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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 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;

(2) means, for taxpayers other than estates
or trusts, that part of the taxpayer's income defined as

1 adjusted gross income plus, for taxable years beginning on or
2 after January 1, 1991, the amount of the net operating loss
3 deduction allowed by Section 172(a) of the Internal Revenue
4 Code, as that section may be amended or renumbered, and taken
5 by the taxpayer for that year;

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

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

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

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

1 C. "compensation" means wages, salaries,
2 commissions and any other form of remuneration paid to
3 employees for personal services;

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

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

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

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

18 H. "head of household" means "head of household"
19 as generally defined for federal income tax purposes;

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

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

25 K. "lump-sum amount" means, for the purpose of

1 determining liability for federal income tax, an amount that
2 was not included in adjusted gross income but upon which the
3 five-year-averaging or the ten-year-averaging method of tax
4 computation provided in Section 402 of the Internal Revenue
5 Code, as that section may be amended or renumbered, was
6 applied;

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

- 10 (1) compensation;
- 11 (2) net profit from business;
- 12 (3) gains from dealings in property;
- 13 (4) interest;
- 14 (5) net rents;
- 15 (6) royalties;
- 16 (7) dividends;
- 17 (8) alimony and separate maintenance
18 payments;
- 19 (9) annuities;
- 20 (10) income from life insurance and
21 endowment contracts;
- 22 (11) pensions;
- 23 (12) discharge of indebtedness;
- 24 (13) distributive share of partnership
25 income;

- 1 (14) income in respect of a decedent;
- 2 (15) income from an interest in an estate or
- 3 a trust;
- 4 (16) social security benefits;
- 5 (17) unemployment compensation benefits;
- 6 (18) workers' compensation benefits;
- 7 (19) public assistance and welfare benefits;
- 8 (20) cost-of-living allowances; and
- 9 (21) gifts;

10 M. "modified gross income" excludes:

- 11 (1) payments for hospital, dental, medical
- 12 or drug expenses to or on behalf of the taxpayer;
- 13 (2) the value of room and board provided by
- 14 federal, state or local governments or by private individuals
- 15 or agencies based upon financial need and not as a form of
- 16 compensation;
- 17 (3) payments pursuant to a federal, state or
- 18 local government program directly or indirectly to a third
- 19 party on behalf of the taxpayer when identified to a
- 20 particular use or invoice by the payer; or
- 21 (4) payments for credits and rebates
- 22 pursuant to the Income Tax Act and made for a credit pursuant
- 23 to Section 7-3-9 NMSA 1978;

24 N. "net income" means, for estates and trusts,

25 base income adjusted to exclude amounts that the state is

1 prohibited from taxing because of the laws or constitution of
2 this state or the United States and means, for taxpayers
3 other than estates or trusts, base income adjusted to
4 exclude:

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

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

16 (3) an amount equal to the product of the
17 exemption amount allowed for the taxpayer's taxable year by
18 Section 151 of the Internal Revenue Code, as that section may
19 be amended or renumbered, multiplied by the number of
20 personal exemptions allowed for federal income tax purposes;

21 (4) income from obligations of the
22 United States of America less expenses incurred to earn that
23 income;

24 (5) other amounts that the state is
25 prohibited from taxing because of the laws or constitution of

1 this state or the United States;

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

4 (a) net operating loss carryback
5 deductions to that year from taxable years beginning prior to
6 January 1, 1991 claimed and allowed, as provided by the
7 Internal Revenue Code; and

8 (b) net operating loss carryover
9 deductions to that year claimed and allowed;

10 (7) for taxable years beginning on or after
11 January 1, 1991 and prior to January 1, 2013, an amount equal
12 to the sum of any net operating loss carryover deductions to
13 that year claimed and allowed, provided that the amount of
14 any net operating loss carryover from a taxable year
15 beginning on or after January 1, 1991 and prior to
16 January 1, 2013 may be excluded only as follows:

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

20 (b) in the case of amended returns or
21 original returns not timely filed, in the first taxable year
22 beginning after the date on which the return or amended
23 return establishing the net operating loss is filed; and

24 (c) in either case, if the net
25 operating loss carryover exceeds the amount of net income

1 exclusive of the net operating loss carryover for the taxable
2 year to which the exclusion first applies, in the next four
3 succeeding taxable years in turn until the net operating loss
4 carryover is exhausted for any net operating loss carryover
5 from a taxable year prior to January 1, 2013; in no event
6 shall a net operating loss carryover from a taxable year
7 beginning prior to January 1, 2013 be excluded in any taxable
8 year after the fourth taxable year beginning after the
9 taxable year to which the exclusion first applies;

10 (8) for taxable years beginning on or after
11 January 1, 2013, an amount equal to the sum of any net
12 operating loss carryover deductions to that year claimed and
13 allowed; provided that the amount of any net operating loss
14 carryover may be excluded only as follows:

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

18 (b) in the case of amended returns or
19 original returns not timely filed, in the first taxable year
20 beginning after the date on which the return or amended
21 return establishing the net operating loss is filed; and

22 (c) in either case, if the net
23 operating loss carryover exceeds the amount of net income
24 exclusive of the net operating loss carryover for the taxable
25 year to which the exclusion first applies, in the next

1 nineteen succeeding taxable years in turn until the net
2 operating loss carryover is exhausted for any net operating
3 loss carryover from a taxable year beginning on or after
4 January 1, 2013; in no event shall a net operating loss
5 carryover from a taxable year beginning: 1) prior to
6 January 1, 2013 be excluded in any taxable year after the
7 fourth taxable year beginning after the taxable year to which
8 the exclusion first applies; and 2) on or after
9 January 1, 2013 be excluded in any taxable year after the
10 nineteenth taxable year beginning after the taxable year to
11 which the exclusion first applies; and

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

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

24 P. "net operating loss carryover" means the
25 amount, or any portion of the amount, of a net operating loss

1 for any taxable year that, pursuant to Paragraph (6), (7) or
2 (8) of Subsection N of this section, may be excluded from
3 base income;

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

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

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

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

1 revenue or the secretary's delegate;

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

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

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

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

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

22 Z. "taxpayer" means any individual subject to the
23 tax imposed by the Income Tax Act."

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

1 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
2 Income and Franchise Tax Act and unless the context requires
3 otherwise:

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

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

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

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

23 E. "department" means the taxation and revenue
24 department, the secretary of taxation and revenue or any
25 employee of the department exercising authority lawfully

1 delegated to that employee by the secretary;

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

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

7 H. "net income" means base income adjusted to
8 exclude:

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

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

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

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

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

22 (4) for taxable years beginning on or after
23 January 1, 1991 and prior to January 1, 2013, an amount equal
24 to the sum of any net operating loss carryover deductions to
25 that year claimed and allowed; provided that the amount of

1 any net operating loss carryover from a taxable year
2 beginning on or after January 1, 1991 and prior to
3 January 1, 2013 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
10 return establishing the net operating loss is filed; and

11 (c) in either case, if the net
12 operating loss carryover exceeds the amount of net income
13 exclusive of the net operating loss carryover for the taxable
14 year to which the exclusion first applies, in the next four
15 succeeding taxable years in turn until the net operating loss
16 carryover is exhausted for any net operating loss carryover
17 from a taxable year prior to January 1, 2013; in no event may
18 a net operating loss carryover from a taxable year beginning
19 prior to January 1, 2013 be excluded in any taxable year
20 after the fourth taxable year beginning after the taxable
21 year to which the exclusion first applies; and

22 (5) for taxable years beginning on or after
23 January 1, 2013, an amount equal to the sum of any net
24 operating loss carryover deductions to that year claimed and
25 allowed; provided that the amount of any net operating loss

1 carryover may be excluded only as follows:

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

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

9 (c) in either case, if the net
10 operating loss carryover exceeds the amount of net income
11 exclusive of the net operating loss carryover for the taxable
12 year to which the exclusion first applies, in the next
13 nineteen succeeding taxable years in turn until the net
14 operating loss carryover is exhausted for any net operating
15 loss carryover from a taxable year beginning on or after
16 January 1, 2013; in no event shall a net operating loss
17 carryover from a taxable year beginning: 1) prior to
18 January 1, 2013 be excluded in any taxable year after the
19 fourth taxable year beginning after the taxable year to which
20 the exclusion first applies; and 2) on or after
21 January 1, 2013 be excluded in any taxable year after the
22 nineteenth taxable year beginning after the taxable year to
23 which the exclusion first applies;

24 I. "net operating loss" means any net operating
25 loss, as defined by Section 172(c) of the Internal Revenue

1 Code, as that section may be amended or renumbered, for a
2 taxable year as further increased by the income, if any, from
3 obligations of the United States for that year less related
4 expenses;

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

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

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

19 M. "state" means any state of the United States,
20 the District of Columbia, the commonwealth of Puerto Rico,
21 any territory or possession of the United States or political
22 subdivision thereof or any political subdivision of a foreign
23 country;

24 N. "state or local bond" means a bond issued by a
25 state other than New Mexico or by a local government other

1 than one of New Mexico's political subdivisions, the interest
2 from which is excluded from income for federal income tax
3 purposes under Section 103 of the Internal Revenue Code, as
4 that section may be amended or renumbered;

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

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

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

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

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

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(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.