

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILLS 106 & 156

3
4 **51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**
5
6
7
8
9

10 AN ACT

11 RELATING TO TAXATION; EXCLUDING NET OPERATING LOSS CARRYOVER
12 FROM NET INCOME IN THE INCOME TAX ACT AND THE CORPORATE INCOME
13 AND FRANCHISE TAX ACT FOR TWENTY YEARS.
14

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

16 SECTION 1. Section 7-2-2 NMSA 1978 (being Laws 1986,
17 Chapter 20, Section 26, as amended) is amended to read:

18 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
19 Act and unless the context requires otherwise:

20 A. "adjusted gross income" means adjusted gross
21 income as defined in Section 62 of the Internal Revenue Code,
22 as that section may be amended or renumbered;

23 B. "base income":

24 (1) means, for estates and trusts, that part
25 of the estate's or trust's income defined as taxable income and

.196444.1

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

7 (2) means, for taxpayers other than estates or
8 trusts, that part of the taxpayer's income defined as adjusted
9 gross income plus, for taxable years beginning on or after
10 January 1, 1991, the amount of the net operating loss deduction
11 allowed by Section 172(a) of the Internal Revenue Code, as that
12 section may be amended or renumbered, and taken by the taxpayer
13 for that year;

14 (3) includes, for all taxpayers, any other
15 income of the taxpayer not included in adjusted gross income
16 but upon which a federal tax is calculated pursuant to the
17 Internal Revenue Code for income tax purposes, except amounts
18 for which a calculation of tax is made pursuant to Section 55
19 of the Internal Revenue Code, as that section may be amended or
20 renumbered; "base income" also includes interest received on a
21 state or local bond; and

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

25 (a) such amount is transferred to

1 another qualified tuition program, as defined in Section 529 of
 2 the Internal Revenue Code, not authorized in the Education
 3 Trust Act; or

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

9 C. "compensation" means wages, salaries,
 10 commissions and any other form of remuneration paid to
 11 employees for personal services;

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

16 E. "fiduciary" means a guardian, trustee, executor,
 17 administrator, committee, conservator, receiver, individual or
 18 corporation acting in any fiduciary capacity;

19 F. "filing status" means "married filing joint
 20 returns", "married filing separate returns", "head of
 21 household", "surviving spouse" and "single", as those terms are
 22 generally defined for federal tax purposes;

23 G. "fiscal year" means any accounting period of
 24 twelve months ending on the last day of any month other than
 25 December;

.196444.1

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

3 I. "individual" means a natural person, an estate,
4 a trust or a fiduciary acting for a natural person, trust or
5 estate;

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

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

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

- 18 (1) compensation;
- 19 (2) net profit from business;
- 20 (3) gains from dealings in property;
- 21 (4) interest;
- 22 (5) net rents;
- 23 (6) royalties;
- 24 (7) dividends;
- 25 (8) alimony and separate maintenance payments;

- 1 (9) annuities;
- 2 (10) income from life insurance and endowment
- 3 contracts;
- 4 (11) pensions;
- 5 (12) discharge of indebtedness;
- 6 (13) distributive share of partnership income;
- 7 (14) income in respect of a decedent;
- 8 (15) income from an interest in an estate or a
- 9 trust;
- 10 (16) social security benefits;
- 11 (17) unemployment compensation benefits;
- 12 (18) workers' compensation benefits;
- 13 (19) public assistance and welfare benefits;
- 14 (20) cost-of-living allowances; and
- 15 (21) gifts;

16 M. "modified gross income" excludes:

17 (1) payments for hospital, dental, medical or
 18 drug expenses to or on behalf of the taxpayer;

19 (2) the value of room and board provided by
 20 federal, state or local governments or by private individuals
 21 or agencies based upon financial need and not as a form of
 22 compensation;

23 (3) payments pursuant to a federal, state or
 24 local government program directly or indirectly to a third
 25 party on behalf of the taxpayer when identified to a particular

.196444.1

underscored material = new
 [bracketed material] = delete

1 use or invoice by the payer; or

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

5 N. "net income" means, for estates and trusts, base
6 income adjusted to exclude amounts that the state is prohibited
7 from taxing because of the laws or constitution of this state
8 or the United States and means, for taxpayers other than
9 estates or trusts, base income adjusted to exclude:

10 (1) an amount equal to the standard deduction
11 allowed the taxpayer for the taxpayer's taxable year by Section
12 63 of the Internal Revenue Code, as that section may be amended
13 or renumbered;

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

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

.196444.1

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

3 (5) 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 (6) 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;

14 (7) for taxable years beginning on or after
15 January 1, 1991 and prior to January 1, 2013, an amount equal
16 to the sum of any net operating loss carryover deductions to
17 that year claimed and allowed, provided that the amount of any
18 net operating loss carryover from a taxable year beginning on
19 or after January 1, 1991 and prior to January 1, 2013 may be
20 excluded only as follows:

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

24 (b) in the case of amended returns or
25 original returns not timely filed, in the first taxable year

.196444.1

1 beginning after the date on which the return or amended return
2 establishing the net operating loss is filed; and

3 (c) in either case, if the net operating
4 loss carryover exceeds the amount of net income exclusive of
5 the net operating loss carryover for the taxable year to which
6 the exclusion first applies, in the next four succeeding
7 taxable years in turn until the net operating loss carryover is
8 exhausted for any net operating loss carryover from a taxable
9 year prior to January 1, 2013; in no event shall a net
10 operating loss carryover from a taxable year beginning prior to
11 January 1, 2013 be excluded in any taxable year after the
12 fourth taxable year beginning after the taxable year to which
13 the exclusion first applies; [~~and~~]

14 (8) for taxable years beginning on or after
15 January 1, 2013, 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 may be excluded only as follows:

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

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

1 (c) in either case, if the net operating
2 loss carryover exceeds the amount of net income exclusive of
3 the net operating loss carryover for the taxable year to which
4 the exclusion first applies, in the next nineteen succeeding
5 taxable years in turn until the net operating loss carryover is
6 exhausted for any net operating loss carryover from a taxable
7 year beginning on or after January 1, 2013; in no event shall a
8 net operating loss carryover from a taxable year beginning: 1)
9 prior to January 1, 2013 be excluded in any taxable year after
10 the fourth taxable year beginning after the taxable year to
11 which the exclusion first applies; and 2) on or after January
12 1, 2013 be excluded in any taxable year after the nineteenth
13 taxable year beginning after the taxable year to which the
14 exclusion first applies; and

15 [~~8~~] (9) for taxable years beginning on or
16 after January 1, 2011, an amount equal to the amount included
17 in adjusted gross income that represents a refund of state and
18 local income and sales taxes that were deducted for federal tax
19 purposes in taxable years beginning on or after January 1,
20 2010;

21 0. "net operating loss" means any net operating
22 loss, as defined by Section 172(c) of the Internal Revenue
23 Code, as that section may be amended or renumbered, for a
24 taxable year as further increased by the income, if any, from
25 obligations of the United States for that year less related

.196444.1

1 expenses;

2 P. "net operating loss carryover" means the amount,
3 or any portion of the amount, of a net operating loss for any
4 taxable year that, pursuant to Paragraph (6), [~~or~~] (7) or (8)
5 of Subsection N of this section, may be excluded from base
6 income;

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

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

16 S. "resident" means an individual who is domiciled
17 in this state during any part of the taxable year or an
18 individual who is physically present in this state for one
19 hundred eighty-five days or more during the taxable year; but
20 any individual, other than someone who was physically present
21 in the state for one hundred eighty-five days or more during
22 the taxable year, who, on or before the last day of the taxable
23 year, changed the individual's place of abode to a place
24 without this state with the bona fide intention of continuing
25 actually to abide permanently without this state is not a

.196444.1

1 resident for the purposes of the Income Tax Act for periods
2 after that change of abode;

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

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

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

15 W. "surviving spouse" means "surviving spouse" as
16 generally defined for federal income tax purposes;

17 X. "taxable income" means net income less any lump-
18 sum amount;

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

24 Z. "taxpayer" means any individual subject to the
25 tax imposed by the Income Tax Act."

.196444.1

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

3 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
4 Income and Franchise Tax Act and unless the context requires
5 otherwise:

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

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

10 C. "base income" means that part of the taxpayer's
11 income defined as taxable income and upon which the federal
12 income tax is calculated in the Internal Revenue Code for
13 income tax purposes plus, for taxable years beginning on or
14 after January 1, 1991, the amount of the net operating loss
15 deduction allowed by Section 172(a) of the Internal Revenue
16 Code, as that section may be amended or renumbered, and claimed
17 by the taxpayer for that year; "base income" also includes
18 interest received on a state or local bond;

19 D. "corporation" means corporations, joint stock
20 companies, real estate trusts organized and operated under the
21 Real Estate Trust Act, financial corporations and banks, other
22 business associations and, for corporate income tax purposes,
23 partnerships and limited liability companies taxed as
24 corporations under the Internal Revenue Code;

25 E. "department" means the taxation and revenue

1 department, the secretary of taxation and revenue or any
2 employee of the department exercising authority lawfully
3 delegated to that employee by the secretary;

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

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

9 H. "net income" means base income adjusted to
10 exclude:

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

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

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

18 (a) net operating loss carryback
19 deductions to that year from taxable years beginning prior to
20 January 1, 1991 claimed and allowed, as provided by the
21 Internal Revenue Code; and

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

24 (4) for taxable years beginning on or after
25 January 1, 1991 and prior to January 1, 2013, an amount equal

.196444.1

1 to the sum of any net operating loss carryover deductions to
2 that year claimed and allowed; provided that the amount of any
3 net operating loss carryover from a taxable year beginning on
4 or after January 1, 1991 and prior to January 1, 2013 may be
5 excluded only as follows:

6 (a) in the case of a timely filed
7 return, in the taxable year immediately following the taxable
8 year for which the return is filed; or

9 (b) in the case of amended returns or
10 original returns not timely filed, in the first taxable year
11 beginning after the date on which the return or amended return
12 establishing the net operating loss is filed; and

13 (c) in either case, if the net operating
14 loss carryover exceeds the amount of net income exclusive of
15 the net operating loss carryover for the taxable year to which
16 the exclusion first applies, in the next four succeeding
17 taxable years in turn until the net operating loss carryover is
18 exhausted for any net operating loss carryover from a taxable
19 year prior to January 1, 2013; in no event may a net operating
20 loss carryover from a taxable year beginning prior to January
21 1, 2013 be excluded in any taxable year after the fourth
22 taxable year beginning after the taxable year to which the
23 exclusion first applies; and

24 (5) for taxable years beginning on or after
25 January 1, 2013, an amount equal to the sum of any net

1 operating loss carryover deductions to that year claimed and
2 allowed; provided that the amount of any net operating loss
3 carryover may be excluded only as follows:

4 (a) in the case of a timely filed
5 return, in the taxable year immediately following the taxable
6 year for which the return is filed; or

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

11 (c) in either case, if the net operating
12 loss carryover exceeds the amount of net income exclusive of
13 the net operating loss carryover for the taxable year to which
14 the exclusion first applies, in the next nineteen succeeding
15 taxable years in turn until the net operating loss carryover is
16 exhausted for any net operating loss carryover from a taxable
17 year beginning on or after January 1, 2013; in no event shall a
18 net operating loss carryover from a taxable year beginning: 1)
19 prior to January 1, 2013 be excluded in any taxable year after
20 the fourth taxable year beginning after the taxable year to
21 which the exclusion first applies; and 2) on or after January
22 1, 2013 be excluded in any taxable year after the nineteenth
23 taxable year beginning after the taxable year to which the
24 exclusion first applies;

25 I. "net operating loss" means any net operating

.196444.1

1 loss, as defined by Section 172(c) of the Internal Revenue
2 Code, as that section may be amended or renumbered, for a
3 taxable year as further increased by the income, if any, from
4 obligations of the United States for that year less related
5 expenses;

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

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

18 L. "secretary" means the secretary of taxation and
19 revenue or the secretary's delegate;

20 M. "state" means any state of the United States,
21 the District of Columbia, the commonwealth of Puerto Rico, any
22 territory or possession of the United States or political
23 subdivision thereof or any political subdivision of a foreign
24 country;

25 N. "state or local bond" means a bond issued by a

1 state other than New Mexico or by a local government other than
2 one of New Mexico's political subdivisions, the interest from
3 which is excluded from income for federal income tax purposes
4 under Section 103 of the Internal Revenue Code, as that section
5 may be amended or renumbered;

6 O. "taxable year" means the calendar year or fiscal
7 year upon the basis of which the net income is computed under
8 the Corporate Income and Franchise Tax Act and includes, in the
9 case of the return made for a fractional part of a year under
10 the provisions of that act, the period for which the return is
11 made;

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

15 Q. "unitary corporations" means two or more
16 integrated corporations, other than any foreign corporation
17 incorporated in a foreign country and not engaged in trade or
18 business in the United States during the taxable year, that are
19 owned in the amount of more than fifty percent and controlled
20 by the same person and for which at least one of the following
21 conditions exists:

22 (1) there is a unity of operations evidenced
23 by central purchasing, advertising, accounting or other
24 centralized services;

25 (2) there is a centralized management or

.196444.1

1 executive force and centralized system of operation; or

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

5 SECTION 3. APPLICABILITY.--The provisions of this act
6 apply to taxable years beginning on or after January 1, 2013.

7 - 18 -

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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