

1 SENATE BILL 42

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 John M. Sapien

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO TAXATION; PROVIDING AN ELECTION FOR A SINGLE  
12 WEIGHTED SALES FACTOR FOR CERTAIN TAXPAYERS THAT INVEST IN  
13 MANUFACTURING ACTIVITY IN NEW MEXICO.

14  
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 or C of this  
20 section, all business income shall be apportioned to this state  
21 by multiplying the income by a fraction, the numerator of which  
22 is the property factor plus the payroll factor plus the sales  
23 factor and the denominator of which is three.

24 B. For taxable years beginning prior to January 1,  
25 2020, a taxpayer whose principal business activity is

.188131.2

underscored material = new  
[bracketed material] = delete

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

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

20 (1) the taxpayer's corporate income tax  
21 liability for the taxable year, computed by the same method of  
22 apportionment used in the preceding taxable year, exceeds the  
23 corporate income tax liability for the taxpayer's immediately  
24 preceding taxable year; or

25 (2) the sum of the taxpayer's payroll factor

.188131.2

underscored material = new  
[bracketed material] = delete

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

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

15 (1) the taxpayer has invested in New Mexico in  
16 a taxable year beginning on or after January 1, 2013 but not  
17 after December 31, 2021, at least one billion dollars  
18 (\$1,000,000,000) in capital equipment and facility construction  
19 or renovation;

20 (2) the taxpayer has invested in New Mexico in  
21 a taxable year beginning on or after January 1, 2013 but not  
22 after December 31, 2021, at least five hundred million dollars  
23 (\$500,000,000) in capital equipment and facility construction  
24 or renovation; or

25 (3) the taxpayer has invested in New Mexico in

.188131.2

underscored material = new  
[bracketed material] = delete

1 a taxable year beginning on or after January 1, 2013 but not  
2 after December 31, 2021, at least two hundred fifty million  
3 dollars (\$250,000,000) in capital equipment and facility  
4 construction or renovation.

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

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

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

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

17 E. A taxpayer electing to have business income  
18 apportioned pursuant to Subsection C of this section shall not  
19 in the same taxable years for the same capital equipment claim  
20 a credit pursuant to the Investment Credit Act.

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

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

25 (2) "facility construction or renovation"

underscored material = new  
[bracketed material] = delete

1 means construction of a new facility specifically to house a  
2 manufacturing business activity or expansion or significant  
3 remodeling of an existing facility for manufacturing; and

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

7 [~~1~~] (a) construction;

8 [~~2~~] (b) farming;

9 [~~3~~] (c) power generation, except for  
10 electricity generation at a facility other than one for which  
11 both location approval and a certificate of convenience and  
12 necessity are required prior to commencing construction or  
13 operation of the facility, pursuant to the Public Utility Act;  
14 or

15 [~~4~~] (d) processing natural resources,  
16 including hydrocarbons."

17 SECTION 2. APPLICABILITY.--The provisions of Section 1 of  
18 this act apply to taxable years beginning on or after January  
19 1, 2013.

20 SECTION 3. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is January 1, 2013.