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SENATE BILL 5

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2016

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; DELAYING REDUCTION OF THE CORPORATE
INCOME TAX RATES; DELAYING SINGLE SALES APPORTIONMENT OF INCOME
FOR MANUFACTURERS; DECLARING AN EMERGENCY.

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 tables:

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

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

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1 Over \$1,000,000 \$56,000
2 plus 6.9% of excess
3 over \$1,000,000.

4 D. For taxable years beginning on or after January 1,
5 [~~2016~~] 2018 and prior to January 1, [~~2017~~] 2019:

6 If the net income is: The tax shall be:
7 Not over \$500,000 4.8% of net income
8 Over \$500,000 but not
9 over \$1,000,000 \$24,000 plus
10 6.4% of excess
11 over \$500,000
12 Over \$1,000,000 \$56,000
13 plus 6.6% of excess
14 over \$1,000,000.

15 E. For taxable years beginning on or after January 1,
16 [~~2017~~] 2019 and prior to January 1, [~~2018~~] 2020:

17 If the net income is: The tax shall be:
18 Not over \$500,000 4.8% of net income
19 Over \$500,000 \$24,000 plus
20 6.2% of excess
21 over \$500,000.

22 F. For taxable years beginning on or after January 1,
23 [~~2018~~] 2020:

24 If the net income is: The tax shall be:
25 Not over \$500,000 4.8% of net income

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1 Over \$500,000 \$24,000 plus
2 5.9% of excess
3 over \$500,000."

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

6 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

7 A. Except as provided in Subsections B and C of this
8 section, all business income shall be apportioned to this state
9 by multiplying the income by a fraction, the numerator of which
10 is the property factor plus the payroll factor plus the sales
11 factor and the denominator of which is three.

12 B. A taxpayer whose principal business activity in
13 New Mexico is manufacturing may elect to have business income
14 apportioned to this state:

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

20 (2) in the taxable year beginning on or after
21 January 1, 2015 and prior to January 1, [~~2016~~] 2018, by
22 multiplying the income by a fraction, the numerator of which is
23 three multiplied by the sales factor plus the property factor
24 plus the payroll factor and the denominator of which is five;

25 (3) in the taxable year beginning on or after

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1 January 1, [~~2016~~] 2018 and prior to January 1, [~~2017~~] 2019, by
2 multiplying the income by a fraction, the numerator of which is
3 seven multiplied by the sales factor plus one and one-half
4 multiplied by the property factor plus one and one-half
5 multiplied by the payroll factor and the denominator of which
6 is ten;

7 (4) in the taxable year beginning on or after
8 January 1, [~~2017~~] 2019 and prior to January 1, [~~2018~~] 2020, by
9 multiplying the income by a fraction, the numerator of which is
10 eight multiplied by the sales factor plus the property factor
11 plus the payroll factor and the denominator of which is ten;
12 and

13 (5) in taxable years beginning on or after
14 January 1, [~~2018~~] 2020, by multiplying the income by a
15 fraction, the numerator of which is the total sales of the
16 taxpayer in New Mexico during the taxable year and the
17 denominator of which is the total sales of the taxpayer from
18 any location within or outside of the state during the taxable
19 year.

20 C. A taxpayer whose principal business activity in
21 New Mexico is a headquarters operation may elect to have
22 business income apportioned to this state by multiplying the
23 income by a fraction, the numerator of which is the total sales
24 of the taxpayer in New Mexico during the taxable year and the
25 denominator of which is the total sales of the taxpayer from

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1 any location within or outside of the state during the taxable
2 year.

3 D. To elect the method of apportionment provided by
4 Subsection B or C of this section, the taxpayer shall notify
5 the department of the election, in writing, no later than the
6 date on which the taxpayer files the return for the first
7 taxable year to which the election will apply. The election
8 will apply to that taxable year and to each taxable year
9 thereafter until the taxpayer notifies the department, in
10 writing, that the election is terminated, except that the
11 taxpayer shall not terminate the election until the method of
12 apportioning business income provided by Subsection B or C of
13 this section has been used by the taxpayer for at least three
14 consecutive taxable years, including a total of at least
15 thirty-six calendar months. The election will apply to the
16 separately filed return of the taxpayer or the combined or
17 consolidated return the taxpayer has elected to be included
18 pursuant to Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978.

19 E. For purposes of this section:

20 (1) "headquarters operation" means:

21 (a) the center of operations of a business:

22 1) where corporate staff employees are physically employed; 2)

23 where centralized functions are performed, including

24 administrative, planning, managerial, human resources,

25 purchasing, information technology and accounting, but not

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1 including operating a call center; 3) the function and purpose
2 of which is to manage and direct most aspects and functions of
3 the business operations within a subdivided area of the United
4 States; 4) from which final authority over regional or
5 subregional offices, operating facilities and any other offices
6 of the business are issued; and 5) including national and
7 regional headquarters if the national headquarters is
8 subordinate only to the ownership of the business or its
9 representatives and the regional headquarters is subordinate to
10 the national headquarters; or

11 (b) the center of operations of a business:

12 1) the function and purpose of which is to manage and direct
13 most aspects of one or more centralized functions; and 2) from
14 which final authority over one or more centralized functions is
15 issued; and

16 (2) "manufacturing" means combining or
17 processing components or materials to increase their value for
18 sale in the ordinary course of business, but does not include:

19 (a) construction;

20 (b) farming;

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

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1 (d) processing natural resources, including
2 hydrocarbons."

3 SECTION 3. TEMPORARY PROVISION--UNDERESTIMATING CORPORATE
4 INCOME TAX--FORGIVING PENALTIES AND INTEREST.--A taxpayer that
5 estimated corporate income tax to the state pursuant to Section
6 7-2A-9.1 NMSA 1978 for corporate income tax liabilities for
7 taxable year 2016 but underpaid due to the changes made to
8 Sections 7-2A-5 and 7-4-10 NMSA 1978 pursuant to this act shall
9 not be subject to the penalties and interest provisions of the
10 Tax Administration Act; provided that the underestimation is
11 solely attributable to the changes made to Sections 7-2A-5 and
12 7-4-10 NMSA 1978 pursuant to this act.

13 SECTION 4. EMERGENCY.--It is necessary for the public
14 peace, health and safety that this act take effect immediately.

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