

HOUSE BILL 129

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; REQUIRING ALL BUSINESS INCOME TO BE
APPORTIONED BY THE SINGLE SALES FACTOR.

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 Subsections B and 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. If eighty percent or more of the New Mexico numerators of the property and payroll factors for a filing group, or for a taxpayer that is not a member of a filing~~

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1 ~~group, are employed in manufacturing or operating a computer~~
2 ~~processing facility, the filing group or the taxpayer may elect~~
3 ~~to have business income apportioned to this state by~~
4 ~~multiplying the income by the sales factor for the taxable~~
5 ~~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~~

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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~~

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 combining or~~
12 ~~processing components or materials to increase their value for~~
13 ~~sale in the ordinary course of business, but does not include:~~

14 ~~(a) construction;~~
15 ~~(b) farming;~~
16 ~~(c) power generation; provided that for~~
17 ~~taxable years beginning prior to January 1, 2024,~~

18 ~~"manufacturing" includes electricity generation at a facility~~
19 ~~that does not require location approval and a certificate of~~
20 ~~convenience and necessity prior to commencing construction or~~
21 ~~operation of the facility pursuant to the Public Utility Act;~~

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

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

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

8 SECTION 2. Section 7-4-19 NMSA 1978 (being Laws 1965,
9 Chapter 203, Section 19, as amended) is amended to read:

10 "7-4-19. EQUITABLE ADJUSTMENT OF STANDARD ALLOCATION OR
11 APPORTIONMENT.--If the allocation and apportionment provisions
12 of the Uniform Division of Income for Tax Purposes Act do not
13 fairly represent the extent of the taxpayer's business activity
14 in this state, the taxpayer may petition for, or the department
15 may require, in respect to all or any part of the taxpayer's
16 business activity, if reasonable:

17 A. separate accounting;

18 ~~[B. the exclusion of any one or more of the~~
19 ~~factors;~~

20 ~~C. the inclusion of one or more additional factors~~
21 ~~which will fairly represent the taxpayer's business activity in~~
22 ~~this state] or~~

23 ~~[D.]~~ B. the employment of any other method to
24 effectuate an equitable allocation and apportionment of the
25 taxpayer's income."

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