

1 HOUSE BILL 118

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Kristina Ortez

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9  
10 AN ACT

11 RELATING TO TAXATION; REMOVING A SUNSET DATE TO ALLOW A  
12 TAXPAYER EMPLOYED IN CERTAIN ELECTRICITY GENERATION TO  
13 APPORTION BUSINESS INCOME BY THE SINGLE SALES FACTOR  
14 PERMANENTLY.

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

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

19 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

20 A. Except as provided in Subsections B and C of  
21 this section, all business income shall be apportioned to this  
22 state by multiplying the income by a fraction, the numerator of  
23 which is the property factor plus the payroll factor plus the  
24 sales factor and the denominator of which is three.

25 B. If eighty percent or more of the New Mexico

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1 numerators of the property and payroll factors for a filing  
2 group, or for a taxpayer that is not a member of a filing  
3 group, are employed in manufacturing or operating a computer  
4 processing facility, the filing group or the taxpayer may elect  
5 to have business income apportioned to this state by  
6 multiplying the income by the sales factor for the taxable  
7 year.

8 C. If a filing group, or a taxpayer that is not a  
9 member of a filing group, has a headquarters operation in New  
10 Mexico, the filing group or the taxpayer may elect to have  
11 business income apportioned to this state by multiplying the  
12 income by the sales factor for the taxable year.

13 D. To elect the method of apportionment provided by  
14 Subsection B or C of this section, the taxpayer shall notify  
15 the department of the election, in writing, no later than the  
16 date on which the taxpayer files the return for the first  
17 taxable year to which the election will apply. The election  
18 shall apply as follows:

19 (1) if the election is made for taxable years  
20 beginning prior to January 1, 2020, to the taxable year in  
21 which the election is made and to each taxable year thereafter  
22 for three years, or until the taxable year ending prior to  
23 January 1, 2020, whichever is earlier;

24 (2) if the election is made for a taxable year  
25 beginning on or after January 1, 2020, to the taxable year in

1 which the election is made and to each taxable year thereafter  
2 until the taxpayer notifies the department, in writing, that  
3 the election is terminated, except that the taxpayer shall not  
4 terminate the election until the method of apportioning  
5 business income provided by Subsection B or C of this section  
6 has been used by the taxpayer for at least three consecutive  
7 taxable years, including a total of at least thirty-six  
8 calendar months; and

9 (3) if the election is made by a qualifying  
10 filing group, the election shall apply to the members of the  
11 filing group properly included pursuant to Section 7-2A-8.3  
12 NMSA 1978.

13 E. For purposes of this section:

14 (1) "filing group" means "filing group" as  
15 that term is defined in the Corporate Income and Franchise Tax  
16 Act;

17 (2) "headquarters operation" means:

18 (a) the center of operations of a  
19 business: 1) where corporate staff employees are physically  
20 employed; 2) where the centralized functions are primarily  
21 performed, including administrative, planning, managerial,  
22 human resources, purchasing, information technology and  
23 accounting, but not including operating a call center; 3) the  
24 function and purpose of which is to manage and direct most  
25 aspects and functions of the business operations within a

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~~[bracketed material] = delete~~

1 subdivided area of the United States; 4) from which final  
2 authority over regional or subregional offices, operating  
3 facilities and any other offices of the business are issued;  
4 and 5) including national and regional headquarters if the  
5 national headquarters is subordinate only to the ownership of  
6 the business or its representatives and the regional  
7 headquarters is subordinate to the national headquarters; or

8 (b) the center of operations of a  
9 business: 1) the function and purpose of which is to manage  
10 and direct most aspects of one or more centralized functions;  
11 and 2) from which final authority over one or more centralized  
12 functions is issued;

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

16 (a) construction;  
17 (b) farming;  
18 (c) power generation; provided that ~~[for~~  
19 ~~taxable years beginning prior to January 1, 2024]~~

20 "manufacturing" includes electricity generation at a facility  
21 that does not require location approval and a certificate of  
22 convenience and necessity prior to commencing construction or  
23 operation of the facility pursuant to the Public Utility Act;

24 (d) processing natural resources,  
25 including hydrocarbons; or

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1 (e) processing or preparation of meals  
2 for immediate consumption; and

3 (4) "operating a computer processing facility"  
4 means managing the necessary and ancillary activities for the  
5 operation of a facility primarily used to process data or  
6 information, but does not include managing the operation of  
7 facilities that are predominantly used to support sales of  
8 tangible property or the provision of banking, financial or  
9 professional services."

10 SECTION 2. APPLICABILITY.--The provisions of this act  
11 apply to taxable years beginning on or after January 1, 2024.