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HOUSE BILL 6

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2020

INTRODUCED BY

Christine Chandler and Abbas Akhil and
Javier Martínez and Peter Wirth

AN ACT

RELATING TO TAXATION; INCREASING A TEMPORARY DISTRIBUTION TO MUNICIPALITIES AND COUNTIES; AMENDING THE DEFINITION OF "NET OPERATING LOSS DEDUCTION" IN THE CORPORATE INCOME AND FRANCHISE TAX ACT TO ADDRESS CERTAIN CHANGES MADE BY THE FEDERAL CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT; PROVIDING A TEMPORARY WAIVER OF PENALTIES AND INTEREST ON CERTAIN TAX LIABILITIES DUE IN 2020; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-1-6.64 NMSA 1978 (being Laws 2019, Chapter 270, Section 9) is amended to read:

"7-1-6.64. DISTRIBUTION--MUNICIPALITIES AND COUNTIES.--

A. Beginning July 1, 2020 and prior to July 1, 2021, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to municipalities from the net receipts

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1 attributable to the gross receipts tax in an amount equal to
2 [~~one million two hundred fifty thousand dollars (\$1,250,000)~~]
3 two million five hundred thousand dollars (\$2,500,000). The
4 amount to be distributed to each municipality shall be in
5 proportion to the population of each municipality in the
6 proportion that the population of each municipality is to the
7 total population of all municipalities, according to the most
8 recent federal decennial census.

9 B. Beginning July 1, 2020 and prior to July 1,
10 2021, a distribution pursuant to Section 7-1-6.1 NMSA 1978
11 shall be made to counties from the net receipts attributable to
12 the gross receipts tax in an amount equal to [~~seven hundred~~
13 ~~fifty thousand dollars (\$750,000)~~] one million five hundred
14 thousand dollars (\$1,500,000). The amount to be distributed to
15 each county shall be in the proportion that the population of
16 each county is to the total population of all counties,
17 according to the most recent federal decennial census."

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

20 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
21 Income and Franchise Tax Act and unless the context requires
22 otherwise:

23 A. "bank" means any national bank, national banking
24 association, state bank or bank holding company;

25 B. "apportioned net income" or "apportioned net

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

7 C. "base income" means the federal taxable income
8 or the federal net operating loss of a corporation for the
9 taxable year calculated pursuant to the Internal Revenue Code,
10 after special deductions provided in Sections 241 through 249
11 of the Internal Revenue Code but without any deduction for net
12 operating losses, as if the corporation filed a federal tax
13 return as a separate domestic entity, modified as follows:

14 (1) adding to that income:

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

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

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

25 (2) subtracting from that income:

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1 (a) income from obligations of the
2 United States net of expenses incurred to earn that income;

3 (b) other amounts that the state is
4 prohibited from taxing because of the laws or constitution of
5 this state or the United States net of any related expenses;

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

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

15 (3) making other adjustments deemed necessary
16 to properly reflect income of the unitary group, including
17 attribution of income or expense related to unitary assets held
18 by related corporations that are not part of the filing group;

19 D. "captive real estate investment trust" means a
20 corporation, trust or association taxed as a real estate
21 investment trust pursuant to Section 857 of the Internal
22 Revenue Code, the shares or beneficial interests of which are
23 not regularly traded on an established securities market;
24 provided that more than fifty percent of any class of
25 beneficial interests or shares of the real estate investment

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1 trust are owned directly, indirectly or constructively by the
2 taxpayer during all or a part of the taxpayer's taxable year;

3 E. "common ownership" means the direct or indirect
4 control or ownership of more than fifty percent of the
5 outstanding voting stock, ownership of which is determined
6 pursuant to Section 1563 of the Internal Revenue Code, as that
7 section may be amended or renumbered, of:

8 (1) a parent-subsidiary controlled group as
9 defined in Section 1563 of the Internal Revenue Code, except
10 that fifty percent shall be substituted for eighty percent;

11 (2) a brother-sister controlled group as
12 defined in Section 1563 of the Internal Revenue Code; or

13 (3) three or more corporations each of which
14 is a member of a group of corporations described in Paragraph
15 (1) or (2) of this subsection, and one of which is:

16 (a) a common parent corporation included
17 in a group of corporations described in Paragraph (1) of this
18 subsection; and

19 (b) included in a group of corporations
20 described in Paragraph (2) of this subsection;

21 F. "consolidated group" means the group of entities
22 properly filing a federal consolidated return under the
23 Internal Revenue Code for the taxable year;

24 G. "corporation" means corporations, joint stock
25 companies, real estate trusts organized and operated under the

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1 Real Estate Trust Act, financial corporations and banks, other
2 business associations and, for corporate income tax purposes,
3 partnerships and limited liability companies taxed as
4 corporations under the Internal Revenue Code;

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

9 I. "filing group" means a group of corporations
10 properly included in a return pursuant to Section 7-2A-8.3 NMSA
11 1978 for a particular taxable year;

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

15 K. "grandfathered net operating loss carryover"
16 means:

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

25 (2) reduced by:

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

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

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

14 L. "Internal Revenue Code" means the United States
15 Internal Revenue Code of 1986, as amended;

16 M. "net income" means:

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

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

25 N. "net operating loss carryover" means the

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1 apporportioned net loss properly reported on an original or
2 amended tax return for taxable years beginning on or after
3 January 1, 2020 by the taxpayer:

4 (1) plus:

5 (a) the portion of an apporportioned net
6 loss properly reported to New Mexico for a taxable year
7 beginning on or after January 1, 2020, on a separate year
8 return, to the extent the taxpayer would have been entitled to
9 include the portion of such apporportioned net loss in the
10 taxpayer's consolidated net operating loss carryforward under
11 the Internal Revenue Code if the taxpayer filed a consolidated
12 federal return; and

13 (b) the taxpayer's grandfathered net
14 operating loss carryover; and

15 (2) minus:

16 (a) the amount of the net operating loss
17 carryover attributed to an entity that has left the filing
18 group, computed in a manner consistent with the consolidated
19 filing requirements of the Internal Revenue Code and applicable
20 regulations, as if the taxpayer were filing a consolidated
21 return; and

22 (b) the amount of net operating loss
23 deductions properly taken by the taxpayer;

24 0. "net operating loss deduction" means the portion
25 of the net operating loss carryover that may be deducted from

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1 the taxpayer's apportioned net income under the Internal
2 Revenue Code as of January 1, 2018 for the taxable year in
3 which the deduction is taken, including the eighty percent
4 limitation of Section 172(a) of the Internal Revenue Code as of
5 January 1, 2018 calculated on the basis of the taxpayer's
6 apportioned net income;

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

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

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

20 S. "return" means any tax or information return,
21 including a water's-edge or worldwide combined return, a
22 consolidated return, a declaration of estimated tax or a claim
23 for refund, including any amendments or supplements to the
24 return, required or permitted pursuant to a law subject to
25 administration and enforcement pursuant to the Tax

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1 Administration Act and filed with the department by or on
2 behalf of any person;

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

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

10 V. "state" means any state of the United States,
11 the District of Columbia, the commonwealth of Puerto Rico, any
12 territory or possession of the United States or political
13 subdivision thereof or any political subdivision of a foreign
14 country;

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

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

24 Y. "taxable year" means the calendar year or fiscal
25 year upon the basis of which the net income is computed under

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1 the Corporate Income and Franchise Tax Act and includes, in the
2 case of the return made for a fractional part of a year under
3 the provisions of that act, the period for which the return is
4 made;

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

9 AA. "unitary group" means a group of two or more
10 corporations, including a captive real estate investment trust,
11 but not including an S corporation, an insurance company
12 subject to the provisions of the New Mexico Insurance Code, an
13 insurance company that would be subject to the New Mexico
14 Insurance Code if the insurance company engaged in business in
15 this state or a real estate investment trust that is not a
16 captive real estate investment trust, that are:

17 (1) related through common ownership; and

18 (2) economically interdependent with one

19 another as demonstrated by the following factors:

20 (a) centralized management;

21 (b) functional integration; and

22 (c) economies of scale;

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

25 (1) corporations that are exempt from

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1 corporate income tax pursuant to Section 7-2A-4 NMSA 1978; and
2 (2) corporations wherever organized or
3 incorporated that have less than twenty percent of their
4 property, payroll and sales sourced to locations within the
5 United States, following the sourcing rules of the Uniform
6 Division of Income for Tax Purposes Act; and

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

12 SECTION 3. TEMPORARY PROVISION--PENALTIES AND INTEREST
13 WAIVED FOR CERTAIN TAXES DUE IN 2020.--

14 A. Notwithstanding Sections 7-1-67 and 7-1-69 NMSA
15 1978, no interest shall accrue and no penalty shall be assessed
16 to a taxpayer for:

17 (1) tax liabilities pursuant to the Income Tax
18 Act or the Corporate Income and Franchise Tax Act for failure
19 to pay the tax that became due April 15, 2020 through July 15,
20 2020; provided that the failure to pay the tax was made without
21 intent to evade or defeat the tax; and provided further that
22 payment for the unpaid payments is made in full on or before
23 April 15, 2021;

24 (2) tax liabilities pursuant to the
25 Withholding Tax Act for failure to pay the tax that became due

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1 March 25, 2020 through July 25, 2020; provided that the failure
2 to pay the tax was made without intent to evade or defeat the
3 tax; and provided further that payment for the unpaid taxes is
4 made in full on or before April 25, 2021;

5 (3) gross receipts tax, local option gross
6 receipts tax or compensating tax liabilities for failure to pay
7 any of those taxes that became due March 25, 2020 through July
8 25, 2020; provided that the failure to pay the tax was made
9 without intent to evade or defeat the tax; and provided further
10 that payment for the unpaid taxes is made in full on or before
11 April 25, 2021; and

12 (4) tax liabilities assessed between September
13 3, 2019 and January 3, 2020 as the result of a managed audit
14 performed in accordance with a managed audit agreement pursuant
15 to Section 7-1-11.1 NMSA 1978; provided that payment for those
16 liabilities is made pursuant to terms of the managed audit
17 agreement on or before December 31, 2020.

18 B. Notwithstanding Sections 7-38-49 and 7-38-50
19 NMSA 1978, no interest shall accrue and no penalty shall be
20 assessed to a property owner for unpaid property taxes that
21 became due April 10, 2020 pursuant to Section 7-38-38 NMSA
22 1978; provided that:

23 (1) the unpaid property taxes did not become
24 delinquent because of an intent to defraud by the property
25 owner;

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1 (2) payment for the unpaid property taxes is
2 made in full on or before May 10, 2021; and

3 (3) the subject property does not have
4 property taxes that became delinquent pursuant to Section
5 7-38-46 NMSA 1978 prior to May 10, 2020.

6 SECTION 4. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect immediately.

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