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SENATE BILL 560

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

INTRODUCED BY

Clemente Sanchez

AN ACT

RELATING TO TAXATION; PROVIDING FOR AN EXPANDED NET OPERATING LOSS CARRYOVER PERIOD FOR NET OPERATING LOSSES INCURRED IN THE 2010 TAXABLE YEAR AND SUBSEQUENT TAXABLE 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

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1 income defined as taxable income and upon which the federal
2 income tax is calculated in the Internal Revenue Code for
3 income tax purposes plus, for taxable years beginning on or
4 after January 1, 1991, the amount of the net operating loss
5 deduction allowed by Section 172(a) of the Internal Revenue
6 Code, as that section may be amended or renumbered, and claimed
7 by the taxpayer for that year; "base income" also includes
8 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 and prior to January 1, 2010, 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, 2010 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

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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; in no event may a net operating loss carryover be
9 excluded in any taxable year after the fourth taxable year
10 beginning after the taxable year to which the exclusion first
11 applies; and

12 (5) for taxable years beginning on or after
13 January 1, 2010, an amount equal to the sum of any net
14 operating loss carryover deductions to that year claimed and
15 allowed, provided that the amount of any net operating loss
16 carryover from a taxable year beginning on or after January 1,
17 2010 may be excluded only as follows:

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

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

25 (c) in either case, if the net operating

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

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

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

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

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1 instrumentality thereof;

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

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

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

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

24 Q. "unitary corporations" means two or more
25 integrated corporations, other than any foreign corporation

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1 incorporated in a foreign country and not engaged in trade or
2 business in the United States during the taxable year, that are
3 owned in the amount of more than fifty percent and controlled
4 by the same person and for which at least one of the following
5 conditions exists:

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

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

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

14 SECTION 2. A new section of the Corporate Income and
15 Franchise Tax Act is enacted to read:

16 "[NEW MATERIAL] REPORTING ON FOURTEEN-YEAR NET OPERATING
17 LOSS CARRYOVER.--

18 A. The purpose of allowing corporations to carry
19 over a net operating loss for fourteen years is to allow a
20 taxpayer to reduce the corporate income tax liability by
21 offsetting unprofitable taxable years against profitable
22 taxable years and to strike an average taxable income computed
23 over a period longer than five years.

24 B. The department shall annually report to the
25 interim legislative revenue stabilization and tax policy

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1 committee aggregate statistical information, including the
2 amount of net operating loss carried over, the number of
3 taxpayers claiming a net operating loss, the number of
4 taxpayers who carry over a net operating loss for more than
5 five years and any other information necessary to determine
6 whether allowing a fourteen-year net operating loss carryover
7 is providing a fair tax policy to corporations.

8 C. A taxpayer claiming a net operating loss after
9 the fourteenth taxable year beginning after the taxable year to
10 which the exclusion first applies shall report in a manner
11 prescribed by the department that facilitates evaluation of the
12 fourteen-year net operating loss carryover of the benefit of
13 the carryover to the state."

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