

HOUSE BILL 293

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

George Dodge, Jr.

AN ACT

RELATING TO TAXATION; PROVIDING FOR A NET OPERATING LOSS
CARRYOVER OF FOURTEEN YEARS.

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;

C. "base income" means that part of the taxpayer's
income defined as taxable income and upon which the federal

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

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

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

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

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

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

25 (1) income from obligations of the United

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1 States less expenses incurred to earn that income;

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

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

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

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

13 (4) for taxable years beginning on or after
14 January 1, 1991 and prior to January 1, 2014, an amount equal
15 to the sum of any net operating loss carryover deductions to
16 that year claimed and allowed, provided that the amount of any
17 net operating loss carryover from a taxable year beginning on
18 or after January 1, 1991 and prior to January 1, 2014 may be
19 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; and

11 (5) for taxable years beginning on or after
12 January 1, 2014, an amount equal to the sum of any net
13 operating loss carryover deductions to that year claimed and
14 allowed, provided that the amount of any net operating loss
15 carryover from a taxable year beginning on or after January 1,
16 2014 may be excluded only as follows:

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

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

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

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1 the net operating loss carryover for the taxable year to which
2 the exclusion first applies, in the next fourteen succeeding
3 taxable years in turn until the net operating loss carryover is
4 exhausted; in no event shall a net operating loss carryover be
5 excluded in any taxable year after the fourteenth taxable year
6 beginning after the taxable year to which the exclusion first
7 applies;

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

14 J. "net operating loss carryover" means the amount,
15 or any portion of the amount, of a net operating loss for any
16 taxable year that, pursuant to Paragraph (3), [~~or~~] (4) or (5)
17 of Subsection H of this section, may be excluded from base
18 income;

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

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1 L. "secretary" means the secretary of taxation and
2 revenue or the secretary's delegate;

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

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

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

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

23 Q. "unitary corporations" means two or more
24 integrated corporations, other than any foreign corporation
25 incorporated in a foreign country and not engaged in trade or

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1 business in the United States during the taxable year, that are
2 owned in the amount of more than fifty percent and controlled
3 by the same person and for which at least one of the following
4 conditions exists:

5 (1) there is a unity of operations evidenced
6 by central purchasing, advertising, accounting or other
7 centralized services;

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

10 (3) the operations of the corporations are
11 dependent upon or contribute property or services to one
12 another individually or as a group."

13 SECTION 2. APPLICABILITY.--The provisions of this act
14 shall apply to taxable years beginning on or after January 1,
15 2014.

16 SECTION 3. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is January 1, 2014.

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