

1 HOUSE BILL 286

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Conrad James

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10 AN ACT

11 RELATING TO TAXATION; PHASING IN THE USE OF A SINGLE SALES
12 FACTOR BY A HEADQUARTERS OPERATION IN APPORTIONING CORPORATE
13 INCOME TO THE STATE.

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

25 B. A taxpayer whose principal business activity in

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1 New Mexico is manufacturing may elect to have business income
2 apportioned to this state:

3 (1) in the taxable year beginning on or after
4 January 1, 2014 and prior to January 1, 2015, by multiplying
5 the income by a fraction, the numerator of which is twice the
6 sales factor plus the property factor plus the payroll factor
7 and the denominator of which is four;

8 (2) in the taxable year beginning on or after
9 January 1, 2015 and prior to January 1, 2016, by multiplying
10 the income by a fraction, the numerator of which is three
11 multiplied by the sales factor plus the property factor plus
12 the payroll factor and the denominator of which is five;

13 (3) in the taxable year beginning on or after
14 January 1, 2016 and prior to January 1, 2017, by multiplying
15 the income by a fraction, the numerator of which is seven
16 multiplied by the sales factor plus one and one-half multiplied
17 by the property factor plus one and one-half multiplied by the
18 payroll factor and the denominator of which is ten;

19 (4) in the taxable year beginning on or after
20 January 1, 2017 and prior to January 1, 2018, by multiplying
21 the income by a fraction, the numerator of which is eight
22 multiplied by the sales factor plus the property factor plus
23 the payroll factor and the denominator of which is ten; and

24 (5) in taxable years beginning on or after
25 January 1, 2018, by multiplying the income by a fraction, the

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1 numerator of which is the total sales of the taxpayer in New
2 Mexico during the taxable year and the denominator of which is
3 the total sales of the taxpayer from any location within or
4 outside of the state during the taxable year.

5 C. A taxpayer whose principal business activity in
6 New Mexico is a headquarters operation may elect to have
7 business income apportioned to this state:

8 (1) in the taxable year beginning on or after
9 January 1, 2015 and prior to January 1, 2016, by multiplying
10 the income by a fraction, the numerator of which is three
11 multiplied by the sales factor plus the property factor plus
12 the payroll factor and the denominator of which is five;

13 (2) in the taxable year beginning on or after
14 January 1, 2016 and prior to January 1, 2017, by multiplying
15 the income by a fraction, the numerator of which is seven
16 multiplied by the sales factor plus one and one-half multiplied
17 by the property factor plus one and one-half multiplied by the
18 payroll factor and the denominator of which is ten;

19 (3) in the taxable year beginning on or after
20 January 1, 2017 and prior to January 1, 2018, by multiplying
21 the income by a fraction, the numerator of which is eight
22 multiplied by the sales factor plus the property factor plus
23 the payroll factor and the denominator of which is ten; and

24 (4) in taxable years beginning on or after
25 January 1, 2018, by multiplying the income by a fraction, the

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1 numerator of which is the total sales of the taxpayer in New
2 Mexico during the taxable year and the denominator of which is
3 the total sales of the taxpayer from any location within or
4 outside of the state during the taxable year.

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

21 ~~[D-]~~ E. For purposes of this section:

22 (1) "headquarters operation" means:

23 (a) the center of operations of a
24 business: 1) where corporate staff employees are physically
25 employed; 2) where centralized functions are performed,

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1 including administrative, planning, managerial, human
2 resources, purchasing, information technology and accounting,
3 but not including operating a call center; 3) the function and
4 purpose of which is to manage and direct most aspects and
5 functions of the business operations within a subdivided area
6 of the United States; 4) from which final authority over
7 regional or subregional offices, operating facilities and any
8 other offices of the business are issued; and 5) including
9 national and regional headquarters if the national headquarters
10 is subordinate only to the ownership of the business or its
11 representatives and the regional headquarters is subordinate to
12 the national headquarters; or

13 (b) the center of operations of a
14 business: 1) the function and purpose of which is to manage
15 and direct most aspects of one or more centralized functions;
16 and 2) from which final authority over one or more centralized
17 functions is issued; and

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

21 [(-1)] (a) construction;
22 [(-2)] (b) farming;
23 [(-3)] (c) power generation, except for
24 electricity generation at a facility other than one for which
25 both location approval and a certificate of convenience and

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1 necessity are required prior to commencing construction or
2 operation of the facility, pursuant to the Public Utility Act;
3 or

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

6 SECTION 2. APPLICABILITY.--The provisions of this act
7 apply to taxable years beginning on or after January 1, 2015.