

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 59

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

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TAXATION; REDUCING CORPORATE INCOME TAX RATES;
PROVIDING FOR USE OF A SINGLE SALES FACTOR BY CERTAIN TAXPAYERS
IN APPORTIONING CORPORATE INCOME TO THE STATE; PROVIDING FOR
COMBINED REPORTING OF CORPORATE INCOME FOR UNITARY
CORPORATIONS; REPEALING THE RURAL JOB TAX CREDIT, THE
INVESTMENT CREDIT ACT, THE TECHNOLOGY JOBS TAX CREDIT ACT, THE
HIGH-WAGE JOBS TAX CREDIT AND THE RESEARCH AND DEVELOPMENT
SMALL BUSINESS TAX CREDIT 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 at the rates specified in the following table:

.190421.3

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

underscored material = new
[bracketed material] = delete

1	If the net income is:	The tax shall be:
2	Not over \$500,000	[4.8%] <u>4.2%</u> of net
3		income
4	Over \$500,000 but not	
5	over \$1,000,000	[\$24,000] <u>\$21,000</u>
6		plus [6.4%] <u>5.8%</u> of
7		excess over \$500,000
8	Over \$1,000,000	[\$56,000] <u>\$50,000</u>
9		plus [7.6%] <u>7.0%</u> of
10		excess over
11		\$1,000,000."

12 SECTION 2. Section 7-2A-8.3 NMSA 1978 (being Laws 1983,
13 Chapter 213, Section 12, as amended by Laws 1993, Chapter 307,
14 Section 4 and by Laws 1993, Chapter 309, Section 2) is amended
15 to read:

16 "7-2A-8.3. COMBINED RETURNS.--

17 A. A unitary corporation that is subject to taxation
18 under the Corporate Income and Franchise Tax Act and that has
19 not previously filed ~~[a combined return pursuant to this~~
20 ~~section or]~~ a consolidated return pursuant to Section 7-2A-8.4
21 NMSA 1978 ~~[may elect to]~~ shall file a combined return with
22 other unitary corporations as though the entire combined net
23 income were that of one corporation. The return filed under
24 this method of reporting shall include the net income of all
25 the unitary corporations. Transactions among the unitary

.190421.3

underscored material = new
[bracketed material] = delete

1 corporations may be eliminated by applying the appropriate
2 rules for reporting income for a consolidated federal income
3 tax return. Any corporation that has filed an income tax
4 return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978
5 shall not file pursuant to this section unless the secretary
6 gives prior permission to file on a combined return basis.

7 B. Once corporations have reported net income through
8 a combined return for any taxable year, they shall file
9 combined returns for subsequent taxable years, so long as they
10 remain unitary corporations, unless the corporations elect to
11 file pursuant to Section 7-2A-8.4 NMSA 1978. [~~or unless the~~
12 ~~secretary grants prior permission for one or more of the~~
13 ~~corporations to file individually.~~

14 ~~C. For taxable years beginning on or after January 1,~~
15 ~~1993, no unitary corporation once included in a combined return~~
16 ~~may elect, or be granted permission by the secretary, for any~~
17 ~~subsequent taxable year to separately account pursuant to~~
18 ~~Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.]"~~

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

21 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

22 A. Except as provided in [~~Subsection~~] Subsections B
23 and C of this section, all business income shall be apportioned
24 to this state by multiplying the income by a fraction, the
25 numerator of which is the property factor plus the payroll

.190421.3

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

1 factor plus the sales factor and the denominator of which is
2 three.

3 B. For taxable years beginning prior to January 1,
4 2020, a taxpayer whose principal business activity is
5 manufacturing may elect to have business income apportioned to
6 this state by multiplying the income by a fraction, the
7 numerator of which is the property factor plus the payroll
8 factor plus twice the sales factor and the denominator of which
9 is four. To elect the method of apportionment provided by this
10 subsection, the taxpayer shall notify the department of the
11 election, in writing, no later than the date on which the
12 taxpayer files the return for the first taxable year to which
13 the election will apply. The election will apply to that
14 taxable year and to each taxable year thereafter until the
15 taxpayer notifies the department, in writing, that the election
16 is terminated, except that the taxpayer shall not terminate the
17 election until the method of apportioning business income
18 provided by this subsection has been used by the taxpayer for
19 at least three consecutive taxable years, including a total of
20 at least thirty-six calendar months. Notwithstanding any
21 provisions of this subsection to the contrary, the taxpayer
22 shall use the method of apportionment provided by Subsection A
23 of this section for the taxable year unless:

24 (1) the taxpayer's corporate income tax
25 liability for the taxable year, computed by the same method of

.190421.3

underscored material = new
[bracketed material] = delete

1 apportionment used in the preceding taxable year, exceeds the
2 corporate income tax liability for the taxpayer's immediately
3 preceding taxable year; or

4 (2) the sum of the taxpayer's payroll factor and
5 property factor for the taxable year exceeds the sum of the
6 taxpayer's payroll factor and property factor for the
7 taxpayer's base year. For purposes of this paragraph, "base
8 year" means the taxpayer's first taxable year beginning on or
9 after January 1, 1991.

10 C. A taxpayer whose principal business activity is
11 manufacturing may elect to have business income apportioned to
12 this state beginning in the taxable year following the taxable
13 year in which investments are made as described in this
14 subsection by multiplying the income by a fraction, the
15 numerator of which is the total sales of the taxpayer in New
16 Mexico during the taxable year and the denominator of which is
17 the total sales of the taxpayer from any location within or
18 outside of the state during the taxable year if:

19 (1) the taxpayer has invested in New Mexico in a
20 taxable year beginning on or after January 1, 2014 but not on
21 or after January 1, 2023, at least five hundred million dollars
22 (\$500,000,000) in capital equipment and facility construction
23 or renovation;

24 (2) the taxpayer has invested in New Mexico in a
25 taxable year beginning on or after January 1, 2014 but not on

.190421.3

underscored material = new
[bracketed material] = delete

1 or after January 1, 2023, at least two hundred fifty million
2 dollars (\$250,000,000) in capital equipment and facility
3 construction or renovation; or

4 (3) the taxpayer has invested in New Mexico in a
5 taxable year beginning on or after January 1, 2014 but not on
6 or after January 1, 2023, at least one hundred twenty-five
7 million dollars (\$125,000,000) in capital equipment or facility
8 construction or renovation.

9 D. A taxpayer electing to have business income
10 apportioned pursuant to Subsection C of this section may
11 continue that election for a period not to exceed:

12 (1) eight consecutive taxable years from the
13 taxable year that an election pursuant to Paragraph (1) of
14 Subsection C of this section is first claimed and approved;

15 (2) four consecutive taxable years from the
16 taxable year that an election pursuant to Paragraph (2) of
17 Subsection C of this section is first claimed and approved; or

18 (3) two consecutive taxable years from the
19 taxable year that an election pursuant to Paragraph (3) of
20 Subsection C of this section is first claimed and approved.

21 E. A taxpayer electing to have business income
22 apportioned pursuant to Subsection C of this section shall not,
23 in the same taxable years for the same capital equipment, claim
24 a credit pursuant to the Investment Credit Act.

25 ~~[G.]~~ F. For purposes of this section:

underscored material = new
[bracketed material] = delete

1 (1) "capital equipment" means equipment that is
2 a depreciable asset pursuant to Section 179 of the Internal
3 Revenue Code;

4 (2) "facility construction or renovation" means
5 construction of a new facility specifically to house a
6 manufacturing business activity or expansion or a significant
7 remodeling of an existing facility for manufacturing; and

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

11 [~~(1)~~] (a) construction;

12 [~~(2)~~] (b) farming;

13 [~~(3)~~] (c) power generation, except for
14 electricity generation at a facility other than one for which
15 both location approval and a certificate of convenience and
16 necessity are required prior to commencing construction or
17 operation of the facility, pursuant to the Public Utility Act;
18 or

19 [~~(4)~~] (d) processing natural resources,
20 including hydrocarbons."

21 SECTION 4. REPEAL.--Sections 7-2E-1.1, 7-9A-1 through
22 7-9A-11, 7-9F-1 through 7-9F-12, 7-9G-1 and 7-9H-1 through
23 7-9H-6 NMSA 1978 (being Laws 2007, Chapter 172, Section 2, Laws
24 1979, Chapter 347, Sections 1 and 2, Laws 2001, Chapter 57,
25 Section 2 and Laws 2001, Chapter 337, Section 2, Laws 1979,

.190421.3

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

1 Chapter 347, Sections 3 through 7, Laws 1983, Chapter 206,
2 Section 6, Laws 1979, Chapter 347, Sections 8 and 9, Laws 1997,
3 Chapter 62, Section 2, Laws 2000 (2nd S.S.), Chapter 22,
4 Sections 1 through 12, Laws 2004, Chapter 15, Section 1 and
5 Laws 2005, Chapter 104, Sections 11 through 16, as amended) are
6 repealed.

7 SECTION 5. APPLICABILITY.--The provisions of this act
8 apply to taxable years beginning on or after January 1, 2014.

9 SECTION 6. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is January 1, 2014.