SENATE BILL 106

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; ALLOWING THE EXCLUSION OF NET OPERATING LOSS CARRYOVER FROM NET INCOME IN THE CORPORATE INCOME AND FRANCHISE TAX ACT FOR UP TO TWENTY YEARS.

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;

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

D. "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 corporations under the Internal Revenue Code;

E. "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;

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

G. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

H. "net income" means base income adjusted to exclude: .195617.1
(1) income from obligations of the United States less expenses incurred to earn that income;

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

(3) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:
   (a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and
   (b) net operating loss carryover deductions to that year claimed and allowed; [and]

(4) for taxable years beginning on or after January 1, 1991 and prior to January 1, 2014, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 and prior to January 1, 2014 may be excluded only as follows:
   (a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or
   (b) in the case of amended returns or original returns not timely filed, in the first taxable year.
beginning after the date on which the return or amended return
establishing the net operating loss is filed; and

    (c) in either case, if the net operating
loss carryover exceeds the amount of net income exclusive of
the net operating loss carryover for the taxable year to which
the exclusion first applies, in the next four succeeding
taxable years in turn until the net operating loss carryover is
exhausted for any net operating loss carryover from a taxable
year beginning prior to January 1, 2014; in no event may a net
operating loss carryover from a taxable year beginning prior to
January 1, 2014 be excluded in any taxable year after the
fourth taxable year beginning after the taxable year to which
the exclusion first applies; and

    (5) for taxable years beginning on or after
January 1, 2014, an amount equal to the sum of any net
operating loss carryover deductions to that year claimed and
allowed; provided that the amount of any net operating loss
carryover may be excluded only as follows:

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

        (b) in the case of amended returns or
original returns not timely filed, in the first taxable year
beginning after the date on which the return or amended return
establishing the net operating loss is filed; and
(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2014; in no event shall a net operating loss carryover from a taxable year beginning on or after January 1, 2014 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies;

I. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

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

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

L. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

M. "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 or political subdivision thereof or any political subdivision of a foreign country;

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

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

P. "taxpayer" means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act;
and

Q. "unitary corporations" means two or more integrated corporations, other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year, that are owned in the amount of more than fifty percent and controlled by the same person and for which at least one of the following conditions exists:

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

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

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

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2014.