

1 SENATE BILL 391

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO TAXATION; INCLUDING CERTAIN INCOME RECEIVED BY A
12 CAPTIVE REAL ESTATE INVESTMENT TRUST IN BASE INCOME FOR
13 PURPOSES OF THE CORPORATE INCOME AND FRANCHISE TAX ACT;
14 DEFINING "CAPTIVE REAL ESTATE INVESTMENT TRUST" AND "REAL
15 ESTATE INVESTMENT TRUST" IN THAT ACT.

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

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

20 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
21 Income and Franchise Tax Act and unless the context requires
22 otherwise:

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

25 B. "bank" means any national bank, national banking

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1 association, state bank or bank holding company;

2 C. "base income" means that part of the taxpayer's
3 income defined as taxable income and upon which the federal
4 income tax is calculated in the Internal Revenue Code for
5 income tax purposes plus:

6 (1) for taxable years beginning on or after
7 January 1, 1991, the amount of the net operating loss deduction
8 allowed by Section 172(a) of the Internal Revenue Code, as that
9 section may be amended or renumbered, and claimed by the
10 taxpayer for that year; [~~"base income" also includes~~]

11 (2) interest received on a state or local
12 bond; and

13 (3) the amount of any deduction claimed in
14 calculating taxable income for all expenses and costs directly
15 or indirectly paid, accrued or incurred to a captive real
16 estate investment trust;

17 D. "captive real estate investment trust" means a
18 corporation, trust or association taxed as a real estate
19 investment trust pursuant to Section 857 of the Internal
20 Revenue Code, the shares or beneficial interests of which are
21 not regularly traded on an established securities market;
22 provided that more than fifty percent of any class of
23 beneficial interests or shares of the real estate investment
24 trust are owned directly, indirectly or constructively by the
25 taxpayer during all or a part of the taxpayer's taxable year;

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1 ~~[D-]~~ E. "corporation" means corporations, joint
2 stock companies, real estate trusts organized and operated
3 under the Real Estate Trust Act, financial corporations and
4 banks, other business associations and, for corporate income
5 tax purposes, partnerships and limited liability companies
6 taxed as corporations under the Internal Revenue Code;

7 ~~[E-]~~ F. "department" means the taxation and revenue
8 department, the secretary of taxation and revenue or any
9 employee of the department exercising authority lawfully
10 delegated to that employee by the secretary;

11 ~~[F-]~~ G. "fiscal year" means any accounting period
12 of twelve months ending on the last day of any month other than
13 December;

14 ~~[G-]~~ H. "Internal Revenue Code" means the United
15 States Internal Revenue Code of 1986, as amended;

16 ~~[H-]~~ I. "net income" means base income adjusted to
17 exclude:

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

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

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

25 (a) net operating loss carryback

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1 deductions to that year from taxable years beginning prior to
2 January 1, 1991 claimed and allowed, as provided by the
3 Internal Revenue Code; and

4 (b) net operating loss carryover
5 deductions to that year claimed and allowed;

6 (4) for taxable years beginning on or after
7 January 1, 1991 and prior to January 1, 2013, an amount equal
8 to the sum of any net operating loss carryover deductions to
9 that year claimed and allowed; provided that the amount of any
10 net operating loss carryover from a taxable year beginning on
11 or after January 1, 1991 and prior to January 1, 2013 may be
12 excluded only as follows:

13 (a) in the case of a timely filed
14 return, in the taxable year immediately following the taxable
15 year for which the return is filed; or

16 (b) in the case of amended returns or
17 original returns not timely filed, in the first taxable year
18 beginning after the date on which the return or amended return
19 establishing the net operating loss is filed; and

20 (c) in either case, if the net operating
21 loss carryover exceeds the amount of net income exclusive of
22 the net operating loss carryover for the taxable year to which
23 the exclusion first applies, in the next four succeeding
24 taxable years in turn until the net operating loss carryover is
25 exhausted for any net operating loss carryover from a taxable

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1 year prior to January 1, 2013; in no event may a net operating
2 loss carryover from a taxable year beginning prior to January
3 1, 2013 be excluded in any taxable year after the fourth
4 taxable year beginning after the taxable year to which the
5 exclusion first applies; and

6 (5) for taxable years beginning on or after
7 January 1, 2013, an amount equal to the sum of any net
8 operating loss carryover deductions to that year claimed and
9 allowed; provided that the amount of any net operating loss
10 carryover may be excluded only as follows:

11 (a) in the case of a timely filed
12 return, in the taxable year immediately following the taxable
13 year for which the return is filed; or

14 (b) in the case of amended returns or
15 original returns not timely filed, in the first taxable year
16 beginning after the date on which the return or amended return
17 establishing the net operating loss is filed; and

18 (c) in either case, if the net operating
19 loss carryover exceeds the amount of net income exclusive of
20 the net operating loss carryover for the taxable year to which
21 the exclusion first applies, in the next nineteen succeeding
22 taxable years in turn until the net operating loss carryover is
23 exhausted for any net operating loss carryover from a taxable
24 year beginning on or after January 1, 2013; in no event shall a
25 net operating loss carryover from a taxable year beginning: 1)

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1 prior to January 1, 2013 be excluded in any taxable year after
2 the fourth taxable year beginning after the taxable year to
3 which the exclusion first applies; and 2) on or after
4 January 1, 2013 be excluded in any taxable year after the
5 nineteenth taxable year beginning after the taxable year to
6 which the exclusion first applies;

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

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

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

25 M. "real estate investment trust" has the meaning

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1 ascribed to the term in Section 856 of the Internal Revenue
2 Code, as that section may be amended or renumbered;

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

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

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

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

22 ~~[P.]~~ R. "taxpayer" means any corporation subject to
23 the taxes imposed by the Corporate Income and Franchise Tax
24 Act; and

25 ~~[Q.]~~ S. "unitary corporations" means two or more

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

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

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

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

15 SECTION 2. APPLICABILITY.--The provisions of this act
16 apply to taxable years beginning on or after January 1, 2017.