AN ACT

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

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

SECTION 1. Section 7-2-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 26, as amended) is amended to read:

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

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and
upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes, 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 taken by the taxpayer for that year;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income 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 taken by the taxpayer for that year;

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a calculation of tax is made pursuant to Section 55 of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond; and

(4) includes, for all taxpayers, an amount deducted pursuant to Section 7-2-32 NMSA 1978 in a prior taxable year if:

(a) such amount is transferred to
another qualified tuition program, as defined in Section 529 of the Internal Revenue Code, not authorized in the Education Trust Act; or

(b) a distribution or refund is made for any reason other than: 1) to pay for qualified higher education expenses, as defined pursuant to Section 529 of the Internal Revenue Code; or 2) upon the beneficiary's death, disability or receipt of a scholarship;

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 or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;
H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

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

K. "lump-sum amount" means, for the purpose of determining liability for federal income tax, an amount that was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source, including:

(1) compensation;

(2) net profit from business;

(3) gains from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;
(9) annuities;
(10) income from life insurance and endowment contracts;
(11) pensions;
(12) discharge of indebtedness;
(13) distributive share of partnership income;
(14) income in respect of a decedent;
(15) income from an interest in an estate or a trust;
(16) social security benefits;
(17) unemployment compensation benefits;
(18) workers’ compensation benefits;
(19) public assistance and welfare benefits;
(20) cost-of-living allowances; and
(21) gifts;

M. "modified gross income" excludes:

(1) payments for hospital, dental, medical or drug expenses to or on behalf of the taxpayer;
(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;
(3) payments pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular
use or invoice by the payer; or

(4) payments for credits and rebates pursuant
to the Income Tax Act and made for a credit pursuant to Section
7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base
income adjusted to exclude amounts that the state is prohibited
from taxing because of the laws or constitution of this state
or the United States and means, for taxpayers other than
estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction
allowed the taxpayer for the taxpayer's taxable year by Section
63 of the Internal Revenue Code, as that section may be amended
or renumbered;

(2) an amount equal to the itemized deductions
defined in Section 63 of the Internal Revenue Code, as that
section may be amended or renumbered, allowed the taxpayer for
the taxpayer's taxable year less the amount excluded pursuant
to Paragraph (1) of this subsection and less the amount of
state and local income and sales taxes included in the
taxpayer's itemized deductions;

(3) an amount equal to the product of the
exemption amount allowed for the taxpayer's taxable year by
Section 151 of the Internal Revenue Code, as that section may
be amended or renumbered, multiplied by the number of personal
exemptions allowed for federal income tax purposes;
(4) income from obligations of the United States of America less expenses incurred to earn that income;

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

(6) 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;

(7) for taxable years beginning on or after January 1, 1991 and prior to January 1, 2013, 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, 2013 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 prior to January 1, 2013]; in no event shall a net
operating loss carryover from a taxable year beginning prior to
January 1, 2013 be excluded in any taxable year after the
fourth taxable year beginning after the taxable year to which
the exclusion first applies; [and]

    (8) for taxable years beginning on or after
January 1, 2013, 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, 2013; in no event shall a net operating loss carryover from a taxable year beginning:

1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and

2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies; and

[(8) (9)] for taxable years beginning on or after January 1, 2011, an amount equal to the amount included in adjusted gross income that represents a refund of state and local income and sales taxes that were deducted for federal tax purposes in taxable years beginning on or after January 1, 2010;

0. "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;

P. "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 (6), (7) or (8) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

R. "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;

S. "resident" means an individual who is domiciled in this state during any part of the taxable year or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year, who, on or before the last day of the taxable year, changed the individual's place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a
resident for the purposes of the Income Tax Act for periods
after that change of abode;

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

   U. "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 any political
   subdivision of a foreign country;

   V. "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;

   W. "surviving spouse" means "surviving spouse" as
   generally defined for federal income tax purposes;

   X. "taxable income" means net income less any lump-
   sum amount;

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

   Z. "taxpayer" means any individual subject to the
   tax imposed by the Income Tax Act."
SECTION 2. 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
dele gated 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:

(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, 2013, 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, 2013 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 prior to January 1, 2013; in no event may a net operating loss carryover from a taxable year beginning prior to January 1, 2013 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, 2013, 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, 2013; in no event shall a
net operating loss carryover from a taxable year beginning:

1) prior to January 1, 2013 be excluded in any taxable year after
the fourth taxable year beginning after the taxable year to
which the exclusion first applies; and

2) on or after January
1, 2013 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), (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 3. APPLICABILITY.--The provisions of this act
apply to taxable years beginning on or after January 1, 2013.