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HOUSE BILL 448

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

David C. Chavez

AN ACT

RELATING TO TAXATION; ALLOWING A DEDUCTION FOR CERTAIN
DEPRECIABLE ASSETS; AMENDING SECTIONS OF THE INCOME TAX ACT AND
THE CORPORATE INCOME AND FRANCHISE TAX ACT; ADDING TO THE
DEFINITION OF "BASE INCOME"; AMENDING AND ENACTING SECTIONS OF
THE NMSA 1978.

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":

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1 (1) means, for estates and trusts, that part
2 of the estate's or trust's income defined as taxable income and
3 upon which the federal income tax is calculated in the Internal
4 Revenue Code for income tax purposes plus, for taxable years
5 beginning on or after January 1, 1991, the amount of the net
6 operating loss deduction allowed by Section 172(a) of the
7 Internal Revenue Code, as that section may be amended or
8 renumbered, and taken by the taxpayer for that year;

9 (2) means, for taxpayers other than estates or
10 trusts, that part of the taxpayer's income defined as adjusted
11 gross income plus, for taxable years beginning on or after
12 January 1, 1991, the amount of the net operating loss deduction
13 allowed by Section 172(a) of the Internal Revenue Code, as that
14 section may be amended or renumbered, and taken by the taxpayer
15 for that year and any amount excluded as Section 179 property
16 in the taxable year if the property was placed in service in
17 the taxable year and a deduction from net income for that
18 Section 179 property is to be claimed pursuant to the Income
19 Tax Act;

20 (3) includes, for all taxpayers, any other
21 income of the taxpayer not included in adjusted gross income
22 but upon which a federal tax is calculated pursuant to the
23 Internal Revenue Code for income tax purposes, except amounts
24 for which a calculation of tax is made pursuant to Section 55
25 of the Internal Revenue Code, as that section may be amended or

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1 renumbered; "base income" also includes interest received on a
2 state or local bond; and

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

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

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

15 C. "compensation" means wages, salaries,
16 commissions and any other form of remuneration paid to
17 employees for personal services;

18 D. "department" means the taxation and revenue
19 department, the secretary or any employee of the department
20 exercising authority lawfully delegated to that employee by the
21 secretary;

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

25 F. "filing status" means "married filing joint

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1 returns", "married filing separate returns", "head of
2 household", "surviving spouse" and "single", as those terms are
3 generally defined for federal tax purposes;

4 G. "fiscal year" means any accounting period of
5 twelve months ending on the last day of any month other than
6 December;

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

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

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

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

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

24 (1) compensation;

25 (2) net profit from business;

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- 1 (3) gains from dealings in property;
- 2 (4) interest;
- 3 (5) net rents;
- 4 (6) royalties;
- 5 (7) dividends;
- 6 (8) alimony and separate maintenance payments;
- 7 (9) annuities;
- 8 (10) income from life insurance and endowment
- 9 contracts;
- 10 (11) pensions;
- 11 (12) discharge of indebtedness;
- 12 (13) distributive share of partnership income;
- 13 (14) income in respect of a decedent;
- 14 (15) income from an interest in an estate or a
- 15 trust;
- 16 (16) social security benefits;
- 17 (17) unemployment compensation benefits;
- 18 (18) workers' compensation benefits;
- 19 (19) public assistance and welfare benefits;
- 20 (20) cost-of-living allowances; and
- 21 (21) gifts;
- 22 M. "modified gross income" excludes:
- 23 (1) payments for hospital, dental, medical or
- 24 drug expenses to or on behalf of the taxpayer;
- 25 (2) the value of room and board provided by

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1 federal, state or local governments or by private individuals
2 or agencies based upon financial need and not as a form of
3 compensation;

4 (3) payments pursuant to a federal, state or
5 local government program directly or indirectly to a third
6 party on behalf of the taxpayer when identified to a particular
7 use or invoice by the payer; or

8 (4) payments for credits and rebates pursuant
9 to the Income Tax Act and made for a credit pursuant to Section
10 7-3-9 NMSA 1978;

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

16 (1) an amount equal to the standard deduction
17 allowed the taxpayer for the taxpayer's taxable year by Section
18 63 of the Internal Revenue Code, as that section may be amended
19 or renumbered;

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

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1 taxpayer's itemized deductions;

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

7 (4) income from obligations of the United
8 States of America less expenses incurred to earn that income;

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

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

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

18 (b) net operating loss carryover
19 deductions to that year claimed and allowed;

20 (7) for taxable years beginning on or after
21 January 1, 1991, an amount equal to the sum of any net
22 operating loss carryover deductions to that year claimed and
23 allowed, provided that the amount of any net operating loss
24 carryover from a taxable year beginning on or after January 1,
25 1991 may be excluded only as follows:

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

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

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

17 (8) for taxable years beginning on or after
18 January 1, 2011, an amount equal to the amount included in
19 adjusted gross income that represents a refund of state and
20 local income and sales taxes that were deducted for federal tax
21 purposes in taxable years beginning on or after January 1,
22 2010;

23 0. "net operating loss" means any net operating
24 loss, as defined by Section 172(c) of the Internal Revenue
25 Code, as that section may be amended or renumbered, for a

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1 taxable year as further increased by the income, if any, from
2 obligations of the United States for that year less related
3 expenses;

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

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

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

17 S. "resident" means an individual who is domiciled
18 in this state during any part of the taxable year or an
19 individual who is physically present in this state for one
20 hundred eighty-five days or more during the taxable year; but
21 any individual, other than someone who was physically present
22 in the state for one hundred eighty-five days or more during
23 the taxable year, who, on or before the last day of the taxable
24 year, changed the individual's place of abode to a place
25 without this state with the bona fide intention of continuing

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1 actually to abide permanently without this state is not a
2 resident for the purposes of the Income Tax Act for periods
3 after that change of abode;

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

6 U. "Section 179 property" means property defined as
7 "Section 179 property" in Section 179 of the Internal Revenue
8 Code, as that section may be amended or renumbered;

9 [~~U.~~] V. "state" means any state of the United
10 States, the District of Columbia, the commonwealth of Puerto
11 Rico, any territory or possession of the United States or any
12 political subdivision of a foreign country;

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

19 [~~W.~~] X. "surviving spouse" means "surviving spouse"
20 as generally defined for federal income tax purposes;

21 [~~X.~~] Y. "taxable income" means net income less any
22 lump-sum amount;

23 [~~Y.~~] Z. "taxable year" means the calendar year or
24 fiscal year upon the basis of which the net income is computed
25 under the Income Tax Act and includes, in the case of the

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1 return made for a fractional part of a year under the
2 provisions of the Income Tax Act, the period for which the
3 return is made; and

4 [Z.] AA. "taxpayer" means any individual subject to
5 the tax imposed by the Income Tax Act."

6 SECTION 2. A new section of the Income Tax Act is enacted
7 to read:

8 "[NEW MATERIAL] DEDUCTION OF CERTAIN BUSINESS ASSETS.--

9 A. A taxpayer may elect to treat the cost of
10 property defined in Section 179 of the Internal Revenue Code as
11 an expense that is not charged to a capital account in the
12 first year in which the asset is placed in service. A cost
13 treated as an expense not charged to a capital account shall be
14 allowed as a deduction from net income for the taxable year in
15 which the Section 179 property is placed in service.

16 B. The purpose of the election allowed in this
17 section is to encourage business investment in Section 179
18 property.

19 C. The depreciable value of the Section 179
20 property deducted pursuant to this section may reduce net
21 income, but not below zero, for the taxable year.

22 D. A Section 179 property shall not be deducted
23 pursuant to this section if the property is:

24 (1) depreciated pursuant to Section 167,
25 Section 168 or any other section of the Internal Revenue Code;

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1 (2) treated as an expense that is charged to a
2 capital account pursuant to the Internal Revenue Code; or

3 (3) the property on which a current taxable
4 year credit taken pursuant to Section 38 of the Internal
5 Revenue Code, as that section may be amended or renumbered, is
6 based.

7 E. A husband and wife who file separate returns for
8 a taxable year in which they could have filed a joint return
9 may each claim one-half of the depreciable value of Section 179
10 property that would have been allowed on a joint return.

11 F. A taxpayer who otherwise elects to depreciate a
12 Section 179 property pursuant to this section, who is a member
13 of a partnership or other business association, may deduct only
14 that amount of the value of the property that is in proportion
15 to the taxpayer's interest in the partnership or business
16 association. All members of the partnership or business
17 association shall depreciate the same Section 179 property
18 pursuant to the same election in the same taxable year.

19 G. The department shall compile an annual report
20 that includes the number of taxpayers claiming a deduction and
21 the amount of the deduction claimed pursuant to this section
22 and report to the revenue stabilization and tax policy
23 committee prior to November 1 of each taxable year beginning in
24 2013. Notwithstanding any other section of law to the
25 contrary, the department may disclose the number of taxpayers

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1 claiming deductions pursuant to this section, the amount of
2 deduction claimed and the value of the assets claimed, and any
3 other information that is necessary to evaluate the
4 effectiveness of this tax benefit in encouraging investment by
5 businesses in capital assets.

6 H. A taxpayer depreciating an asset pursuant to
7 this section shall not claim tax credits pursuant to Section
8 7-2-18.4, 7-2-18.8, 7-2-18.14, 7-2-18.18, 7-2-18.24, 7-2-18.25
9 or 7-9G-2 NMSA 1978 or the credit provided pursuant to the
10 Investment Credit Act in regard to the same assets depreciated
11 pursuant to this section."

12 SECTION 3. Section 7-2A-2 NMSA 1978 (being Laws 1986,
13 Chapter 20, Section 33, as amended) is amended to read:

14 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
15 Income and Franchise Tax Act and unless the context requires
16 otherwise:

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

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

21 C. "base income" means that part of the taxpayer's
22 income defined as taxable income and upon which the federal
23 income tax is calculated in the Internal Revenue Code for
24 income tax purposes plus, for taxable years beginning on or
25 after January 1, 1991, the amount of the net operating loss

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1 deduction allowed by Section 172(a) of the Internal Revenue
2 Code, as that section may be amended or renumbered, and claimed
3 by the taxpayer for that year and any amount excluded as
4 Section 179 property in the taxable year if the property was
5 placed in service in the taxable year and a deduction from net
6 income for that Section 179 property is to be claimed pursuant
7 to the Corporate Income and Franchise Tax Act; "base income"
8 also includes interest received on a state or local bond;

9 D. "corporation" means corporations, joint stock
10 companies, real estate trusts organized and operated under the
11 Real Estate Trust Act, financial corporations and banks, other
12 business associations and, for corporate income tax purposes,
13 partnerships and limited liability companies taxed as
14 corporations under the Internal Revenue Code;

15 E. "department" means the taxation and revenue
16 department, the secretary of taxation and revenue or any
17 employee of the department exercising authority lawfully
18 delegated to that employee by the secretary;

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

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

24 H. "net income" means base income adjusted to
25 exclude:

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

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

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

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

12 (b) net operating loss carryover
13 deductions to that year claimed and allowed; and

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

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

23 (b) in the case of amended returns or
24 original returns not timely filed, in the first taxable year
25 beginning after the date on which the return or amended return

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1 establishing the net operating loss is filed; and

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

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

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

21 K. "person" means any individual, estate, trust,
22 receiver, cooperative association, club, corporation, company,
23 firm, partnership, limited liability company, joint venture,
24 syndicate or other association; "person" also means, to the
25 extent permitted by law, any federal, state or other

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1 governmental unit or subdivision or agency, department or
2 instrumentality thereof;

3 L. "secretary" means the secretary of taxation and
4 revenue or the secretary's delegate;

5 M. "Section 179 property" means property defined as
6 "Section 179 property" in Section 179 of the Internal Revenue
7 Code, as that section may be amended or renumbered;

8 ~~[M-]~~ N. "state" means any state of the United
9 States, the District of Columbia, the commonwealth of Puerto
10 Rico, any territory or possession of the United States or
11 political subdivision thereof or any political subdivision of a
12 foreign country;

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

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

25 ~~[P-]~~ Q. "taxpayer" means any corporation subject to

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1 the taxes imposed by the Corporate Income and Franchise Tax
2 Act; and

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

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

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

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

18 SECTION 4. A new section of the Corporate Income and
19 Franchise Tax Act is enacted to read:

20 "[NEW MATERIAL] DEPRECIATION OF CERTAIN BUSINESS ASSETS.--

21 A. A taxpayer may elect to treat the cost of
22 property defined in Section 179 of the Internal Revenue Code as
23 an expense that is not chargeable to a capital account in the
24 first year in which the asset is placed in service. A cost
25 treated as an expense not chargeable to a capital account shall

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1 be allowed as a deduction from net income for the taxable year
2 in which the Section 179 property is placed in service.

3 B. The purpose of the election allowed in this
4 section is to encourage business investment in Section 179
5 property.

6 C. The cost of the Section 179 property deducted
7 pursuant to this section may reduce net income, but not below
8 zero, for the taxable year.

9 D. A Section 179 property shall not be deducted
10 pursuant to this section if the property is:

11 (1) depreciated pursuant to Section 167,
12 Section 168 or any other section of the Internal Revenue Code;

13 (2) treated as an expense that is charged to a
14 capital account pursuant to the Internal Revenue Code; or

15 (3) the property on which a current taxable
16 year credit taken pursuant to Section 38 of the Internal
17 Revenue Code, as that section may be amended or renumbered, is
18 based.

19 E. The department shall compile an annual report
20 that includes the number of taxpayers claiming a deduction and
21 the amount of the deduction claimed pursuant to this section
22 and report to the revenue stabilization and tax policy
23 committee prior to November 1 of each taxable year beginning in
24 2013. Notwithstanding any other section of law to the
25 contrary, the department may disclose the number of taxpayers

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underscoring material = new
~~[bracketed material] = delete~~

1 claiming deductions pursuant to this section, the amount of
2 deduction claimed and the value of the assets claimed and any
3 other information that is necessary to evaluate the
4 effectiveness of this tax benefit in encouraging investment by
5 businesses in capital assets.

6 F. A taxpayer depreciating an asset pursuant to
7 this section shall not claim tax credits pursuant to Section
8 7-2A-18, 7-2A-21, 7-2A-22 through 7-2A-25 or 7-9G-2 NMSA 1978
9 or the credit provided in the Investment Credit Act in regard
10 to the same assets depreciated pursuant to this section."

11 SECTION 5. APPLICABILITY.--The provisions of this act
12 apply to taxable years beginning on or after January 1, 2012.

13 SECTION 6. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is January 1, 2012.