Uniform Division of Income for Tax Purposes Act, less allocations of net income from that amount to" and added "properly reported for federal income tax purposes plus, for partnerships, the amount of guaranteed payments other than premiums for health insurance paid by the partnership on behalf of a partner, less the net income or guaranteed payments properly allocated or made to"; added Subparagraphs D(1)(e); added Paragraph D(2); added a new Subsection E and redesignated former Subsections E and F as Subsections F and G, respectively; in Subsection F, deleted "at the same time and in the same amounts as the withholding required by Subsection B of Section 7-3A-3 NMSA 1978" and added "on forms and in the manner as determined by the department"; and added Subsections H and I.

Applicability. — Laws 2023, ch. 159, § 5 provided that the provisions of Laws 2023, ch. 159 apply to taxable years beginning on or after January 1, 2023.

ARTICLE 4
Division of Income for Tax Purposes

7-4-1. Short title.

Chapter 7, Article 4 NMSA 1978 may be cited as the "Uniform Division of Income for Tax Purposes Act".

History: 1953 Comp., § 72-15A-16, enacted by Laws 1965, ch. 203, § 1; 1981, ch. 37, § 47.

ANNOTATIONS

Law reviews. — For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction and application of Uniform Division of Income for Tax Purposes Act, 8 A.L.R.4th 934.

7-4-2. Definitions.

As used in the Uniform Division of Income for Tax Purposes Act:

A. "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and income from the disposition or liquidation of a business or segment of a business. "Business income" includes income from tangible and intangible property if the acquisition, management or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

B. "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "nonbusiness income" means all income other than business income;

F. "sales" means all gross receipts of the taxpayer not allocated under Sections 7-4-5 through 7-4-9 NMSA 1978 of the Uniform Division of Income for Tax Purposes Act;

G. "secretary" means the secretary of taxation and revenue or a division director delegated by the secretary; and

H. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

History: 1953 Comp., § 72-15A-17, enacted by Laws 1965, ch. 203, § 2; 1986, ch. 20, § 55; 1999, ch. 47, § 7.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection A inserted "income from the disposition or liquidation of a business or segment of a business. 'Business income'" and made minor stylistic changes.

I. GENERAL CONSIDERATION.

"Transactions and activity in the regular course of the taxpayer's trade or business" means business deals and the performance of a specific function in the normal, typical, customary or accustomed policy or procedure of the taxpayer's trade or business. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70; *Tipperary Corp. v. N.M. Bureau of Revenue*, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

II. CONSTITUTIONAL ISSUES.

Fairly apportioned tax constitutional. — When the apportioned tax is only on that portion of taxpayer's income that fairly represents the extent of taxpayer's business activities in this state, tax is not violative of the due process or commerce clauses of the

federal constitution. *Tipperary Corp. v. N.M. Bureau of Revenue*, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

Taxation of dividends from foreign subsidiary. — The right of a state to tax dividends from foreign subsidiaries must be considered in relation to the due process requirements that the income attributed to a state for tax purposes be rationally related to values connected with the taxing state. *F.W. Woolworth Co. v. Taxation & Revenue Dep't*, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

Taxation of income from foreign tax credit. — A foreign tax credit arising from the taxation by foreign nations of a corporation's foreign subsidiaries that had no unitary business relationship with the state, efforts by the state to tax this income "deemed received" - with respect to which the state contributed nothing - were held to contravene the due process clause. *F.W. Woolworth Co. v. Taxation & Revenue Dep't*, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

III. BUSINESS INCOME.

All income of business organization is not "business income"; business income must arise from the regular course of business. *Tipperary Corp. v. N.M. Bureau of Revenue*, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

Business income must arise from such transactions. — To constitute business income the income must arise from transactions and activity in the regular course of a trade or business. *McVean & Barlow, Inc. v. N.M. Bureau of Revenue*, 1975-NMCA-128, 88 N.M. 521, 543 P.2d 489, cert. denied, 89 N.M. 6, 546 P.2d 71.

Factors pertinent in determining if income is business income. — Pertinent in determining whether income arises from transactions in the regular course of business is the nature of the particular transaction and former practices of the business entity; also pertinent is how the income is used. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70; *Tipperary Corp. v. N.M. Bureau of Revenue*, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

Use of investment income. — The use to which a multistate corporation put its investment income was determinative of whether it was business income. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Determination of business income. — Use to which income is put determines whether it is business income. *Tipperary Corp. v. N.M. Bureau of Revenue*, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

Short-term investment income held business income. — Since a multistate corporation derived interest income from capital earned in its business, rather than having a large cash balance in the bank, purchasing short-term investments and highly liquid assets from which the interest was derived, money from which short-term investments was needed for future business activity, such investment was a specific function of the corporation, and that it was usual and customary in the corporation's business to follow this practice, whenever there was enough money or business income that was not immediately needed in the business, and therefore the investment income was business income. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Rent of part of office space held business income. — Although a multistate corporate taxpayer claimed that income derived from rent of 5% of its total office space was not "business income" because it was not in the business of renting real estate, the most reasonable inference to be drawn from the record is that rental of available office space was a customary procedure, done in the regular course of the taxpayer's business, and since there was no evidence in the record to contradict this inference, the rental income was held to be "business income." *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Income from sale of telephone poles by paper company held business income. — Since a multistate corporation manufactured wood and paper products from timber on land owned or leased by it, and sold some of its logs to telephone utilities for use as telephone poles and the sale of logs was a normal, customary procedure in the taxpayer's business for the year in question and had been for several years, the income arising therefrom was income arising from transactions and activity in the regular course of the taxpayer's trade or business. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

When coal lease sale in regular course of business. — Since taxpayer is in the business of exploration and development of oil, gas and minerals, the sale of the coal leases is in the regular course of this business. *Tipperary Corp. v. New Mexico Bureau of Revenue*, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

Coal lease sale taxable. — Since taxpayer's business is unitary and since a gain from the sale of its coal leases is business income under Subsection A of this section, this state can tax a percentage of this income. *Tipperary Corp. v. New Mexico Bureau of Revenue*, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078.

Income from coal dragline leases held business income. — Oil company's income from its dragline leases was business income because the leases generated substantial capital for the company's general business purposes, and the leases were ongoing, recurring transactions constituting a regular or customary portion of company's overall

business, which contributed to the company's economic enterprise as a whole. *Kewanee Indus., Inc. v. Reese*, 1993-NMSC-006, 114 N.M. 784, 845 P.2d 1238.

Income from liquidation of part of business held not business income. — Since the taxpayer was not in the business of buying and selling pipeline equipment and the transaction in question was a partial liquidation of taxpayer's business and a total cessation and liquidation of one facet of the business, the sale of equipment did not constitute an integral part of the regular trade or business operations of taxpayer and the proceeds thereof were not business income. *McVean & Barlow, Inc. v. N.M. Bureau of Revenue*, 1975-NMCA-128, 88 N.M. 521, 543 P.2d 489, cert. denied, 89 N.M. 6, 546 P.2d 71.

IV. UNITARY BUSINESS PRINCIPLE.

Underlying unitary business required. — The linchpin of apportionability for state income taxation of an interstate enterprise is the unitary-business principle. *F.W. Woolworth Co. v. Taxation & Revenue Dep't*, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

Derivation of dividend income from subsidiaries. — The potential to operate a company as part of a unitary business is not dispositive when, looking at the underlying economic realities of a unitary business, the dividend income from subsidiaries in fact is derived from unrelated business activity which constitutes a discrete business enterprise. *F.W. Woolworth Co. v. Taxation & Revenue Dep't*, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

Existence of underlying unitary business. — When, except for the type of occasional oversight - with respect to capital structure, major debt, and dividends - that any parent gives to an investment in a subsidiary, there is little or no integration of business activities or centralization of management of the parent company and its foreign subsidiaries, there is no underlying unitary business that would justify the state's taxing of dividends from the foreign subsidiaries. *F.W. Woolworth Co. v. Taxation & Revenue Dep't*, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

Multistate business may be unitary or independent. — A multistate business is a "unitary business" for income tax purposes when operations conducted in one state benefit and are in turn benefited by operations in another state, and if its various parts are interdependent and of mutual benefit so as to form one integral business rather than several business entities, it is unitary. On the other hand, if a multistate business enterprise is conducted in a way that one, some or all of the business operations outside New Mexico are independent of and do not contribute to the business operations within this state, the factors attributable to the outside activity may be excluded. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Taxpayer must show business independent to exclude income. — Where a multistate corporation challenged commissioner's allocation of certain interest, rent and gains to business income, but failed to produce evidence that its business activity outside of New Mexico was dependent or independent of its instate operations, or that the interest, rent and gains income was not an integral part of its business carried on in this state, no question was raised whether any of its income was nonbusiness income because there was no evidence that its activities were not part of a unitary business, and therefore the assessed additional corporate income tax was affirmed. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26), 161 A.L.R. Fed. 245.

7-4-3. Allocation and apportionment of income in general.

Except as otherwise provided by law any taxpayer having income which is taxable both within and without this state, other than the rendering of purely personal services by an individual shall allocate and apportion his net income as provided in the Uniform Division of Income for Tax Purposes Act.

History: 1953 Comp., § 72-15A-18, enacted by Laws 1965, ch. 203, § 3; 1981, ch. 37, § 48.

ANNOTATIONS

Cross references. — For income allocation and apportionment, *see* 7-2-11 NMSA 1978.

For Multistate Tax Compact, *see* 7-5-1 NMSA 1978 et seq.

Constitutionality of apportionment. — The United States Constitution does not impose any single method of apportionment on a multistate or multinational taxpayer's income. *NCR Corp. v. Taxation & Revenue Dep't*, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

Factors pertinent in determining if income is business income. — Pertinent in determining whether income arises from transactions in the regular course of business is the nature of the particular transaction and former practices of the business entity; also pertinent is how the income is used. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70 (specially concurring opinion).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 394, 456, 483, 491 to 493, 569 to 577, 581.

85 C.J.S. Taxation §§ 1694 et seq., 1715 et seq., 1756 to 1759.

7-4-4. When taxable in another state.

For purposes of allocation and apportionment of income under the Uniform Division of Income for Tax Purposes Act, a taxpayer is taxable in another state if:

A. in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

B. that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state does or does not.

History: 1953 Comp., § 72-15A-19, enacted by Laws 1965, ch. 203, § 4.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 4 effective January 1, 1966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 471, 542.

What suits at domicile of corporation involving corporate stock or rights and obligations incident thereto are in rem, jurisdiction in which may rest upon constructive service of process against nonresidents, 145 A.L.R. 1393.

Income tax on nonresident or on foreign corporation, 156 A.L.R. 1370.

84 C.J.S. Taxation §§ 38, 72, 92 to 93, 112 to 115, 165, 177 to 180; 85 C.J.S. Taxation §§ 1693, 1701 to 1705, 1715 to 1719.

7-4-5. Allocation of certain nonbusiness income.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in Sections 6 through 9 [7-4-6 to 7-4-9 NMSA 1978] of the Uniform Division of Income for Tax Purposes Act.

History: 1953 Comp., § 72-15A-20, enacted by Laws 1965, ch. 203, § 5.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 5 effective January 1, 1966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 195, 196, 365, 554, 572, 574, 659.

84 C.J.S. Taxation §§ 90, 112 to 115, 123 to 124, 149, 163 to 164; 85 C.J.S. Taxation §§ 1191, 1721 to 1735, 1719, 1756 to 1759.

7-4-6. Allocation of rents and royalties.

A. Net rents and royalties from real property located in this state are allocable to this state.

B. Net rents and royalties from tangible personal property are allocable to this state:

(1) if and to the extent that the property is utilized in this state; or

(2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

C. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

History: 1953 Comp., § 72-15A-21, enacted by Laws 1965, ch. 203, § 6.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 6 effective January 1, 1966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 190, 195, 196, 264, 265, 658 to 665.

Solid mineral royalty as real or personal property, 68 A.L.R.2d 728.

Effect of § 26 of Uniform Partnership Act as converting realty into personalty, 80 A.L.R.2d 1107.

84 C.J.S. Taxation §§ 92 to 94, 112 to 115.

7-4-7. Allocation of capital gains and losses.

A. Capital gains and losses from sales of real property located in this state are allocable to this state.

B. Capital gains and losses from sales of tangible personal property are allocable to this state if:

(1) the property had a situs in this state at the time of the sale; or

(2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

C. Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

History: 1953 Comp., § 72-15A-22, enacted by Laws 1965, ch. 203, § 7.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 7 effective January 1, 1966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 553 to 556.

Capital gain or loss on failure to exercise an option or privilege, 36 A.L.R.2d 1391.

Modern views as to capital gains or ordinary income treatment of profit on sale of subdivided realty which is asserted to be "capital asset" under § 1221 of the Internal Revenue Code of 1954 (26 USCS § 1221), 45 A.L.R. Fed. 292.

84 C.J.S. Taxation §§ 11, 148, 151 to 164, 172 to 173, 227, 231 to 234, 237, 404, 406, 419 to 420; 85 C.J.S. Taxation §§ 1721 to 1725.

7-4-8. Allocation of interest and dividends.

Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

History: 1953 Comp., § 72-15A-23, enacted by Laws 1965, ch. 203, § 8.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 8 effective January 1, 1966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 664, 665, 667, 677, 680.

84 C.J.S. Taxation §§ 227, 231 to 234, 237.

7-4-9. Allocation of patent and copyright royalties.

A. Patent and copyright royalties are allocable to this state:

(1) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

B. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

C. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

History: 1953 Comp., § 72-15A-24, enacted by Laws 1965, ch. 203, § 9.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 9 effective January 1, 1966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 664, 665, 667, 677, 680.

Power of state to tax royalties from patents, 55 A.L.R. 931.

84 C.J.S. Taxation §§ 227, 231 to 234, 237.

7-4-10. Apportionment of business income.

A. Except as provided in Subsections B and C of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator

of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. If eighty percent or more of the New Mexico numerators of the property and payroll factors for a filing group, or for a taxpayer that is not a member of a filing group, are employed in manufacturing or operating a computer processing facility, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year.

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

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

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

(2) if the election is made for a taxable year beginning on or after January 1, 2020, to the taxable year in which the election is made and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by Subsection B or C of this section has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months; and

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

E. For purposes of this section:

(1) "filing group" means "filing group" as that term is defined in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978];

(2) "headquarters operation" means:

(a) the center of operations of a business: 1) where corporate staff employees are physically employed; 2) where the centralized functions are primarily performed, including administrative, planning, managerial, human resources,

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

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

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

(a) construction;

(b) farming;

(c) power generation; provided that for taxable years beginning prior to January 1, 2024, "manufacturing" includes electricity generation at a facility that does not require location approval and a certificate of convenience and necessity prior to commencing construction or operation of the facility pursuant to the Public Utility Act [62-13-1 NMSA 1978];

(d) processing natural resources, including hydrocarbons; or

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

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

History: 1978 Comp., § 7-4-10, enacted by Laws 1993, ch. 153, § 1; 2001, ch. 57, § 1; 2001, ch. 284, § 3; 2001, ch. 337, § 1; 2002, ch. 37, § 6; 2009, ch. 147, § 1; 2013, ch. 160, § 7; 2015 (1st S.S.), ch. 2, § 6; 2019, ch. 270, § 21; 2020, ch. 80, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 153, § 1, repealed 7-4-10 NMSA 1978, as enacted by Laws 1985, ch. 203, § 10, and enacted a new section, effective June 18, 1993.

Repeals. — Laws 2001, ch. 337, § 7 repealed Laws 1999, ch. 35, § 1, which would have repealed this section, effective January 1, 2003.

Laws 2001, ch. 57, § 1 and Laws 2001, ch. 284, § 3 were repealed by Laws 2002, ch. 37, § 9, effective May 15, 2002.

The 2020 amendment, effective May 20, 2020, revised the definition of "manufacturing" as used in the Uniform Division of Income for Tax Purposes Act; in Subsection B, after "manufacturing", added "or operating a computer processing facility"; and in Subsection E, Paragraph E(3), in the introductory clause, after "means", deleted "operating a computer processing facility or", and in Subparagraph E(3)(c), deleted "electric", and after "power generation", added "provided that for taxable years beginning prior to January 1, 2024, ‘manufacturing’ includes electricity generation at a facility that does not require location approval and a certificate of convenience and necessity prior to commencing construction or operation of the facility pursuant to the Public Utility Act".

Applicability. — Laws 2020, ch. 80, § 16 provided that the provisions of Laws 2020, ch. 80, § 3 apply to taxable years beginning on and after January 1, 2020.

The 2019 amendment, effective January 1, 2020, completely rewrote provisions related to apportioning business income to this state; deleted former Subsections B through D and added new Subsections B through D; and in Subsection E, added new Paragraph E(1) and redesignated former Paragraphs E(1) and E(2) as Paragraphs E(2) and E(3), in Paragraph E(3), in the introductory clause, after "means", added "operating a computer processing facility or", in Subparagraph E(3)(c), after the subparagraph designation, added "electric", and after "generation;", deleted "except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act; or", and added new Subparagraph E(3)(e) and Paragraph E(4).

Applicability. — Laws 2019, ch. 270, § 59 provided that the provisions of Sections 16 through 22 and 58 of Laws 2019, ch. 270 apply to taxable years beginning on or after January 1, 2020.

The 2015 (1st S.S.) amendment, effective September 6, 2015, provided for taxpayers whose principal business activity in New Mexico is a headquarters operation to elect to have business income apportioned to this state, and added the definition for "headquarters operation"; in Subsection A, after "as provided in", deleted "Subsection B" and added "Subsections B and C"; in the introductory sentence of Subsection B, after "principal business activity", added "in New Mexico"; added Subsection C and redesignated the succeeding subsections accordingly; in Subsection D, after "Subsection B", added "or C", and added the last sentence; in Subsection E, added a new Paragraph (1), added the paragraph designation "(2)" preceding "‘manufacturing’", and redesignated former Paragraphs (1), (2), (3) and (4) of Subsection D as Subparagraphs E(2)(a), (b), (c) and (d), respectively.

The 2013 amendment, effective January 1, 2014, phased in the use of a single sales factor by certain taxpayers in apportioning corporate income to the state over five years; deleted former Subsection B, which provided for the apportionment of business income by manufacturers, the procedure for electing the method of apportionment, and limitations on the election of a method of apportionment; and added Subsections B and C.

The 2009 amendment, effective June 19, 2009, in Paragraph (3) of Subsection C, deleted "and the Electric Utility Industry Restructuring Act of 1999".

The 2002 amendment, effective May 15, 2002, inserted the exception in Subsection C(3).

The 2001 amendment, effective June 15, 2001, deleted preliminary language concerning the purpose of the section from former Subsection A; added current Subsection A; redesignated former Subsection A as Subsection B; inserted "For taxable years beginning prior to January 1, 2011" to Subsection B; and deleted former Subsection B concerning apportion of business income to the state.

Constitutionality of apportionment. — The United States Constitution does not impose any single method of apportionment on a multistate or multinational taxpayer's income. *NCR Corp. v. Taxation & Revenue Dep't*, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

Constitutionality of formula applied to taxation of dividends received from foreign subsidiaries. — Taxation of dividends from foreign subsidiaries under the separate corporate entity method violates the commerce clause of the United States Constitution, and application of the *Detroit* formula is an insufficient remedy. *Conoco, Inc. v. N.M. Taxation & Revenue Dep't*, 1997-NMSC-005, 122 N.M. 736, 931 P.2d 730, cert. denied, 521 U.S. 1112, 117 S. Ct. 2497, 138 L. Ed. 2d 1003 (1997), *rev'g*1997-NMCA-004, 122 N.M. 745, 931 P.2d 739.

Standard for challenge of apportionment. — A taxpayer seeking to invalidate a state's apportionment formula must show by clear and cogent evidence that the income attributed to the state is in fact disproportionate to the business transacted in that state. *NCR Corp. v. Taxation & Revenue Dep't*, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

Apportionment of multinational income. — Under this statutory formula, the income attributable to the state is determined by multiplying the taxpayer's gross income by a fraction which represents the ratio of sales, payroll, and property located in the state to the total sales, payroll, and property of the corporation. This does not violate the Foreign Commerce Clause of the U.S. Constitution by taxing foreign income because the tax in question is not a tax on any of the domestic corporation's foreign subsidiaries; instead,

the tax falls upon an apportioned share of the domestic corporation's income which it receives in the form of royalties, interest, and dividends from its unitary foreign subsidiaries. The fact that the tax is apportioned in part upon the domestic corporation's foreign income sources does not constitute a bar to state taxation. *NCR Corp. v. Taxation & Revenue Dep't*, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

Taxation of undistributed earnings. — Because its subsidiaries with Subpart F (26 U.S.C. § 952) income remain part of the parent's unitary business and the federal government requires inclusion of the parent's Subpart F income in gross income, under the unitary business principle, the state assessments in question here do not violate the United States or New Mexico Constitutions, are fairly apportioned, and tax a fair portion of such income even though some of the income is undistributed subsidiary earnings. *NCR Corp. v. Taxation & Revenue Dep't*, 1993-NMCA-060, 115 N.M. 612, 856 P.2d 982, cert. denied, 115 N.M. 677, 857 P.2d 788, cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

7-4-11. Property factor for apportionment of business income.

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

History: 1953 Comp., § 72-15A-26, enacted by Laws 1965, ch. 203, § 11.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 11 effective January 1, 1966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 190, 202, 208, 218, 220, 658 to 665.

Situs as between different states or countries of tangible chattels for purposes of property taxation, 110 A.L.R. 707.

84 C.J.S. Taxation §§ 92 to 94, 112 to 115, 153 to 157, 172 to 173, 397 to 401, 416.

7-4-12. Valuation of property for inclusion in property factor.

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rate is the

annual rental paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

History: 1953 Comp., § 72-15A-27, enacted by Laws 1965, ch. 203, § 12.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 12 effective January 1, 1966.

7-4-13. Determination of average value of property for inclusion in property factor.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

History: 1953 Comp., § 72-15A-28, enacted by Laws 1965, ch. 203, § 13; 1986, ch. 20, § 56.

7-4-14. Payroll factor for apportionment of business income.

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

History: 1953 Comp., § 72-15A-29, enacted by Laws 1965, ch. 203, § 14.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 14 effective January 1, 1966.

7-4-15. Determination of compensation for inclusion in payroll factor.

Compensation is paid in this state if:

A. the individual's service is performed entirely within the state; or

B. the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

C. some of the service is performed in the state and:

(1) the base of operations, or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

History: 1953 Comp., § 72-15A-30, enacted by Laws 1965, ch. 203, § 15.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 15 effective January 1, 1966.

7-4-16. Sales factor for apportionment of business income.

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

History: 1953 Comp., § 72-15A-31, enacted by Laws 1965, ch. 203, § 16.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 16 effective January 1, 1966.

7-4-17. Determination of sales in this state of tangible personal property for inclusion in sales factor.

Sales of tangible personal property are in this state if:

A. the property is delivered or shipped to a purchaser other than the United States government within this state regardless of the f. o. b. point or other conditions of the sale; or

B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and:

(1) the purchaser is the United States government; or

(2) the taxpayer:

(a) is not taxable in the state of the purchaser; and

(b) did not make an election for apportionment of business income pursuant to Subsection B or C of Section 7-4-10 NMSA 1978.

History: 1953 Comp., § 72-15A-32, enacted by Laws 1965, ch. 203, § 17; 2013, ch. 160, § 8; 2015 (1st S.S.), ch. 2, § 7.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective September 6, 2015, amended the qualifications for the determination of sales of tangible personal property in this state; in Subparagraph B(2)(b), after "Subsection B", added "or C".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that Laws 2015 (1st S.S.), ch. 2, § 7 apply to taxable years beginning on or after January 1, 2015.

The 2013 amendment, effective January 1, 2014, excluded certain sales from being apportioned as sales in New Mexico; and added Subparagraph (b) of Paragraph (2) of Subsection B.

Applicability. — Laws 2013, ch. 160, § 14 provided that Laws 2013, ch. 160, § 8 applies to taxable years beginning on or after January 1, 2014.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 195, 196.

84 C.J.S. Taxation §§ 92 to 94, 112 to 115, 155 to 157, 172 to 173, 397 to 401, 416.

7-4-18. Determination of sales in this state of other than tangible personal property for inclusion in sales factor.

A. Sales, other than sales described in Section 7-4-17 NMSA 1978, are in this state:

(1) in the case of sale, rental, lease or license of real property, if and to the extent the real property is located in this state;

(2) in the case of rental, lease or license of tangible personal property, if and to the extent the tangible personal property is located in this state;

(3) in the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(4) in the case of sale, rental, lease or license of intangible property, if and to the extent the intangible property is used in this state.

B. If the state or states of assignment under Subsection A of this section cannot be determined, the state or states of assignment shall be reasonably approximated.

C. If the taxpayer is not taxable in a state to which a sale is assigned pursuant to Subsection A of this section or if the state of assignment cannot be determined or reasonably approximated pursuant to Subsection B of this section, that sale shall be excluded from the numerator and denominator of the sales factor.

D. The department may promulgate rules as necessary or appropriate to carry out the purposes of this section.

History: 1953 Comp., § 72-15A-33, enacted by Laws 1965, ch. 203, § 18; 2019, ch. 270, § 22.

ANNOTATIONS

The 2019 amendment, effective January 1, 2020, revised provisions related to the determination of sales in this state; in the section heading, added "services and", and deleted "than tangible personal"; in Subsection A, after "other than sales", deleted "of tangible personal property" and added "described in Section 7-4-17 NMSA 1978", and added Paragraphs A(1) through A(4); and deleted former Subsections A and B and added new Subsections B through D.

Applicability. — Laws 2019, ch. 270, § 59 provided that the provisions of Sections 16 through 22 and 58 of Laws 2019, ch. 270 apply to taxable years beginning on or after January 1, 2020.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 195, 196.

84 C.J.S. Taxation §§ 92 to 94, 112 to 115, 155 to 157, 172 to 173, 397 to 401, 416.

7-4-19. Equitable adjustment of standard allocation or apportionment.

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

A. separate accounting;

B. the exclusion of any one or more of the factors;

C. the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

D. the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History: 1953 Comp., § 72-15A-34, enacted by Laws 1965, ch. 203, § 19; 1977, ch. 249, § 46; 1986, ch. 20, § 57.

ANNOTATIONS

Taxpayer's burden to show when modification of formula necessary. — Since there was nothing arbitrary or unreasonable about the department's conclusion that dividend income is apportionable without modification of the allocation and apportionment formula, the taxpayer bears the burden of showing by clear and cogent evidence that modification of the formula is necessary. *Taxation & Revenue Dep't v. F.W. Woolworth Co*., 1981-NMSC-008, 95 N.M. 519, 624 P.2d 28, *rev'd on other grounds*, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, *reh'g denied*, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

Hearing officer's admission of closing agreement into evidence was not error. — Where taxpayer challenged the use of the department of taxation and revenue's (department) special multistate trucking apportionment regulation to calculate the portion of taxpayer's multistate sales revenue attributable to taxpayer's New Mexico business operations, and where the administrative hearing officer (AHO) found that taxpayer established by clear and cogent evidence that the department's use of the special mileage formula to determine New Mexico's share of taxpayer's multistate revenue for income tax purposes resulted in a gross distortion of taxpayer's actual business activities in New Mexico, contrary to the fair apportionment requirement of the United States constitution's commerce clause and New Mexico's Uniform Division of Income for Tax Purposes Act (UDIPTA), NMSA 1978, §§ 7-4-1 to 7-4-21, and that taxpayer was entitled to equitable apportionment and that the state-to-state volume method proposed by taxpayer was reasonable, and where the department appealed, claiming that the AHO's admission of a closing agreement for prior tax years was reversible error, there was no error where the AHO specifically explained that the closing agreement was admitted into evidence as relevant to show the origins of the state-to-state volume method proposed by taxpayer and relevant to rebut the department's argument that taxpayer made up the state-to-state volume method without any foundation. *United Parcel Serv. v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-064.

Taxpayer entitled to equitable apportionment. — Where taxpayer challenged the use of the department of taxation and revenue's (department) special multistate trucking apportionment regulation to calculate the portion of taxpayer's multistate sales revenue attributable to taxpayer's New Mexico business operations, and where the administrative hearing officer (AHO) found that taxpayer established by clear and cogent evidence that the department's use of the special mileage formula to determine New Mexico's share of taxpayer's multistate revenue for income tax purposes resulted in a gross distortion of taxpayer's actual business activities in New Mexico, contrary to the fair apportionment requirement of the United States constitution's commerce clause and New Mexico's Uniform Division of Income for Tax Purposes Act (UDIPTA), NMSA 1978, §§ 7-4-1 to 7-4-21, and that taxpayer was entitled to equitable apportionment and that the state-to-state volume method proposed by taxpayer was reasonable, and where

the department appealed, claiming that the AHO erred as a matter of law in refusing to apply the department formula to taxpayer because its special mileage formula for apportioning the income of taxpayer for state corporate tax purposes has been found to be a constitutional method of apportioning the revenue of interstate carriers, the AHO did not err in departing from the department's method of apportionment, because NMSA 1978, § 7-4-19(D), provides that if the taxpayer carries its burden, the taxpayer may demand, or the department may require, the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income, so long as the alternative method is reasonable, and the AHO's finding that taxpayer's state-to-state volume method was a reasonable method of allocating taxpayer's revenue was supported by substantial evidence in the record. *United Parcel Serv. v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-064.

7-4-20. Agreements authorized in unusual cases.

In circumstances within the scope of Section 7-4-19 NMSA 1978 and in other circumstances where the revenues of this state would not be adversely affected, the secretary is authorized to enter into an agreement in writing with any person with respect to apportionment and allocation of that person's income. Except upon a showing of fraud or misrepresentation of a material fact or a change in the statutory law, such agreement shall be conclusive. Any agreement, however, may be terminated by either party by written notice thereof to the other party at least ninety days before the beginning of the taxable year to which the termination applies.

History: 1953 Comp., § 72-15A-35, enacted by Laws 1965, ch. 203, § 20; 1981, ch. 37, § 49; 1986, ch. 20, § 58.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 7, 597; 72 Am. Jur. 2d State and Local Taxation § 833.

7-4-21. Construction of act.

The Uniform Division of Income for Tax Purposes Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1953 Comp., § 72-15A-36, enacted by Laws 1965, ch. 203, § 21.

ANNOTATIONS

Effective dates. — Laws 1965, ch. 203, § 22 made Laws 1965, ch. 203, § 21 effective January 1, 1966.