

1 SENATE BILL 549

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

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO TAXATION; AMENDING THE UNIFORM DIVISION OF INCOME
12 FOR TAX PURPOSES ACT TO DETERMINE IN-STATE SALES OF INTANGIBLES
13 AND SERVICES BASED ON MARKET SOURCING RATHER THAN COST OF
14 PERFORMANCE.

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

17 SECTION 1. Section 7-4-18 NMSA 1978 (being Laws 1965,
18 Chapter 203, Section 18) is amended to read:

19 "7-4-18. DETERMINATION OF SALES IN THIS STATE OF OTHER
20 [~~THAN TANGIBLE PERSONAL~~] PROPERTY FOR INCLUSION IN SALES
21 FACTOR.--

22 A. Sales, other than sales [~~of tangible personal~~
23 ~~property~~] described in Section 7-4-17 NMSA 1978, are in this
24 state if

25 [~~A. the income-producing activity is performed in~~

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1 ~~this state; or~~

2 ~~B. the income-producing activity is performed both~~
3 ~~in and outside this state and a greater proportion of the~~
4 ~~income-producing activity is performed in this state than in~~
5 ~~any other state based on costs of performance] and to the~~
6 extent that:

7 (1) in the case of sale, rental, lease or
8 license of real property, the property is located in this
9 state;

10 (2) in the case of rental, lease or license of
11 tangible personal property, the property is located in this
12 state;

13 (3) in the case of sale of a service, the
14 service is delivered to a location in this state; and

15 (4) in the case of intangible property that
16 is:

17 (a) rented, leased or licensed, the
18 property is used in this state, including intangible property
19 that is utilized in marketing a good or service to a consumer
20 if that good or service is purchased by a consumer who is in
21 this state; or

22 (b) sold, the property is used in this
23 state, including a contract right, government license or
24 similar intangible property that authorizes the holder to
25 conduct a business activity in a specific geographic area that

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1 includes all or part of this state.

2 B. Receipts from intangible property sales that are
3 contingent on the productivity, use or disposition of the
4 intangible property shall be treated as receipts from the
5 rental, lease or licensing of that intangible property pursuant
6 to Subparagraph (a) of Paragraph (4) of Subsection A of this
7 section. All other receipts from a sale of intangible property
8 shall be excluded from the numerator and denominator of the
9 sales factor.

10 C. If the state or states of assignment under
11 Subsection A of this section cannot be determined, the state or
12 states of assignment shall be reasonably approximated.

13 D. If the taxpayer is not taxable in a state to
14 which a sale is assigned pursuant to Subsection A, B or C of
15 this section, or if the state of assignment cannot be
16 determined pursuant to Subsection A or B of this section or
17 reasonably approximated pursuant to Subsection C of this
18 section, that sale shall be excluded from the denominator of
19 the sales factor.

20 E. The department may promulgate rules as necessary
21 or appropriate to carry out the purposes of this section."

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