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SENATE BILL 106

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

Carrol H. Leavell

AN ACT

RELATING TO TAXATION; ALLOWING THE EXCLUSION OF NET OPERATING
LOSS CARRYOVER FROM NET INCOME IN THE CORPORATE INCOME AND
FRANCHISE TAX ACT FOR UP TO TWENTY 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, 2014, 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, 2014 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 for any net operating loss carryover from a taxable
9 year beginning prior to January 1, 2014; in no event may a net
10 operating loss carryover from a taxable year beginning prior to
11 January 1, 2014 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 (5) for taxable years beginning on or after
15 January 1, 2014, 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

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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, 2014; in no event shall a
8 net operating loss carryover from a taxable year beginning on
9 or after January 1, 2014 be excluded in any taxable year after
10 the nineteenth taxable year beginning after the taxable year to
11 which the exclusion first applies;

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

18 J. "net operating loss carryover" means the amount,
19 or any portion of the amount, of a net operating loss for any
20 taxable year that, pursuant to Paragraph (3), [~~or~~] (4) or (5)
21 of Subsection H of this section, may be excluded from base
22 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. APPLICABILITY.--The provisions of this act
18 apply to taxable years beginning on or after January 1, 2014.