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HOUSE BILL 947

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Raymond M. Ruiz

AN ACT

RELATING TO CREDIT UNIONS; ESTABLISHING A CATEGORY OF "TAXABLE CREDIT UNIONS"; SUBJECTING TAXABLE CREDIT UNIONS TO THE CORPORATE INCOME TAX; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-2A-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 33, as amended) is amended to read:

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

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

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

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

10 D. "corporation" means corporations, joint stock
11 companies, real estate trusts organized and operated under the
12 Real Estate Trust Act, financial corporations and banks,
13 taxable credit unions as defined in Section 58-11-61.1 NMSA
14 1978 other business associations and, for corporate income tax
15 purposes, partnerships and limited liability companies taxed as
16 corporations under the Internal Revenue Code;

17 E. "department" means the taxation and revenue
18 department, the secretary [~~of taxation and revenue~~] or any
19 employee of the department exercising authority lawfully
20 delegated to that employee by the secretary;

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

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

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underscored material = new
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1 H. "net income" means base income adjusted to
2 exclude:

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

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

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

10 (a) net operating loss carryback
11 deductions to that year from taxable years beginning prior to
12 January 1, 1991 claimed and allowed, as provided by the
13 Internal Revenue Code; and

14 (b) net operating loss carryover
15 deductions to that year claimed and allowed; and

16 (4) for taxable years beginning on or after
17 January 1, 1991, an amount equal to the sum of any net
18 operating loss carryover deductions to that year claimed and
19 allowed, provided that the amount of any net operating loss
20 carryover from a taxable year beginning on or after January 1,
21 1991 may be excluded only as follows:

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

25 (b) in the case of amended returns or

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1 original returns not timely filed, in the first taxable year
2 beginning after the date on which the return or amended return
3 establishing the net operating loss is filed; and

4 (c) in either case, if the net operating
5 loss carryover exceeds the amount of net income exclusive of
6 the net operating loss carryover for the taxable year to which
7 the exclusion first applies, in the next four succeeding
8 taxable years in turn until the net operating loss carryover is
9 exhausted; in no event may a net operating loss carryover be
10 excluded in any taxable year after the fourth taxable year
11 beginning after the taxable year to which the exclusion first
12 applies;

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

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

23 K. "person" means any individual, estate, trust,
24 receiver, cooperative association, club, corporation, company,
25 firm, partnership, limited liability company, joint venture,

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1 syndicate or other association; "person" also means, to the
2 extent permitted by law, any federal, state or other
3 governmental unit or subdivision or agency, department or
4 instrumentality thereof;

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

7 M "state" means any state of the United States,
8 the District of Columbia, the commonwealth of Puerto Rico, any
9 territory or possession of the United States or political
10 subdivision thereof or any political subdivision of a foreign
11 country;

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

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

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

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1 and

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

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

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

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

17 Section 2. Section 58-11-61 NMSA 1978 (being Laws 1987,
18 Chapter 311, Section 61, as amended) is amended to read:

19 "58-11-61. TAXATION. --

20 A. A credit union organized under or subject to the
21 Credit Union Act is exempt from taxation to the extent that a
22 credit union chartered under federal law is exempt, except that
23 a taxable credit union as defined in Section 58-11-61.1 NMSA
24 1978 is subject to the corporate income tax.

25 B. The shares of a credit union shall not be

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1 subject to stock transfer taxes, either when issued or when
2 transferred from one member to another.

3 C. The participation by a credit union in any
4 government program providing unemployment, social security, old
5 age pension or other benefits shall not be deemed a waiver of
6 the tax exemptions granted by this section. "

7 Section 3. A new section of the Credit Union Act, Section
8 58-11-61.1 NMSA 1978, is enacted to read:

9 "58-11-61.1. [NEW MATERIAL] TAXABLE CREDIT UNIONS--
10 DEFINITION. --

11 A. As used in this section, "related credit unions"
12 means two or more credit unions having names that include one or
13 more similar words, except for "credit union", and that:

14 (1) each have a main office in this state; and

15 (2) are established in whole or in part with
16 assets from a credit union that, as of July 1, 2003, has a field
17 of membership that includes all residents of two or more counties.

18 B. A credit union is a "taxable credit union" on the
19 day on which:

20 (1) if the credit union is not a related credit
21 union:

22 (a) the credit union files a report with the
23 director showing assets of the credit union equal or exceed one
24 hundred million dollars (\$100,000,000); and

25 (b) the credit union has a field of

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1 membership that includes all residents of two or more counties; or
2 (2) a related credit union files a report with
3 the director and that report is the second consecutive report that
4 shows assets, if aggregated with its related credit unions, equal
5 or exceed one hundred million dollars (\$100,000,000).

6 C. If a credit union becomes a taxable credit union
7 pursuant to this section, it remains a taxable credit union for as
8 long as the credit union is organized pursuant to the Credit Union
9 Act. "