

1 SENATE BILL 181

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

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; RESTORING CERTAIN INCOME IN THE AMOUNT OF  
12 INCOME USED TO DETERMINE CORPORATE INCOME TAX LIABILITY;  
13 CLARIFYING AN AMOUNT OF CERTAIN INTANGIBLE INCOME USED TO  
14 DETERMINE THAT LIABILITY; INCLUDING CORPORATIONS THAT HAVE  
15 TWENTY PERCENT OR MORE OF THEIR PROPERTY, PAYROLL AND SALES  
16 SOURCED TO LOCATIONS WITHIN THE UNITED STATES OR ITS  
17 POSSESSIONS OR TERRITORIES IN A WATER'S EDGE GROUP.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 7-2A-2 NMSA 1978 (being Laws 1986,  
21 Chapter 20, Section 33, as amended) is amended to read:

22 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate  
23 Income and Franchise Tax Act and unless the context requires  
24 otherwise:

25 A. "bank" means any national bank, national banking

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1 association, state bank or bank holding company;

2 B. "apportioned net income" or "apportioned net  
3 loss" means net income allocated and apportioned to New Mexico  
4 pursuant to the provisions of the Corporate Income and  
5 Franchise Tax Act or the Uniform Division of Income for Tax  
6 Purposes Act, but excluding from the sales factor any sales  
7 that represent intercompany transactions between members of the  
8 filing group;

9 C. "base income" means the federal taxable income  
10 or the federal net operating loss of a corporation for the  
11 taxable year calculated pursuant to the Internal Revenue Code,  
12 after special deductions provided in Sections 241 through 249  
13 of the Internal Revenue Code but without any deduction for net  
14 operating losses, as if the corporation filed a federal tax  
15 return as a separate domestic entity, modified as follows:

16 (1) adding to that income:

17 (a) interest received on a state or  
18 local bond exempt under the Internal Revenue Code;

19 (b) the amount of any deduction claimed  
20 in calculating taxable income for all expenses and costs  
21 directly or indirectly paid, accrued or incurred to a captive  
22 real estate investment trust;

23 (c) the amount of any deduction, other  
24 than for premiums, for amounts paid directly or indirectly to a  
25 commonly controlled entity that is exempt from corporate income

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1 tax pursuant to Section 7-2A-4 NMSA 1978; and

2 (d) for taxable years beginning on or  
3 after January 1, 2023, an amount equal to the amount of credit  
4 claimed and allowed for that year pursuant to Section 7-3A-10  
5 NMSA 1978 with respect to the distributed net income of a pass-  
6 through entity;

7 (2) subtracting from that income:

8 (a) income from obligations of the  
9 United States net of expenses incurred to earn that income;

10 (b) other amounts that the state is  
11 prohibited from taxing because of the laws or constitution of  
12 this state or the United States net of any related expenses;

13 and

14 ~~[(c) an amount equal to one hundred~~  
15 ~~percent of the subpart F income, as that term is defined in~~  
16 ~~Section 952 of the Internal Revenue Code, as that section may~~  
17 ~~be amended or renumbered, included in the income of the~~  
18 ~~corporation; and~~

19 ~~(d)]~~ (c) an amount equal to one hundred  
20 percent of the income of the corporation under Section 951A of  
21 the Internal Revenue Code, ~~[after allowing the deduction~~  
22 ~~provided in]~~ less the amount deducted pursuant to Section 250  
23 of the Internal Revenue Code;

24 (3) making other adjustments deemed necessary  
25 to properly reflect income of the unitary group, including

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1 attribution of income or expense related to unitary assets held  
2 by related corporations that are not part of the filing group;  
3 and

4 (4) for a taxpayer that conducts a lawful  
5 business pursuant to the laws of this state, excludes an amount  
6 equal to any expenditure that is eligible to be claimed as a  
7 federal income tax deduction but is disallowed pursuant to  
8 Section 280E of the Internal Revenue Code, as that section may  
9 be amended or renumbered;

10 D. "captive real estate investment trust" means a  
11 corporation, trust or association taxed as a real estate  
12 investment trust pursuant to Section 857 of the Internal  
13 Revenue Code, the shares or beneficial interests of which are  
14 not regularly traded on an established securities market;  
15 provided that more than fifty percent of any class of  
16 beneficial interests or shares of the real estate investment  
17 trust are owned directly, indirectly or constructively by the  
18 taxpayer during all or a part of the taxpayer's taxable year;

19 E. "common ownership" means the direct or indirect  
20 control or ownership of more than fifty percent of the  
21 outstanding voting stock, ownership of which is determined  
22 pursuant to Section 1563 of the Internal Revenue Code, as that  
23 section may be amended or renumbered, of:

24 (1) a parent-subsidiary controlled group as  
25 defined in Section 1563 of the Internal Revenue Code, except

1 that fifty percent shall be substituted for eighty percent;

2 (2) a brother-sister controlled group as  
3 defined in Section 1563 of the Internal Revenue Code; or

4 (3) three or more corporations each of which  
5 is a member of a group of corporations described in Paragraph  
6 (1) or (2) of this subsection, and one of which is:

7 (a) a common parent corporation included  
8 in a group of corporations described in Paragraph (1) of this  
9 subsection; and

10 (b) included in a group of corporations  
11 described in Paragraph (2) of this subsection;

12 F. "consolidated group" means the group of entities  
13 properly filing a federal consolidated return under the  
14 Internal Revenue Code for the taxable year;

15 G. "corporation" means corporations, joint stock  
16 companies, real estate trusts organized and operated under the  
17 Real Estate Trust Act, financial corporations and banks, other  
18 business associations and, for corporate income tax purposes,  
19 partnerships and limited liability companies taxed as  
20 corporations under the Internal Revenue Code;

21 H. "department" means the taxation and revenue  
22 department, the secretary of taxation and revenue or any  
23 employee of the department exercising authority lawfully  
24 delegated to that employee by the secretary;

25 I. "filing group" means a group of corporations

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1 properly included in a return pursuant to Section 7-2A-8.3 NMSA  
2 1978 for a particular taxable year;

3 J. "fiscal year" means any accounting period of  
4 twelve months ending on the last day of any month other than  
5 December;

6 K. "grandfathered net operating loss carryover"  
7 means:

8 (1) the amount of net loss properly reported  
9 to New Mexico for taxable years beginning January 1, 2013 and  
10 prior to January 1, 2020 as part of a timely filed original  
11 return, or an amended return for those taxable years filed  
12 prior to January 1, 2020, to the extent such loss can be  
13 attributed to one or more corporations that are properly  
14 included in the taxpayer's return for the first taxable year  
15 beginning on or after January 1, 2020;

16 (2) reduced by:

17 (a) adding back deductions that were  
18 taken by the corporation or corporations for royalties or  
19 interest paid to one or more related corporations, but only to  
20 the extent that such adjustment would not create a net loss for  
21 such related corporations; and

22 (b) the amount of net operating loss  
23 deductions taken prior to January 1, 2020 that would be charged  
24 against those losses consistent with the Internal Revenue Code  
25 and provisions of the Corporate Income and Franchise Tax Act

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1 applicable to the year of the deduction; and

2 (3) apportioned to New Mexico using the  
3 apportionment factors that can properly be attributed to the  
4 corporation or corporations for the year of the net loss;

5 L. "Internal Revenue Code" means the United States  
6 Internal Revenue Code of 1986, as amended;

7 M. "net income" means:

8 (1) the base income of a corporation properly  
9 filing a tax return as a separate entity; or

10 (2) the combined base income and losses of  
11 corporations that are part of a filing group that is computed  
12 after eliminating intercompany income and expense in a manner  
13 consistent with the consolidated filing requirements of the  
14 Internal Revenue Code and the Corporate Income and Franchise  
15 Tax Act;

16 N. "net operating loss carryover" means the  
17 apportioned net loss properly reported on an original or  
18 amended tax return for taxable years beginning on or after  
19 January 1, 2020 by the taxpayer:

20 (1) plus:

21 (a) the portion of an apportioned net  
22 loss properly reported to New Mexico for a taxable year  
23 beginning on or after January 1, 2020, on a separate year  
24 return, to the extent the taxpayer would have been entitled to  
25 include the portion of such apportioned net loss in the

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1 taxpayer's consolidated net operating loss carryforward under  
2 the Internal Revenue Code if the taxpayer filed a consolidated  
3 federal return; and

4 (b) the taxpayer's grandfathered net  
5 operating loss carryover; and

6 (2) minus:

7 (a) the amount of the net operating loss  
8 carryover attributed to an entity that has left the filing  
9 group, computed in a manner consistent with the consolidated  
10 filing requirements of the Internal Revenue Code and applicable  
11 regulations, as if the taxpayer were filing a consolidated  
12 return; and

13 (b) the amount of net operating loss  
14 deductions properly taken by the taxpayer;

15 O. "net operating loss deduction" means the portion  
16 of the net operating loss carryover that may be deducted from  
17 the taxpayer's apportioned net income under the Internal  
18 Revenue Code as of January 1, 2018 for the taxable year in  
19 which the deduction is taken, including the eighty percent  
20 limitation of Section 172(a) of the Internal Revenue Code as of  
21 January 1, 2018 calculated on the basis of the taxpayer's  
22 apportioned net income;

23 P. "person" means any individual, estate, trust,  
24 receiver, cooperative association, club, corporation, company,  
25 firm, partnership, limited liability company, joint venture,

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1 syndicate or other association; "person" also means, to the  
2 extent permitted by law, any federal, state or other  
3 governmental unit or subdivision or agency, department or  
4 instrumentality thereof;

5 Q. "real estate investment trust" has the meaning  
6 ascribed to the term in Section 856 of the Internal Revenue  
7 Code, as that section may be amended or renumbered;

8 R. "related corporation" means a corporation that  
9 is under common ownership with one or more corporations but  
10 that is not included in the same tax return;

11 S. "return" means any tax or information return,  
12 including a water's-edge or worldwide combined return, a  
13 consolidated return, a declaration of estimated tax or a claim  
14 for refund, including any amendments or supplements to the  
15 return, required or permitted pursuant to a law subject to  
16 administration and enforcement pursuant to the Tax  
17 Administration Act and filed with the department by or on  
18 behalf of any person;

19 T. "secretary" means the secretary of taxation and  
20 revenue or the secretary's delegate;

21 U. "separate year return" means a properly filed  
22 original or amended return for a taxable year beginning on or  
23 after January 1, 2020 by a taxpayer reporting a loss, a portion  
24 of which is claimed as part of the net operating loss carryover  
25 by another taxpayer in a subsequent return period;

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1           V. "state" means any state of the United States,  
2 the District of Columbia, the commonwealth of Puerto Rico, any  
3 territory or possession of the United States or political  
4 subdivision thereof or any political subdivision of a foreign  
5 country;

6           W. "state or local bond" means a bond issued by a  
7 state other than New Mexico or by a local government other than  
8 one of New Mexico's political subdivisions, the interest from  
9 which is excluded from income for federal income tax purposes  
10 under Section 103 of the Internal Revenue Code, as that section  
11 may be amended or renumbered;

12           X. "taxable income" means a taxpayer's apportioned  
13 net income minus the net operating loss deduction for the  
14 taxable year;

15           Y. "taxable year" means the calendar year or fiscal  
16 year upon the basis of which the net income is computed under  
17 the Corporate Income and Franchise Tax Act and includes, in the  
18 case of the return made for a fractional part of a year under  
19 the provisions of that act, the period for which the return is  
20 made;

21           Z. "taxpayer" means any corporation or group of  
22 corporations filing a return pursuant to Section 7-2A-8.3 NMSA  
23 1978 subject to the taxes imposed by the Corporate Income and  
24 Franchise Tax Act;

25           AA. "unitary group" means a group of two or more

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1 corporations, including a captive real estate investment trust,  
2 but not including an S corporation, an insurance company  
3 subject to the provisions of the New Mexico Insurance Code, an  
4 insurance company that would be subject to the New Mexico  
5 Insurance Code if the insurance company engaged in business in  
6 this state or a real estate investment trust that is not a  
7 captive real estate investment trust, that are:

8 (1) related through common ownership; and

9 (2) economically interdependent with one

10 another as demonstrated by the following factors:

11 (a) centralized management;

12 (b) functional integration; and

13 (c) economies of scale;

14 BB. "water's-edge group" means all corporations  
15 that are part of a unitary group, except:

16 (1) corporations that are exempt from  
17 corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

18 (2) corporations ~~[wherever]~~ organized or  
19 incorporated outside the United States or its possessions or  
20 territories that have less than twenty percent of their  
21 property, payroll and sales sourced to locations within the  
22 United States, following the sourcing rules of the Uniform  
23 Division of Income for Tax Purposes Act; and

24 CC. "worldwide combined group" means all members of  
25 a unitary group, except members that are exempt from corporate

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1 income tax pursuant to Section 7-2A-4 NMSA 1978, irrespective  
2 of the country in which the corporations are incorporated or  
3 conduct business activity."

4 SECTION 2. APPLICABILITY.--The provisions of this act  
5 apply to taxable years beginning on or after January 1, 2025.