

FIFTY-FOURTH LEGISLATURE
FIRST SESSION, 2019

HB 6/a

March 14, 2019

Mr. President:

Your **CORPORATIONS AND TRANSPORTATION COMMITTEE**, to whom has been referred

**HOUSE TAXATION & REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 6, as amended**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 11, after the first semicolon, strike the remainder of the line and strike lines 12 and 13 in their entirety.

2. On page 1, line 14, strike "A" and insert in lieu thereof "AN INCOME TAX", and on line 18, after the semicolon, insert "CREATING A CORPORATE INCOME TAX DEDUCTION TO OFFSET MATERIAL FINANCIAL EFFECTS OF CHANGES IN DEFERRED TAX AMOUNTS;".

3. On page 2, line 5, after the first semicolon, strike the remainder of the line, strike line 6 up to the semicolon and insert in lieu thereof:

"IMPOSING THE TOBACCO PRODUCTS TAX ON LITTLE CIGARS AND E-LIQUID USED IN E-CIGARETTES; REDUCING THE RATE OF TOBACCO PRODUCTS TAX ON CIGARS; PROVIDING A DISCOUNT IN TAX FOR CERTAIN CIGARETTES AND TOBACCO PRODUCTS".

4. On page 2, line 7, after the first semicolon, strike the remainder of the line.

5. On page 2, line 9, after the semicolon, strike the remainder of the line and strike line 10 through the semicolon.

6. On pages 30 through 48, strike Sections 9 and 10 in their entirety.

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7. On page 48, line 12, after "in", strike the remainder of the line, strike line 13 up to the comma and insert in lieu thereof "the proportion that the population of each municipality is to the total population of all municipalities".

8. On page 48, line 20, after the first occurrence of "in", strike the remainder of the line, strike line 21 up to the comma and insert in lieu thereof "the proportion that the population of each county is to the total population of all counties".

9. On page 49, line 2, before the period, insert "--LOCATION FOR TRANSACTIONS SUBJECT TO THE COMPENSATING TAX".

10. On page 51, between lines 5 and 6, insert the following:

"C. Values from transactions subject to the compensating tax shall be reported consistent with Subsections A and B of this section unless the taxpayer can demonstrate that the taxable use in New Mexico first occurred after the purchase, lease, license or other transaction giving rise to that value and that the first taxable use occurred in another location within the state."

11. Reletter the succeeding subsection accordingly.

12. On pages 51 through 54, strike Section 13 in its entirety.

13. On page 55, line 4, strike "twenty" and insert in lieu thereof "fifteen".

14. On pages 55 and 56, strike Section 15 in its entirety.

15. On pages 57 through 79, strike Sections 17 through 20 in their entirety and insert in lieu thereof the following new sections:

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"SECTION 13. 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.]~~ A. "bank" means any national bank, national banking association, state bank or bank holding company;

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

~~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:~~

~~(1) 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;~~

~~(2) interest received on a state or local bond; and~~

~~(3) the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust] the federal taxable income or the federal net operating loss of a corporation for the taxable year calculated pursuant to the Internal Revenue Code, after special deductions~~

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provided in Sections 241 through 249 of the Internal Revenue Code but without any deduction for net operating losses, as if the corporation filed a federal tax return as a separate domestic entity, modified as follows:

(1) adding to that income:

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

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

(c) the amount of any deduction, other than for premiums, for amounts paid directly or indirectly to a commonly controlled entity that is exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978;

(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;

(c) an amount equal to one hundred percent of the subpart F income, as that term is defined in Section 952 of the Internal Revenue Code, as that section may be amended or renumbered, included in the income of the corporation; and

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(d) an amount equal to one hundred percent of the income of the corporation under Section 951A of the Internal Revenue Code, after allowing the deduction provided in Section 250 of the Internal Revenue Code; and

(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;

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

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(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;

~~[E.]~~ 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 corporations under the Internal Revenue Code;

~~[F.]~~ H. "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;

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

~~[G.]~~ J. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

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K. "grandfathered net operating loss carryover" means:

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

(2) reduced by:

(a) adding back deductions that were taken by the corporation or corporations for royalties or interest paid to one or more related corporations, but only to the extent that such adjustment would not create a net loss for such related corporations; and

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

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

~~[H.]~~ L. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

~~[I.]~~ M. "net income" means: ~~[base income adjusted to exclude:~~

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

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~~(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;~~

~~(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~~

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~~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;~~

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J. ~~"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;]~~

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

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

~~[K.] N. "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 I of this section, may be excluded from base income]~~ the apportioned net loss properly reported on an original or amended tax return for taxable years beginning on or after 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

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(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;

O. "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 for the taxable year in which the deduction is taken, including the eighty percent limitation of Section 172(a) of the Internal Revenue Code calculated on the basis of the taxpayer's apportioned net income;

~~[L.]~~ P. "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;

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

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

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

~~[N.]~~ T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

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

~~[O.]~~ V. "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;

~~[P.]~~ W. "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;

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

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~~[Q.]~~ Y. "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;

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

~~S.]~~ AA. "unitary ~~[corporations]~~ group" 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]~~ a group of two or more corporations, including a captive real estate investment trust, but not including an S corporation, an insurance company subject to the provisions of the New Mexico Insurance Code, an insurance company that would be subject to the New Mexico Insurance Code if the insurance company engaged in business in this state or a real estate investment trust that is not a captive real estate investment trust, that are:

(1) related through common ownership; and

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

(a) centralized management;

(b) functional integration; and

(c) economies of scale;

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

(1) corporations that are exempt from corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and

(2) corporations wherever organized or incorporated that have less than twenty percent of their property, payroll and sales sourced to locations within the United States, following the sourcing rules of the Uniform Division of Income for Tax Purposes Act; and

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

SECTION 14. Section 7-2A-3 NMSA 1978 (being Laws 1981, Chapter 37, Section 36, as amended) is amended to read:

"7-2A-3. IMPOSITION AND LEVY OF TAXES.--

A. A tax to be known as the "corporate income tax" is imposed at the rate specified in the Corporate Income and Franchise Tax Act upon the ~~[net]~~ taxable income of ~~[every domestic corporation and upon the net income of every foreign corporation employed or]~~ a corporation or group of corporations, in whatever jurisdiction

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organized or incorporated, that is engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state.

B. A tax to be known as the "corporate franchise tax" is imposed in the amount specified in the Corporate Income and Franchise Tax Act upon every domestic corporation and upon every foreign corporation employed or engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state and upon every domestic or foreign corporation, whether engaged in active business or not, but having or exercising its corporate franchise in this state."

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

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

A. For taxable years beginning prior to January 1, 2014:	
 If the net income is:	The tax shall be:
Not over \$500,000	4.8% of net income
Over \$500,000 but not	
 over \$1,000,000	\$24,000 plus
	6.4% of excess
	over \$500,000
Over \$1,000,000	\$56,000
	plus 7.6% of excess
	over \$1,000,000.

B. For taxable years beginning on or after January 1, 2014	
and prior to January 1, 2015:	
 If the net income is:	The tax shall be:
Not over \$500,000	4.8% of net income
Over \$500,000 but not	
 over \$1,000,000	\$24,000 plus

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	6.4% of excess over \$500,000 \$56,000 plus 7.3% of excess over \$1,000,000.
Over \$1,000,000	

~~C. For taxable years beginning on or after January 1, 2015
and prior to January 1, 2016:~~

If the net income is:	The tax shall be:
Not over \$500,000	4.8% of net income
Over \$500,000 but not over \$1,000,000	\$24,000 plus 6.4% of excess over \$500,000 \$56,000 plus 6.9% of excess over \$1,000,000.
Over \$1,000,000	

~~D. For taxable years beginning on or after January 1, 2016
and prior to January 1, 2017:~~

If the net income is:	The tax shall be:
Not over \$500,000	4.8% of net income
Over \$500,000 but not over \$1,000,000	\$24,000 plus 6.4% of excess over \$500,000 \$56,000 plus 6.6% of excess over \$1,000,000.
Over \$1,000,000	

~~E. For taxable years beginning on or after January 1, 2017
and prior to January 1, 2018:~~

If the net income is:	The tax shall be:
Not over \$500,000	4.8% of net income
Over \$500,000	\$24,000 plus 6.2% of excess over \$500,000.

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~~F. for taxable years beginning on or after January 1, 2018]~~

If the [net] <u>taxable</u> income is:	The tax shall be:
Not over \$500,000	4.8% of [net] <u>taxable</u> income
Over \$500,000	\$24,000 plus 5.9% of excess over \$500,000."

SECTION 16. Section 7-2A-8.3 NMSA 1978 (being Laws 1983, Chapter 213, Section 12, as amended) is amended to read:

"7-2A-8.3. COMBINED AND CONSOLIDATED RETURNS.--

~~[A. A unitary corporation that is subject to taxation under the Corporate Income and Franchise Tax Act and that has not previously filed a combined return pursuant to this section or a consolidated return pursuant to Section 7-2A-8.4 NMSA 1978 may elect to file a combined return with other unitary corporations as though the entire combined net income were that of one corporation; provided, however, that for taxable years beginning on or after January 1, 2014, a unitary corporation that provides retail sales of goods in a facility of more than thirty thousand square feet under one roof in New Mexico shall file a combined return with other unitary corporations as though the entire combined net income were that of one corporation. The return filed under this method of reporting shall include the net income of all the unitary corporations. Transactions among the unitary corporations may be eliminated by applying the appropriate rules for reporting income for a consolidated federal income tax return. Any corporation that has filed an income tax return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978 shall not file pursuant to this section unless the secretary gives prior permission to file on a combined return basis.~~

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~~B. Once corporations have reported net income through a combined return for any taxable year, they shall file combined returns for subsequent taxable years, so long as they remain unitary corporations, unless the corporations elect to file pursuant to Section 7-2A-8.4 NMSA 1978 or unless the secretary grants prior permission for one or more of the corporations to file individually.~~

~~C. For taxable years beginning on or after January 1, 1993, no unitary corporation once included in a combined return may elect, or be granted permission by the secretary, for any subsequent taxable year to separately account pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.~~

~~D. Notwithstanding Subsection A of this section, a unitary corporation shall not be required to file a combined return pursuant to this section if that unitary corporation:~~

~~(1) has operations in New Mexico at facilities that do not provide retail sales of goods; and~~

~~(2) employs at least seven hundred fifty employees in New Mexico at such facilities.]~~

A. Corporations that are part of a unitary group shall file a return properly reporting and paying tax on taxable income as a worldwide combined group unless they properly elect to report and pay tax on taxable income as a water's-edge or consolidated group, pursuant to department rules and instructions, on the first original return required to be filed for taxable years beginning on or after January 1, 2020. Corporations electing to file a consolidated return must file on that same basis for federal income tax purposes. Once a unitary or consolidated group has properly made an election to file as a water's-edge or consolidated group, the group and any of the group's members shall file a return on that basis for at least seven consecutive years unless the secretary grants permission

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otherwise. Corporations that are part of a unitary group filing a return are jointly and severally liable for the tax imposed pursuant to the Corporate Income and Franchise Tax Act on taxable income.

B. Corporations required to file a return as part of a filing group pursuant to this section may designate a member of the group to act as the principal corporation to file the return, make any elections, claim tax credits or refunds or perform any other act on behalf of the group with respect to the corporate income tax; provided that the members of the group remain jointly and severally liable for the taxes due pursuant to Subsection A of this section."

SECTION 17. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION TO OFFSET MATERIAL FINANCIAL EFFECTS OF CHANGES IN DEFERRED TAX AMOUNTS DUE TO CERTAIN CHANGES MADE TO SECTIONS 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 AND 7-4-18 NMSA 1978.--

A. For each of ten consecutive taxable years beginning on or after January 1, 2026, a filing group subject to the corporate income tax whose members are part of a publicly traded company may claim a deduction, as provided by Subsection B of this section, from taxable income before net operating losses are deducted.

B. The deduction for each taxable year shall not exceed one-tenth of the amount of the aggregate increase in net deferred tax liabilities, the aggregate decrease in net deferred tax assets or an aggregate change from a net deferred tax asset to a net deferred tax liability, as measured under generally accepted accounting principles, that resulted from the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act; provided that:

(1) the amount of the aggregate change in deferred tax assets and deferred tax liabilities is properly included in the calculation of the deferred tax asset or deferred tax liability

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reported as part of the consolidated financial statements, as required by the federal Securities Exchange Act of 1934, for the first reporting period affected by the changes to Sections 7-2A-2, 7-2A-3, 7-2A-8.3, 7-4-10 and 7-4-18 NMSA 1978 made by this 2019 act but for the deduction provided by this section; and

(2) if the deduction provided by this section is greater than the taxpayer's net income, any excess amount shall be carried forward and applied as a deduction to the taxpayer's net income in future income years until fully utilized.

C. A filing group shall not claim a deduction pursuant to this section unless the filing group files a preliminary notice with the secretary prior to January 1, 2023 and provides necessary information to show the calculation of the deduction expected to be claimed, as the secretary may require."

SECTION 18. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1, as amended) is amended to read:

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

A. Except as provided in Subsections B and C of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

~~[B. A taxpayer whose principal business activity in New Mexico is manufacturing may elect to have business income apportioned to this state~~

~~(1) in the taxable year beginning on or after January 1, 2014 and prior to January 1, 2015, by multiplying the income by a fraction, the numerator of which is twice the sales factor plus the property factor plus the payroll factor and the denominator of which is four;~~

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~~(2) in the taxable year beginning on or after January 1, 2015 and prior to January 1, 2016, by multiplying the income by a fraction, the numerator of which is three multiplied by the sales factor plus the property factor plus the payroll factor and the denominator of which is five;~~

~~(3) in the taxable year beginning on or after January 1, 2016 and prior to January 1, 2017, by multiplying the income by a fraction, the numerator of which is seven multiplied by the sales factor plus one and one-half multiplied by the property factor plus one and one-half multiplied by the payroll factor and the denominator of which is ten;~~

~~(4) in the taxable year beginning on or after January 1, 2017 and prior to January 1, 2018, by multiplying the income by a fraction, the numerator of which is eight multiplied by the sales factor plus the property factor plus the payroll factor and the denominator of which is ten; and~~

~~(5) in taxable years beginning on or after January 1, 2018, by multiplying the income by a fraction, the numerator of which is the total sales of the taxpayer in New Mexico during the taxable year and the denominator of which is the total sales of the taxpayer from any location within or outside of the state during the taxable year.~~

~~G. A taxpayer whose principal business activity in New Mexico is a headquarters operation may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the total sales of the taxpayer in New Mexico during the taxable year and the denominator of which is the total sales of the taxpayer from any location within or outside of the state during the taxable year.~~

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~~D. To elect the method of apportionment provided by Subsection B or C of this section, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by Subsection B or C of this section has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. The election will apply to the separately filed return of the taxpayer or the combined or consolidated return the taxpayer has elected to be included pursuant to Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978.]~~

B. If eighty percent or more of the New Mexico numerators of the property and payroll factors for a filing group, or for a taxpayer that is not a member of a filing group, are employed in manufacturing, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year.

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

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

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

(2) if the election is made for a taxable year beginning on or after January 1, 2020, to the taxable year in which the election is made and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by Subsection B or C of this section has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months; and

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

E. For purposes of this section:

(1) "filing group" means "filing group" as that term is defined in the Corporate Income and Franchise Tax Act;

~~[(1)]~~ (2) "headquarters operation" means:

(a) the center of operations of a business: 1) where corporate staff employees are physically employed; 2) where the centralized functions are primarily performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; 3) the function and purpose of which is to manage and direct most aspects and functions of the business operations within a 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

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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; ~~and~~

~~(2)]~~ (3) "manufacturing" means operating a computer processing facility or 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) electric power generation; ~~[except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act; or]~~

(d) processing natural resources, including hydrocarbons; or

(e) processing or preparation of meals for immediate consumption; and

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

16. On page 101, strike lines 1 through 5 in their entirety and insert in lieu thereof a closing quotation mark.

17. On pages 108 through 113, strike Sections 38 and 39 in their entirety and insert in lieu thereof the following new section:

"SECTION 36. Section 7-12-3 NMSA 1978 (being Laws 1971, Chapter 77, Section 3, as amended) is amended to read:

"7-12-3. EXCISE TAX ON CIGARETTES--~~[RATES]~~ REDUCTION OF RATE FOR CERTAIN CIGARETTES.--

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at [~~the following rates~~] a rate of ten cents (\$.10) for each cigarette sold, given or consumed in this state.

~~[(1) eight and three-tenths cents (\$.083) if the cigarettes are packaged in lots of twenty or twenty-five;~~

~~(2) sixteen and six-tenths cents (\$.166) if the cigarettes are packaged in lots of ten; or~~

~~(3) thirty-three and two-tenths cents (\$.332) if the cigarettes are packaged in lots of five.]~~

B. The tax imposed by this section shall be referred to as the "cigarette tax".

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C. The tax imposed by this section shall be reduced by fifty percent for a cigarette for which a modified risk tobacco product order has been issued by the United States secretary of health and human services pursuant to Section 21 U.S.C. 387k(g)(1).

D. The tax imposed by this section shall be reduced by twenty-five percent for a cigarette for which a modified risk tobacco product order has been issued by the United States secretary of health and human services pursuant to Section 21 U.S.C. 387k(g)(2)."

18. On pages 116 through 118, strike Sections 42 and 43 in their entirety and insert in lieu thereof the following new sections:

"SECTION 39. Section 7-12A-2 NMSA 1978 (being Laws 1986, Chapter 112, Section 3, as amended) is amended to read:

"7-12A-2. DEFINITIONS.--As used in the Tobacco Products Tax Act:

A. "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;

B. "cigar" means a roll for smoking made wholly or in part of tobacco and weighing greater than four and one-half pounds per thousand;

~~[B.]~~ C. "distribute" means to sell or to give;

D. "e-cigarette" means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substance the use or inhalation of which simulates smoking and includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name

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or descriptor. "E-cigarette" does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act;

E. "e-liquid" means liquid or other substance intended for use in an e-cigarette, not including any substance containing cannabis or oil derived from cannabis;

~~[G.]~~ F. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

~~[D.]~~ G. "first purchaser" means a person engaging in business in New Mexico ~~[who]~~ that manufactures tobacco products or ~~[who]~~ that purchases or receives on consignment tobacco products from any person outside of New Mexico, which tobacco products are to be distributed in New Mexico in the ordinary course of business;

H. "little cigar" means a roll for smoking made wholly or in part of tobacco, using an integrated cellulose acetate or other similar filter, and weighing not more than four and one-half pounds per thousand;

~~[E.]~~ I. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, limited liability company, limited liability partnership, other association or gas, water or electric utility owned or operated by a county or municipality or other entity of the state; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality;

~~[F.]~~ J. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in the case of tobacco products received on consignment, the value of the tobacco

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products received or, in the case of tobacco products manufactured and sold in New Mexico, the proceeds from the sale by the manufacturer of the tobacco products; and

[6.] K. "tobacco product" means:

(1) any product, other than cigarettes, cigars and little cigars, made from or containing tobacco;

(2) e-liquid; and

(3) e-cigarettes."

SECTION 40. Section 7-12A-3 NMSA 1978 (being Laws 1986, Chapter 112, Section 4, as amended) is amended to read:

"7-12A-3. IMPOSITION AND [RATE] RATES OF TAX--REDUCTION OF RATE FOR CERTAIN TOBACCO PRODUCTS--DENOMINATION AS "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

A. For the manufacture or acquisition of tobacco products in New Mexico, not including cigars, little cigars, e-liquid or e-cigarettes, to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the rate of twenty-five percent of the product value of the tobacco products.

B. For the manufacture or acquisition of cigars in New Mexico to be distributed in the ordinary course of business and for the consumption of cigars in New Mexico, there is imposed an excise tax at a rate equal to twenty-five percent of the product value of the cigar, not to exceed fifty cents (\$.50) per cigar.

C. For the manufacture or acquisition of little cigars in New Mexico to be distributed in the ordinary course of business and for the consumption of little cigars in New Mexico, there is imposed

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an excise tax at a rate equal to the rate imposed on cigarettes pursuant to Section 7-12-3 NMSA 1978 per package of little cigars.

D. For the manufacture or acquisition of e-liquid in New Mexico to be distributed in the ordinary course of business and for the consumption of e-liquid in New Mexico, there is imposed an excise tax at a rate of five cents (\$.05) per milligram of nicotine by volume in the e-liquid. Such tax shall be computed based on the net volume of the e-liquid, as listed by the manufacturer.

E. The taxes imposed by this section shall be reduced by fifty percent for a tobacco product, cigar or little cigar for which a modified risk tobacco product order has been issued by the United States secretary of health and human services pursuant to Section 21 U.S.C. 387k(g)(1).

F. The taxes imposed by this section shall be reduced by twenty-five percent for a tobacco product, cigar or little cigar for which a modified risk tobacco product order has been issued by the United States secretary of health and human services pursuant to Section 21 U.S.C. 387k(g)(2).

~~[B.]~~ G. The ~~[tax]~~ taxes imposed by ~~[Subsection A of]~~ this section may be referred to as the "tobacco products tax".

~~[C.]~~ H. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs."

19. On page 119, lines 3 and 4, strike "four and two-tenths" and insert in lieu thereof "three and one-half".

20. On page 119, line 20, strike "two and ninety-six" and insert in lieu thereof "three and fifty-six".

21. On pages 128 through 132, strike Sections 54 and 55 in their entirety.

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22. On page 133, strike Section 57 in its entirety.

23. On page 133, line 16, strike "11" and insert in lieu thereof "9" and between lines 19 and 20, insert the following:

"C. Sections 7-2A-8 and 7-2A-8.4 NMSA 1978 (being Laws 1981, Chapter 37, Section 41 and Laws 1983, Chapter 213, Section 13, as amended) are repealed effective January 1, 2020."

24. Reletter the succeeding subsection accordingly.

25. On pages 133 and 134, strike Sections 60 and 61 in their entirety and insert in lieu thereof the following new sections:

"SECTION 54. APPLICABILITY.--

A. The provisions of Sections 11 and 12 of this act apply to taxable years beginning on or after January 1, 2019.

B. The provisions of Sections 13 through 19 of this act apply to taxable years beginning on or after January 1, 2020.

SECTION 55. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 9, 20 through 26, 28, 30 through 46, 48, 49, 51 and 52 of this act is July 1, 2019.

B. The effective date of the provisions of Sections 13 through 19 of this act is January 1, 2020.

C. The effective date of the provisions of Sections 10, 27, 29, 47 and 50 of this act is July 1, 2021."

26. Renumber sections to correspond to these amendments.,

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and thence referred to the **FINANCE COMMITTEE**.

Respectfully submitted,

SENATOR CLEMENTE SANCHEZ, CHAIRMAN

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 2 Against

Yes: 5

No: Fulfer, Sharer

Excused: Woods

Absent: None

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