing natural resources,
22 including hydrocarbons; or

23 (e) processing or preparation of meals
24 for immediate consumption; and

25 (4) "operating a computer processing facility"

.217156.2

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

1 means managing the necessary and ancillary activities for the
2 operation of a facility primarily used to process data or
3 information, but does not include managing the operation of
4 facilities that are predominantly used to support sales of
5 tangible property or the provision of banking, financial or
6 professional services."

7 SECTION 2. APPLICABILITY.--The provisions of this act
8 apply to taxable years beginning on or after January 1, 2020.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25