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HOUSE BILL 9

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2009

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO REVENUE; ADDING DEFINITIONS TO THE CORPORATE INCOME AND FRANCHISE TAX ACT; AMENDING CORPORATE INCOME TAX RATES; IMPOSING AN ADDITIONAL FRANCHISE TAX; AMENDING ESTIMATED CORPORATE INCOME TAX PAYMENTS.

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

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

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

A. "affiliated group" means that term as it is used in the Internal Revenue Code;

B. "bank" means any national bank, national banking association, state bank or bank holding company;

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1 C. "base income" means that part of the taxpayer's
2 income defined as taxable income and upon which the federal
3 income tax is calculated in the Internal Revenue Code for
4 income tax purposes plus, for taxable years beginning on or
5 after January 1, 1991, the amount of the net operating loss
6 deduction allowed by Section 172(a) of the Internal Revenue
7 Code, as that section may be amended or renumbered, and claimed
8 by the taxpayer for that year; "base income" also includes
9 interest received on a state or local bond;

10 D. "business entity" means a corporation, a
11 partnership not treated as a corporation for federal income tax
12 purposes and a limited liability company not treated as a
13 corporation for federal income tax purposes; "business entity"
14 does not include a sole proprietorship, estate or trust;

15 E. "corporate income tax" means, for purposes of
16 tax credits allowed pursuant to the Corporate Income and
17 Franchise Tax Act, both corporate income tax and franchise tax;

18 [~~D.~~] F. "corporation" means corporations, joint
19 stock companies, real estate trusts organized and operated
20 under the Real Estate Trust Act, financial corporations and
21 banks, other business associations and, for corporate income
22 tax purposes, partnerships and limited liability companies
23 taxed as corporations under the Internal Revenue Code;

24 [~~E.~~] G. "department" means the taxation and revenue
25 department, the secretary of taxation and revenue or any

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1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

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

6 ~~[G.]~~ I. "Internal Revenue Code" means the United
7 States Internal Revenue Code of 1986, as amended;

8 ~~[H.]~~ J. "net income" means base income adjusted to
9 exclude:

10 (1) income from obligations of the United
11 States less expenses incurred to earn that income;

12 (2) other amounts that the state is prohibited
13 from taxing because of the laws or constitution of this state
14 or the United States;

15 (3) for taxable years that began prior to
16 January 1, 1991, an amount equal to the sum of:

17 (a) net operating loss carryback
18 deductions to that year from taxable years beginning prior to
19 January 1, 1991 claimed and allowed, as provided by the
20 Internal Revenue Code; and

21 (b) net operating loss carryover
22 deductions to that year claimed and allowed; and

23 (4) for taxable years beginning on or after
24 January 1, 1991, an amount equal to the sum of any net
25 operating loss carryover deductions to that year claimed and

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1 allowed, provided that the amount of any net operating loss
2 carryover from a taxable year beginning on or after January 1,
3 1991 may be excluded only as follows:

4 (a) in the case of a timely filed
5 return, in the taxable year immediately following the taxable
6 year for which the return is filed; or

7 (b) in the case of amended returns or
8 original returns not timely filed, in the first taxable year
9 beginning after the date on which the return or amended return
10 establishing the net operating loss is filed; and

11 (c) in either case, if the net operating
12 loss carryover exceeds the amount of net income exclusive of
13 the net operating loss carryover for the taxable year to which
14 the exclusion first applies, in the next four succeeding
15 taxable years in turn until the net operating loss carryover is
16 exhausted; in no event may a net operating loss carryover be
17 excluded in any taxable year after the fourth taxable year
18 beginning after the taxable year to which the exclusion first
19 applies;

20 [~~F.~~] K. "net operating loss" means any net
21 operating loss, as defined by Section 172(c) of the Internal
22 Revenue Code, as that section may be amended or renumbered, for
23 a taxable year as further increased by the income, if any, from
24 obligations of the United States for that year less related
25 expenses;

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1 ~~[J-]~~ L. "net operating loss carryover" means the
2 amount, or any portion of the amount, of a net operating loss
3 for any taxable year that, pursuant to Paragraph (3) or (4) of
4 Subsection ~~[H]~~ I of this section, may be excluded from base
5 income;

6 M. "ownership share" means all interests, direct
7 and indirect, held in a business entity;

8 N. "partnership" means a combination of persons,
9 including a partnership, joint venture, common trust fund,
10 limited association, pool or working agreement or any other
11 combination of persons that is treated as a partnership for
12 federal income tax purposes;

13 ~~[K-]~~ O. "person" means any individual, estate,
14 trust, receiver, cooperative association, club, corporation,
15 company, firm, partnership, limited liability company, joint
16 venture, syndicate or other association; "person" also means,
17 to the extent permitted by law, any federal, state or other
18 governmental unit or subdivision or agency, department or
19 instrumentality thereof;

20 P. "related business entity" means a business
21 entity for which a corporation's ownership share exceeds twenty
22 percent; provided that business entities with common ownership,
23 direct plus indirect, of more than twenty percent are related
24 business entities and are each deemed to have the direct plus
25 indirect ownership share of the common owner in each of the

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1 other commonly owned business entities;

2 [L.] Q. "secretary" means the secretary of taxation
3 and revenue or the secretary's delegate;

4 [M.] R. "state" means any state of the United
5 States, the District of Columbia, the commonwealth of Puerto
6 Rico, any territory or possession of the United States or
7 political subdivision thereof or any political subdivision of a
8 foreign country;

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

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

21 [P.] U. "taxpayer" means any corporation subject to
22 the taxes imposed by the Corporate Income and Franchise Tax
23 Act; and

24 [Q.] V. "unitary corporations" means two or more
25 integrated corporations, other than any foreign corporation

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1 incorporated in a foreign country and not engaged in trade or
2 business in the United States during the taxable year, that are
3 owned in the amount of more than fifty percent and controlled
4 by the same person and for which at least one of the following
5 conditions exists:

6 (1) there is a unity of operations evidenced
7 by central purchasing, advertising, accounting or other
8 centralized services;

9 (2) there is a centralized management or
10 executive force and centralized system of operation; or

11 (3) the operations of the corporations are
12 dependent upon or contribute property or services to one
13 another individually or as a group."

14 Section 2. Section 7-2A-5 NMSA 1978 (being Laws 1981,
15 Chapter 37, Section 38, as amended) is amended to read:

16 "7-2A-5. CORPORATE INCOME TAX RATES.--The corporate
17 income tax imposed on corporations by Section 7-2A-3 NMSA 1978
18 shall be at the rates specified in the following [~~table~~]
19 tables:

20	[If the net income is:	The tax shall be:
21	Not over \$500,000	4.8% of net income
22	Over \$500,000 but not	
23	over \$1,000,000	\$24,000 plus
24		6.4% of excess
25		over \$500,000

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1 ~~Over \$1,000,000~~ \$56,000
2 ~~plus 7.6% of excess~~
3 ~~over \$1,000,000.]~~

4 A. For taxable years beginning in 2010:

5 <u>If the net income is:</u>	<u>The tax shall be:</u>
6 <u>Not over \$250,000</u>	<u>0% of net income</u>
7 <u>Over \$250,000 but not over</u>	<u>4.8% of excess over</u>
8 <u>\$500,000</u>	<u>\$250,000</u>
9 <u>Over \$500,000 but not over</u>	<u>\$12,000 plus 6.4% of</u>
10 <u>\$1,000,000</u>	<u>excess over \$500,000</u>
11 <u>Over \$1,000,000</u>	<u>\$44,000 plus 7.6% of</u>
12	<u>excess over</u>
13	<u>\$1,000,000.</u>

14 B. For taxable years beginning in 2011:

15 <u>If the net income is:</u>	<u>The tax shall be:</u>
16 <u>Not over \$500,000</u>	<u>0% of net income</u>
17 <u>Over \$500,000 but not over</u>	<u>6.4% of excess over</u>
18 <u>\$1,000,000</u>	<u>\$500,000</u>
19 <u>Over \$1,000,000</u>	<u>\$32,000 plus 6.9% of</u>
20	<u>excess over</u>
21	<u>\$1,000,000.</u>

22 C. For taxable years beginning in 2012:

23 <u>If the net income is:</u>	<u>The tax shall be:</u>
24 <u>Not over \$500,000</u>	<u>0% of net income</u>
25 <u>Over \$500,000</u>	<u>5.9 % of excess over</u>

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\$500,000.

D. For taxable years beginning in 2013 and subsequent years:

<u>If the net income is:</u>	<u>The tax shall be:</u>
<u>Not over \$500,000</u>	<u>0% of net income</u>
<u>Over \$500,000</u>	<u>4.9 % of excess over</u> <u>\$500,000."</u>

Section 3. Section 7-2A-5.1 NMSA 1978 (being Laws 1986, Chapter 20, Section 37, as amended) is amended to read:

"7-2A-5.1. CORPORATE FRANCHISE TAX AMOUNT.--

A. The corporate franchise tax amount imposed on a corporation by Section 7-2A-3 NMSA 1978 shall be fifty dollars (\$50.00) per taxable year or any fraction thereof plus, for corporations subject to the tax imposed by Subsection A of Section 7-2A-3 NMSA 1978, the tax determined pursuant to Subsection B of this section.

B. The tax imposed by this section is the amount determined pursuant to Paragraph (1) of this subsection reduced, but not below zero, by the amount determined pursuant to Paragraph (2) of this subsection:

(1) the rate specified in Subsection G of this section applied to the sum of the following:

(a) the excess above five million dollars (\$5,000,000) of the corporation's property in this state calculated pursuant to Subsection C of this section;

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1 (b) the excess above one million two hundred
2 thousand dollars (\$1,200,000) of the corporation's payroll in
3 this state calculated pursuant to Subsection D of this section;
4 and

5 (c) the excess above nine million three
6 hundred thousand dollars (\$9,300,000) of the corporation's
7 sales in this state calculated pursuant to Subsection E of this
8 section; and

9 (2) except as provided in Subsection F of this
10 section, the tax imposed by Subsection A of Section 7-2A-3 NMSA
11 1978 on the corporation plus the amount of tax imposed by
12 Subsection A of Section 7-2A-3 NMSA 1978 on each related
13 business entity multiplied by the corporation's ownership share
14 in the business entity for the taxable year of the business
15 entity ending with or within the corporation's taxable year.

16 C. Except as provided in Subsection F of this
17 section, the corporation's property in this state is the amount
18 of property that is the numerator of the corporation's property
19 factor determined under Section 7-4-11 NMSA 1978 for the
20 taxable year plus the sum of the amount of property that is the
21 numerator of the property factor determined under Section
22 7-4-11 NMSA 1978 for each related business entity multiplied by
23 the corporation's ownership share in the business entity for
24 the taxable year of the business entity ending with or within
25 the corporation's taxable year.

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1 D. Except as provided in Subsection F of this
2 section, the corporation's payroll in this state is the amount
3 of payroll that is the numerator of the corporation's payroll
4 factor determined under Section 7-4-14 NMSA 1978 for the
5 taxable year plus the sum of the amount of payroll that is the
6 numerator of the payroll factor determined under Section 7-4-14
7 NMSA 1978 for each related business entity multiplied by the
8 corporation's ownership share in the business entity for the
9 taxable year of the business entity ending with or within the
10 corporation's taxable year.

11 E. Except as provided in Subsection F of this
12 section, the corporation's sales in this state are the amount
13 of sales that is the numerator of the corporation's sales
14 factor determined under Section 7-4-16 NMSA 1978 for the
15 taxable year plus the sum of the amount of sales that is the
16 numerator of the sales factor determined under Section 7-4-16
17 NMSA 1978 for each related business entity multiplied by the
18 corporation's ownership share in the business entity for the
19 taxable year of the business entity ending with or within the
20 corporation's taxable year.

21 F. For purposes of Paragraph (2) of Subsection B and
22 Subsections C, D and E of this section:

23 (1) if the corporation's ownership share in a
24 business entity is eighty percent or more, one hundred percent
25 shall be used in place of the ownership share; and

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1 (2) the amount of tax imposed by Subsection A of
2 Section 7-2A-3 NMSA 1978, property in this state, payroll in
3 this state and sales in this state are only taken into account
4 once.

5 G. For taxable years beginning in:

6 (1) 2010 and 2011, the rate shall be sixteen
7 hundredths of one percent;

8 (2) 2012, the rate shall be twenty-one
9 hundredths of one percent; and

10 (3) 2013 and subsequent years, the rate shall be
11 twenty-five hundredths of one percent."

12 Section 4. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,
13 Chapter 5, Section 1, as amended) is amended to read:

14 "7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--
15 PENALTY--EXEMPTION.--

16 A. Every taxpayer shall pay estimated corporate
17 income tax and franchise tax to the state of New Mexico during
18 its taxable year if its tax after applicable credits is five
19 thousand dollars (\$5,000) or more in the current taxable year.
20 A taxpayer to which this section applies shall calculate
21 estimated tax by one of the following methods:

22 (1) estimating the amount of [~~tax~~] taxes due,
23 net of any credits, for the current taxable year, provided that
24 the estimated amount is at least eighty percent of the amount
25 determined to be due for the taxable year;

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1 (2) using as the estimate an amount equal to one
2 hundred percent of the [~~tax~~] taxes due for the previous taxable
3 year, if the previous taxable year was a full twelve-month
4 year;

5 (3) using as the estimate an amount equal to one
6 hundred ten percent of the [~~tax~~] taxes due for the taxable year
7 immediately preceding the previous taxable year, if the taxable
8 year immediately preceding the previous taxable year was a full
9 twelve-month year and the return for the previous taxable year
10 has not been filed and the extended due date for filing that
11 return has not occurred at the time the first installment is
12 due for the taxable year; or

13 (4) estimating the amount of [~~tax~~] taxes due,
14 net of any credits, for each fiscal quarter of the current
15 taxable year, provided that the estimated amount is at least
16 eighty percent of the amount determined to be due for that
17 quarter.

18 B. If Subsection A of this section applies, the
19 amount of estimated tax shall be paid in installments as
20 provided in this subsection. Twenty-five percent of the
21 estimated tax calculated under Paragraph (1), (2) or (3) of
22 Subsection A of this section or one hundred percent of the
23 estimated tax calculated under Paragraph (4) of Subsection A of
24 this section is due on or before the following dates: the
25 fifteenth day of the fourth month of the taxable year, the

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1 fifteenth day of the sixth month of the taxable year, the
2 fifteenth day of the ninth month of the taxable year and the
3 fifteenth day of the twelfth month of the taxable year.
4 Application of this subsection to a taxable year that is a
5 fractional part of a year shall be determined by regulation of
6 the secretary.

7 C. Every taxpayer to which Subsection A of this
8 section applies that fails to pay the estimated tax when due or
9 that makes estimated tax payments during the taxable year that
10 are less than the lesser of eighty percent of the [~~income tax~~
11 taxes imposed on the taxpayer under the Corporate Income and
12 Franchise Tax Act or the amount required by Paragraph (2), (3)
13 or (4) of Subsection A of this section shall be subject to the
14 interest and penalty provisions of Sections 7-1-67 and 7-1-69
15 NMSA 1978 on the underpayment.

16 D. For purposes of this section, the amount of
17 underpayment shall be the excess of the amount of the
18 installment that would be required to be paid if the estimated
19 tax were equal to eighty percent of the tax shown on the return
20 for the taxable year or the amount required by Paragraph (2),
21 (3) or (4) of Subsection A of this section or, if no return was
22 filed, eighty percent of the tax for the taxable year for which
23 the estimated tax is due less the amount, if any, of the
24 installment paid on or before the last date prescribed for
25 payment.

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1 E. For purposes of this section, the period of
2 underpayment shall run from the date the installment was
3 required to be paid to whichever of the following dates is
4 earlier:

5 (1) the fifteenth day of the third month
6 following the end of the taxable year; or

7 (2) with respect to any portion of the
8 underpayment, the date on which such portion is paid. For the
9 purposes of this paragraph, a payment of estimated tax on any
10 installment date shall be applied as a payment of any previous
11 underpayment only to the extent such payment exceeds the amount
12 of the installment determined under Subsection D of this
13 section due on such installment date.

14 F. For the purposes of this section, the amount of
15 tax deducted and withheld with respect to a taxpayer under the
16 Withholding Tax Act or the Oil and Gas Proceeds Withholding Tax
17 Act shall be deemed a payment of estimated tax. An equal
18 amount of the amount of withheld tax shall be deemed paid on
19 each due date for the applicable taxable year unless the
20 taxpayer establishes the dates on which all amounts were
21 actually withheld, in which case the amounts withheld shall be
22 deemed payments of estimated tax on the dates on which the
23 amounts were actually withheld. The taxpayer may apply the
24 provisions of this subsection separately to amounts withheld
25 under the Withholding Tax Act or the Oil and Gas Proceeds

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1 Withholding Tax Act."

2 Section 5. A new section of the Corporate Income and
3 Franchise Tax Act is enacted to read:

4 "[NEW MATERIAL] APPLICATION OF TAX CREDITS.--

5 Notwithstanding any provision of the Corporate Income and
6 Franchise Tax Act to the contrary, a credit that may be applied
7 against a taxpayer's corporate income tax liability pursuant to
8 Sections 7-2A-8.6, 7-2A-8.8, 7-2A-8.9, 7-2A-14, 7-2A-15,
9 7-2A-16, 7-2A-17.1, 7-2A-18, 7-2A-19, 7-2A-21, 7-2A-22, 7-2A-23
10 and 7-2A-24 NMSA 1978 may also be applied against the
11 taxpayer's franchise tax liability."

12 Section 6. APPLICABILITY.--The provisions of this act
13 apply to taxable years beginning on or after January 1, 2010.