SENATE BILL 277

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; DECREASING CERTAIN CORPORATE INCOME TAX RATES; PROVIDING FOR USE OF A SINGLE SALES FACTOR BY CERTAIN TAXPAYERS IN APPORTIONING CORPORATE INCOME TO THE STATE; EXCLUDING CERTAIN SALES FROM BEING APPORTIONED AS SALES IN NEW MEXICO.

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 at the rates specified in the following [~~table~~] tables:

A. For taxable years beginning prior to January 1, 2014:

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If the net income is:	The tax shall be:
Not over $500,000	4.8% of net income
Over $500,000 but not over $1,000,000	$24,000 plus 6.4% of excess over $500,000
Over $1,000,000	$56,000 plus 7.6% of excess over $1,000,000.

B. For taxable years beginning on or after January 1, 2014 and prior to January 1, 2015:

If the net income is:	The tax shall be:
Not over $500,000	4.8% of net income
Over $500,000 but not over $1,000,000	$24,000 plus 5.9% of excess over $500,000
Over $1,000,000	$53,500 plus 6.7% of excess over $1,000,000.

C. For taxable years beginning on or after January 1, 2015 and prior to January 1, 2016:

If the net income is:	The tax shall be:
Not over $500,000	4.8% of net income
Over $500,000 but not	

over $1,000,000	$24,000 plus 5.4% of excess over $500,000
Over $1,000,000	$51,000 plus 5.8% of excess over $1,000,000.

D. For taxable years beginning on or after January 1, 2016:

If the net income is:	The tax shall be:
Not over $500,000	4.8% of net income
Over $500,000	$24,000 plus 4.9% of excess over $500,000."

SECTION 2. 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 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 manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the~~

underscored material = new
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~~numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any provisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection A of this section for the taxable year unless:~~

~~(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or~~

~~(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the~~

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

~~taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year beginning on or after January 1, 1991.~~]

B. A taxpayer may elect to have business income apportioned to this state:

(1) in the taxable year beginning on or after January 1, 2014 and prior to January 1, 2015, by multiplying the income by a fraction, the numerator of which is twice the sales factor plus the property factor plus the payroll factor and the denominator of which is four;

(2) in the taxable year beginning on or after January 1, 2015 and prior to January 1, 2016, by multiplying the income by a fraction, the numerator of which is eight multiplied by the sales factor plus the property factor plus the payroll factor and the denominator of which is ten; and

(3) in taxable years beginning on or after January 1, 2016, by multiplying the income by a fraction, the numerator of which is the total sales of the taxpayer in New Mexico during the taxable year and the denominator of which is the total sales of the taxpayer from any location within or outside of the state during the taxable year.

C. A taxpayer electing to have business income apportioned pursuant to Subsection B of this section shall not elect another formula to apportion income for any subsequent taxable year unless the taxpayer requests and the secretary

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grants prior permission.

[~~C.~~] D. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(1) construction;

(2) farming;

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

(4) processing natural resources, including hydrocarbons."

SECTION 3. Section 7-4-17 NMSA 1978 (being Laws 1965, Chapter 203, Section 17) is amended to read:

"7-4-17. DETERMINATION OF SALES IN THIS STATE OF TANGIBLE PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR.--Sales of tangible personal property are in this state if:

A. the property is delivered or shipped to a purchaser other than the United States government within this state regardless of the f. o. b. point or other conditions of the sale; or

B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and:

underscored material = new
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(1) the purchaser is the United States government; or

(2) the taxpayer:

(a) is not taxable in the state of the purchaser; and

(b) did not make an election for apportionment of business income pursuant to Subsection B of Section 7-4-10 NMSA 1978."

SECTION 4. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2014.

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2014.