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AN ACT

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

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  
income tax is calculated in the Internal Revenue Code for  
income tax purposes plus:

(1) for taxable years beginning on or after  
January 1, 1991, the amount of the net operating loss  
deduction allowed by Section 172(a) of the Internal Revenue  
Code, as that section may be amended or renumbered, and

1 claimed by the taxpayer for that year;

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

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

8 D. "captive real estate investment trust" means a  
9 corporation, trust or association taxed as a real estate  
10 investment trust pursuant to Section 857 of the Internal  
11 Revenue Code, the shares or beneficial interests of which are  
12 not regularly traded on an established securities market;  
13 provided that more than fifty percent of any class of  
14 beneficial interests or shares of the real estate investment  
15 trust are owned directly, indirectly or constructively by the  
16 taxpayer during all or a part of the taxpayer's taxable year;

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

23 F. "department" means the taxation and revenue  
24 department, the secretary of taxation and revenue or any  
25 employee of the department exercising authority lawfully

1 delegated to that employee by the secretary;

2 G. "fiscal year" means any accounting period of  
3 twelve months ending on the last day of any month other than  
4 December;

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

7 I. "net income" means base income adjusted to  
8 exclude:

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

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

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

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

20 (b) net operating loss carryover  
21 deductions to that year claimed and allowed;

22 (4) for taxable years beginning on or after  
23 January 1, 1991 and prior to January 1, 2013, an amount equal  
24 to the sum of any net operating loss carryover deductions to  
25 that year claimed and allowed; provided that the amount of

1 any net operating loss carryover from a taxable year  
2 beginning on or after January 1, 1991 and prior to  
3 January 1, 2013 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  
10 return establishing the net operating loss is filed; and

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

22 (5) for taxable years beginning on or after  
23 January 1, 2013, an amount equal to the sum of any net  
24 operating loss carryover deductions to that year claimed and  
25 allowed; provided that the amount of any net operating loss

1 carryover may be excluded only as follows:

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

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

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

24 J. "net operating loss" means any net operating  
25 loss, as defined by Section 172(c) of the Internal Revenue

1 Code, as that section may be amended or renumbered, for a  
2 taxable year as further increased by the income, if any, from  
3 obligations of the United States for that year less related  
4 expenses;

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

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

17 M. "real estate investment trust" has the meaning  
18 ascribed to the term in Section 856 of the Internal Revenue  
19 Code, as that section may be amended or renumbered;

20 N. "secretary" means the secretary of taxation and  
21 revenue or the secretary's delegate;

22 O. "state" means any state of the United States,  
23 the District of Columbia, the commonwealth of Puerto Rico,  
24 any territory or possession of the United States or political  
25 subdivision thereof or any political subdivision of a foreign

1 country;

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

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

14 R. "taxpayer" means any corporation subject to the  
15 taxes imposed by the Corporate Income and Franchise Tax Act;  
16 and

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

24 (1) there is a unity of operations evidenced  
25 by central purchasing, advertising, accounting or other

1 centralized services;

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

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

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

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