

1 SENATE BILL 151

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

4 Peter Wirth and Cristina Parajón and Heather Berghmans  
5 and Natalie Figueroa

10 AN ACT

11 RELATING TO TAXATION; DECOUPLING FROM CERTAIN PROVISIONS OF  
12 FEDERAL LAW RELATING TO CORPORATE INCOME TAX BY AMENDING THE  
13 DEFINITION OF "BASE INCOME" IN THE CORPORATE INCOME AND  
14 FRANCHISE TAX ACT TO CONFORM TO THE FEDERAL INCLUSION OF  
15 CERTAIN INCOME OF CONTROLLED FOREIGN CORPORATIONS AND  
16 SUBTRACTING AMOUNTS DEDUCTED FOR BONUS DEPRECIATION AND  
17 INTEREST EXPENSES; PROVIDING THAT APPORTIONMENT RULES APPLY TO  
18 ATTRIBUTED INCOME FROM A CONTROLLED FOREIGN CORPORATION.

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

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

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

.233165.5

underscored material = new  
[bracketed material] = delete

1                   A. "bank" means any national bank, national banking  
2 association, state bank or bank holding company;

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

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

17                   (1) adding to that income:

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

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

24                    (c) the amount of any deduction, other  
25 than for premiums, for amounts paid directly or indirectly to a

.233165.5

underscored material = new  
[bracketed material] = delete

commonly controlled entity that is exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

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

(2) subtracting from that income:

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

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

[and

(c) ~~an amount equal to one hundred percent of the income of the corporation under Section 951A of the Internal Revenue Code, less the amount deducted pursuant to Section 250 of the Internal Revenue Code;~~]

(c) the amount of any deduction taken pursuant to Sections 168(k) and 168(n) of the Internal Revenue Code in excess of the deduction amount that would have been allowed by Sections 168(a) through 168(j) of the Internal Revenue Code; and

(d) the amount of additional interest deducted as a result of the changes to Subparagraph (A) of

.233165.5

Section 163(j)(8) of the Internal Revenue Code made by Section 70303 of Public Law 119-21; provided that such interest shall be eligible for the carryforward provisions of Section 163(j)(2) of the Internal Revenue Code;

(3) making other adjustments deemed necessary to properly reflect income of the unitary group, including attribution of income or expense related to unitary assets held by related corporations that are not part of the filing group; and

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

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

E. "common ownership" means the direct or indirect

control or ownership of more than fifty percent of the outstanding voting stock, ownership of which is determined pursuant to Section 1563 of the Internal Revenue Code, as that section may be amended or renumbered, of:

(1) a parent-subsidiary controlled group as defined in Section 1563 of the Internal Revenue Code, except that fifty percent shall be substituted for eighty percent;

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

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

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

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

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

G. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act, financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships and limited liability companies taxed as

1 corporations under the Internal Revenue Code;

2                   H. "department" means the taxation and revenue  
3 department, the secretary of taxation and revenue or any  
4 employee of the department exercising authority lawfully  
5 delegated to that employee by the secretary;

6                   I. "filing group" means a group of corporations  
7 properly included in a return pursuant to Section 7-2A-8.3 NMSA  
8 1978 for a particular taxable year;

9                   J. "fiscal year" means any accounting period of  
10 twelve months ending on the last day of any month other than  
11 December;

12                   K. "grandfathered net operating loss carryover"  
13 means:

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

22                   (2) reduced by:

23                   (a) adding back deductions that were  
24 taken by the corporation or corporations for royalties or  
25 interest paid to one or more related corporations, but only to

1 the extent that such adjustment would not create a net loss for  
2 such related corporations; and

3 (b) the amount of net operating loss  
4 deductions taken prior to January 1, 2020 that would be charged  
5 against those losses consistent with the Internal Revenue Code  
6 and provisions of the Corporate Income and Franchise Tax Act  
7 applicable to the year of the deduction; and

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

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

13 M. "net income" means:

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

16 (2) the combined base income and losses of  
17 corporations that are part of a filing group that is computed  
18 after eliminating intercompany income and expense in a manner  
19 consistent with the consolidated filing requirements of the  
20 Internal Revenue Code and the Corporate Income and Franchise  
21 Tax Act;

22 N. "net operating loss carryover" means the  
23 apportioned net loss properly reported on an original or  
24 amended tax return for taxable years beginning on or after  
25 January 1, 2020 by the taxpayer:

- (1) plus:
  - (a) the portion of an apportioned net loss properly reported to New Mexico for a taxable year beginning on or after January 1, 2020, on a separate year return, to the extent the taxpayer would have been entitled to include the portion of such apportioned net loss in the taxpayer's consolidated net operating loss carryforward under the Internal Revenue Code if the taxpayer filed a consolidated federal return; and

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

(2) minus:

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

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

0. "net operating loss deduction" means the portion of the net operating loss carryover that may be deducted from the taxpayer's apportioned net income under the Internal Revenue Code as of January 1, 2018 for the taxable year in which the deduction is taken, including the eighty percent

1 limitation of Section 172(a) of the Internal Revenue Code as of  
2 January 1, 2018 calculated on the basis of the taxpayer's  
3 apportioned net income;

4 P. "person" means any individual, estate, trust,  
5 receiver, cooperative association, club, corporation, company,  
6 firm, partnership, limited liability company, joint venture,  
7 syndicate or other association; "person" also means, to the  
8 extent permitted by law, any federal, state or other  
9 governmental unit or subdivision or agency, department or  
10 instrumentality thereof;

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

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

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

25 T. "secretary" means the secretary of taxation and

.233165.5

1 revenue or the secretary's delegate;

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

7                   V. "state" means any state of the United States,  
8 the District of Columbia, the commonwealth of Puerto Rico, any  
9 territory or possession of the United States or political  
10 subdivision thereof or any political subdivision of a foreign  
11 country;

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

18                  X. "taxable income" means a taxpayer's apportioned  
19 net income minus the net operating loss deduction for the  
20 taxable year;

21                  Y. "taxable year" means the calendar year or fiscal  
22 year upon the basis of which the net income is computed under  
23 the Corporate Income and Franchise Tax Act and includes, in the  
24 case of the return made for a fractional part of a year under  
25 the provisions of that act, the period for which the return is

.233165.5

1 made;

2                   Z. "taxpayer" means any corporation or group of  
3 corporations filing a return pursuant to Section 7-2A-8.3 NMSA  
4 1978 subject to the taxes imposed by the Corporate Income and  
5 Franchise Tax Act;

6                   AA. "unitary group" means a group of two or more  
7 corporations, including a captive real estate investment trust,  
8 but not including an S corporation, an insurance company  
9 subject to the provisions of the New Mexico Insurance Code, an  
10 insurance company that would be subject to the New Mexico  
11 Insurance Code if the insurance company engaged in business in  
12 this state or a real estate investment trust that is not a  
13 captive real estate investment trust, that are:

14                   (1) related through common ownership; and

15                   (2) economically interdependent with one  
16 another as demonstrated by the following factors:

17                   (a) centralized management;

18                   (b) functional integration; and

19                   (c) economies of scale;

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

22                   (1) corporations that are exempt from  
23 corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and  
24                   (2) corporations organized or incorporated  
25 outside the United States or its possessions or territories

1 that have less than twenty percent of their property, payroll  
2 and sales sourced to locations within the United States,  
3 following the sourcing rules of the Uniform Division of Income  
4 for Tax Purposes Act; and

5 CC. "worldwide combined group" means all members of  
6 a unitary group, except members that are exempt from corporate  
7 income tax pursuant to Section 7-2A-4 NMSA 1978, irrespective  
8 of the country in which the corporations are incorporated or  
9 conduct business activity."

10 **SECTION 2.** Section 7-4-10 NMSA 1978 (being Laws 1993,  
11 Chapter 153, Section 1, as amended) is amended to read:

12 **"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--**

13 A. Except as provided in Subsections B and C of  
14 this section, all business income shall be apportioned to this  
15 state by multiplying the income by a fraction, the numerator of  
16 which is the property factor plus the payroll factor plus the  
17 sales factor and the denominator of which is three. The  
18 apportionment calculation shall include the factors of a  
19 controlled foreign corporation to the extent the income of the  
20 corporation is included in net income.

21 B. If eighty percent or more of the New Mexico  
22 numerators of the property and payroll factors for a filing  
23 group, or for a taxpayer that is not a member of a filing  
24 group, are employed in manufacturing or operating a computer  
25 processing facility, the filing group or the taxpayer may elect

.233165.5

1 to have business income apportioned to this state by  
2 multiplying the income by the sales factor for the taxable  
3 year.

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

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

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

20 (2) if the election is made for a taxable year  
21 beginning on or after January 1, 2020, to the taxable year in  
22 which the election is made and to each taxable year thereafter  
23 until the taxpayer notifies the department, in writing, that  
24 the election is terminated, except that the taxpayer shall not  
25 terminate the election until the method of apportioning

underscored material = new  
[bracketed material] = delete

1 business income provided by Subsection B or C of this section  
2 has been used by the taxpayer for at least three consecutive  
3 taxable years, including a total of at least thirty-six  
4 calendar months; and

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

9 E. For purposes of this section:

10 (1) "controlled foreign corporation" means a  
11 foreign corporation as defined by Section 957 of the Internal  
12 Revenue Code of 1986, as that section may be amended or  
13 renumbered;

14 [~~1~~] (2) "filing group" means "filing group"  
15 as that term is defined in the Corporate Income and Franchise  
16 Tax Act;

17 [~~2~~] (3) "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

underscored material = new  
[bracketed material] = delete

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~~] (4) "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

"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;

(d) processing natural resources,

including hydrocarbons; or

(e) processing or preparation of meals

1 for immediate consumption; and

2 [4] 5 "operating a computer processing  
3 facility" means managing the necessary and ancillary activities  
4 for the operation of a facility primarily used to process data  
5 or information, but does not include managing the operation of  
6 facilities that are predominantly used to support sales of  
7 tangible property or the provision of banking, financial or  
8 professional services."

9 **SECTION 3. APPLICABILITY.**--The provisions of this act  
10 apply to taxable years beginning on or after January 1, 2027.

11 - 16 -  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25