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HOUSE BILL 322

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Jason C. Harper and Antonio Maestas

AN ACT

RELATING TO TAXATION; CREATING A FLAT CORPORATE INCOME TAX RATE; REQUIRING ALL BUSINESS INCOME TO BE APPORTIONED BY THE SINGLE SALES FACTOR; REPEALING PROVISIONS OF THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT.

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

SECTION 1. Section 7-2A-5 NMSA 1978 (being Laws 1981, Chapter 37, Section 38, as amended) is amended to read:

"7-2A-5. CORPORATE INCOME TAX RATES.--The corporate income tax imposed on corporations by Section 7-2A-3 NMSA 1978 shall be

[If the taxable income is:	The tax shall be:
Not over \$500,000	4.8% of taxable income
Over \$500,000	\$24,000 plus 5.9% of excess over \$500,000]

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1 five and nine-tenths percent of taxable income."

2 SECTION 2. Section 7-4-10 NMSA 1978 (being Laws 1993,
3 Chapter 153, Section 1, as amended) is amended to read:

4 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--~~[A. Except~~
5 ~~as provided in Subsections B and C of this section]~~ All
6 business income shall be apportioned to this state by
7 multiplying the income by ~~[a fraction, the numerator of which~~
8 ~~is the property factor plus the payroll factor plus]~~ the sales
9 factor ~~[and the denominator of which is three.~~

10 B. ~~If eighty percent or more of the New Mexico~~
11 ~~numerators of the property and payroll factors for a filing~~
12 ~~group, or for a taxpayer that is not a member of a filing~~
13 ~~group, are employed in manufacturing or operating a computer~~
14 ~~processing facility, the filing group or the taxpayer may elect~~
15 ~~to have business income apportioned to this state by~~
16 ~~multiplying the income by the sales factor for the taxable~~
17 ~~year.~~

18 C. ~~If a filing group, or a taxpayer that is not a~~
19 ~~member of a filing group, has a headquarters operation in New~~
20 ~~Mexico, the filing group or the taxpayer may elect to have~~
21 ~~business income apportioned to this state by multiplying the~~
22 ~~income by the sales factor for the taxable year.~~

23 D. ~~To elect the method of apportionment provided by~~
24 ~~Subsection B or C of this section, the taxpayer shall notify~~
25 ~~the department of the election, in writing, no later than the~~

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1 ~~date on which the taxpayer files the return for the first~~
2 ~~taxable year to which the election will apply. The election~~
3 ~~shall apply as follows:~~

4 ~~(1) if the election is made for taxable years~~
5 ~~beginning prior to January 1, 2020, to the taxable year in~~
6 ~~which the election is made and to each taxable year thereafter~~
7 ~~for three years, or until the taxable year ending prior to~~
8 ~~January 1, 2020, whichever is earlier;~~

9 ~~(2) if the election is made for a taxable year~~
10 ~~beginning on or after January 1, 2020, to the taxable year in~~
11 ~~which the election is made and to each taxable year thereafter~~
12 ~~until the taxpayer notifies the department, in writing, that~~
13 ~~the election is terminated, except that the taxpayer shall not~~
14 ~~terminate the election until the method of apportioning~~
15 ~~business income provided by Subsection B or C of this section~~
16 ~~has been used by the taxpayer for at least three consecutive~~
17 ~~taxable years, including a total of at least thirty-six~~
18 ~~calendar months; and~~

19 ~~(3) if the election is made by a qualifying~~
20 ~~filing group, the election shall apply to the members of the~~
21 ~~filing group properly included pursuant to Section 7-2A-8.3~~
22 ~~NMSA 1978.~~

23 ~~E. For purposes of this section:~~

24 ~~(1) "filing group" means "filing group" as~~
25 ~~that term is defined in the Corporate Income and Franchise Tax~~

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1 Act;

2 ~~(2) "headquarters operation" means:~~

3 ~~(a) the center of operations of a~~
4 ~~business: 1) where corporate staff employees are physically~~
5 ~~employed; 2) where the centralized functions are primarily~~
6 ~~performed, including administrative, planning, managerial,~~
7 ~~human resources, purchasing, information technology and~~
8 ~~accounting, but not including operating a call center; 3) the~~
9 ~~function and purpose of which is to manage and direct most~~
10 ~~aspects and functions of the business operations within a~~
11 ~~subdivided area of the United States; 4) from which final~~
12 ~~authority over regional or subregional offices, operating~~
13 ~~facilities and any other offices of the business are issued;~~
14 ~~and 5) including national and regional headquarters if the~~
15 ~~national headquarters is subordinate only to the ownership of~~
16 ~~the business or its representatives and the regional~~
17 ~~headquarters is subordinate to the national headquarters; or~~

18 ~~(b) the center of operations of a~~
19 ~~business: 1) the function and purpose of which is to manage~~
20 ~~and direct most aspects of one or more centralized functions;~~
21 ~~and 2) from which final authority over one or more centralized~~
22 ~~functions is issued;~~

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

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1 ~~(a) construction;~~
2 ~~(b) farming;~~
3 ~~(c) power generation; provided that for~~
4 ~~taxable years beginning prior to January 1, 2024,~~

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

9 ~~(d) processing natural resources,~~
10 ~~including hydrocarbons; or~~

11 ~~(e) processing or preparation of meals~~
12 ~~for immediate consumption; and~~

13 ~~(4) "operating a computer processing facility"~~
14 ~~means managing the necessary and ancillary activities for the~~
15 ~~operation of a facility primarily used to process data or~~
16 ~~information, but does not include managing the operation of~~
17 ~~facilities that are predominantly used to support sales of~~
18 ~~tangible property or the provision of banking, financial or~~
19 ~~professional services]."~~

20 SECTION 3. Section 7-4-19 NMSA 1978 (being Laws 1965,
21 Chapter 203, Section 19, as amended) is amended to read:

22 "7-4-19. EQUITABLE ADJUSTMENT OF STANDARD ALLOCATION OR
23 APPORTIONMENT.--If the allocation and apportionment provisions
24 of the Uniform Division of Income for Tax Purposes Act do not
25 fairly represent the extent of the taxpayer's business activity

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1 in this state, the taxpayer may petition for, or the department
2 may require, in respect to all or any part of the taxpayer's
3 business activity, if reasonable:

4 A. separate accounting;

5 ~~[B. the exclusion of any one or more of the~~
6 ~~factors;~~

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

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

13 SECTION 4. REPEAL.--Sections 7-4-11 through 7-4-15 NMSA
14 1978 (being Laws 1965, Chapter 203, Sections 11 through 15, as
15 amended) are repealed.

16 SECTION 5. APPLICABILITY.--The provisions of Sections 1
17 through 3 of this act apply to taxable years beginning on or
18 after January 1, 2024.

19 SECTION 6. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is January 1, 2024.

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