

1 SENATE BILL 319

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Michael Padilla and William "Bill" R. Rehm

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR USE OF A SINGLE SALES
12 FACTOR BY TAXPAYERS WHOSE PRINCIPAL BUSINESS ACTIVITY IS
13 MANUFACTURING.

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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 Subsection B of this
20 section, all business income shall be apportioned to this state
21 by multiplying the income by a fraction, the numerator of which
22 is the property factor plus the payroll factor plus the sales
23 factor and the denominator of which is three.

24 ~~[B. For taxable years beginning prior to January 1,~~
25 ~~2020, a taxpayer whose principal business activity is~~

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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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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 B. A taxpayer whose principal business activity is
7 manufacturing may elect to have business income apportioned to
8 this state in the taxable year by multiplying the income by a
9 fraction, the numerator of which is the total sales of the
10 taxpayer in New Mexico during the taxable year and the
11 denominator of which is the total sales of the taxpayer from
12 any location within or outside of the state during the taxable
13 year. To elect the method of apportionment provided by this
14 subsection, the taxpayer shall notify the department of the
15 election, in writing, no later than the date on which the
16 taxpayer files the return for the first taxable year to which
17 the election will apply. The election shall apply to that
18 taxable year and to each taxable year thereafter until the
19 taxpayer notifies the department, in writing, that the election
20 is terminated, provided that the taxpayer shall not terminate
21 the election until the method of apportioning business income
22 provided by this subsection has been used by the taxpayer for
23 at least three consecutive taxable years, including a total of
24 at least thirty-six calendar months.

25 C. For purposes of this section, "manufacturing"

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1 means combining or processing components or materials to
2 increase their value for sale in the ordinary course of
3 business, but does not include:
4 (1) construction;
5 (2) farming;
6 (3) power generation, except for electricity
7 generation at a facility other than one for which both location
8 approval and a certificate of convenience and necessity are
9 required prior to commencing construction or operation of the
10 facility, pursuant to the Public Utility Act; or
11 (4) processing natural resources, including
12 hydrocarbons."

13 SECTION 2. APPLICABILITY.--The provisions of this act
14 apply to taxable years beginning on or after January 1, 2014.

15 SECTION 3. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is January 1, 2014.