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AN ACT

RELATING TO TAXATION; INCREASING A TEMPORARY DISTRIBUTION TO MUNICIPALITIES AND COUNTIES IF CERTAIN FEDERAL FUNDS ARE NOT MADE AVAILABLE FOR MUNICIPALITIES AND COUNTIES; AMENDING THE DEFINITION OF "NET OPERATING LOSS DEDUCTION" IN THE CORPORATE INCOME AND FRANCHISE TAX ACT TO ADDRESS CERTAIN CHANGES MADE BY THE FEDERAL CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT; EXEMPTING CERTAIN FEDERAL CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT PAYMENTS TO CERTAIN HEALTH CARE PROVIDERS FROM THE GROSS RECEIPTS TAX; PROVIDING A TEMPORARY WAIVER OF PENALTIES AND INTEREST ON CERTAIN TAX LIABILITIES DUE IN 2020; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-1-6.64 NMSA 1978 (being Laws 2019, Chapter 270, Section 9) is amended to read:

"7-1-6.64. DISTRIBUTION--MUNICIPALITIES AND COUNTIES.--

A. Except as provided in Subsection C of this section, beginning July 1, 2020 and prior to July 1, 2021, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to municipalities from the net receipts attributable to the gross receipts tax in an amount equal to two million five hundred thousand dollars (\$2,500,000). The amount to be distributed to each municipality shall be in proportion to the population of each municipality in the proportion that

1 the population of each municipality is to the total
2 population of all municipalities, according to the most
3 recent federal decennial census.

4 B. Except as provided in Subsection D of this
5 section, beginning July 1, 2020 and prior to July 1, 2021, a
6 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
7 made to counties from the net receipts attributable to the
8 gross receipts tax in an amount equal to one million five
9 hundred thousand dollars (\$1,500,000). The amount to be
10 distributed to each county shall be in the proportion that
11 the population of each county is to the total population of
12 all counties, according to the most recent federal decennial
13 census.

14 C. If, on or after the effective date of this 2020
15 act, the federal government provides money for each
16 municipality in the state for revenue declines attributable
17 to the coronavirus disease 2019 pandemic, as determined by
18 the secretary, beginning on the first day of the month after
19 the date in which each municipality receives the money and
20 prior to July 1, 2021, a distribution pursuant to Section
21 7-1-6.1 NMSA 1978 shall be made to municipalities from the
22 net receipts attributable to the gross receipts tax in an
23 amount equal to one million two hundred fifty thousand
24 dollars (\$1,250,000). The amount to be distributed to each
25 municipality shall be in proportion to the population of each

1 municipality in the proportion that the population of each
2 municipality is to the total population of all
3 municipalities, according to the most recent federal
4 decennial census.

5 D. If, on or after the effective date of this 2020
6 act, the federal government provides money for each county in
7 the state for revenue declines attributable to the
8 coronavirus disease 2019 pandemic, as determined by the
9 secretary, beginning on the first day of the month after the
10 date in which each county receives the money and prior to
11 July 1, 2021, a distribution pursuant to Section 7-1-6.1 NMSA
12 1978 shall be made to counties from the net receipts
13 attributable to the gross receipts tax in an amount equal to
14 seven hundred fifty thousand dollars (\$750,000). The amount
15 to be distributed to each county shall be in the proportion
16 that the population of each county is to the total population
17 of all counties, according to the most recent federal
18 decennial census."

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

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

24 A. "bank" means any national bank, national
25 banking association, state bank or bank holding company;

1 B. "apportioned net income" or "apportioned net
2 loss" means net income allocated and apportioned to New
3 Mexico pursuant to the provisions of the Corporate Income and
4 Franchise Tax Act or the Uniform Division of Income for Tax
5 Purposes Act, but excluding from the sales factor any sales
6 that represent intercompany transactions between members of
7 the filing group;

8 C. "base income" means the federal taxable income
9 or the federal net operating loss of a corporation for the
10 taxable year calculated pursuant to the Internal Revenue
11 Code, after special deductions provided in Sections 241
12 through 249 of the Internal Revenue Code but without any
13 deduction for net operating losses, as if the corporation
14 filed a federal tax return as a separate domestic entity,
15 modified as follows:

16 (1) adding to that income:

17 (a) interest received on a state or
18 local bond exempt under the Internal Revenue Code;

19 (b) the amount of any deduction claimed
20 in calculating taxable income for all expenses and costs
21 directly or indirectly paid, accrued or incurred to a captive
22 real estate investment trust; and

23 (c) the amount of any deduction, other
24 than for premiums, for amounts paid directly or indirectly to
25 a commonly controlled entity that is exempt from corporate

1 income tax pursuant to Section 7-2A-4 NMSA 1978;

2 (2) subtracting from that income:

3 (a) income from obligations of the
4 United States net of expenses incurred to earn that income;

5 (b) other amounts that the state is
6 prohibited from taxing because of the laws or constitution of
7 this state or the United States net of any related expenses;

8 (c) an amount equal to one hundred
9 percent of the subpart F income, as that term is defined in
10 Section 952 of the Internal Revenue Code, as that section may
11 be amended or renumbered, included in the income of the
12 corporation; and

13 (d) an amount equal to one hundred
14 percent of the income of the corporation under Section 951A
15 of the Internal Revenue Code, after allowing the deduction
16 provided in Section 250 of the Internal Revenue Code; and

17 (3) making other adjustments deemed
18 necessary to properly reflect income of the unitary group,
19 including attribution of income or expense related to unitary
20 assets held by related corporations that are not part of the
21 filing group;

22 D. "captive real estate investment trust" means a
23 corporation, trust or association taxed as a real estate
24 investment trust pursuant to Section 857 of the Internal
25 Revenue Code, the shares or beneficial interests of which are

1 not regularly traded on an established securities market;
2 provided that more than fifty percent of any class of
3 beneficial interests or shares of the real estate investment
4 trust are owned directly, indirectly or constructively by the
5 taxpayer during all or a part of the taxpayer's taxable year;

6 E. "common ownership" means the direct or indirect
7 control or ownership of more than fifty percent of the
8 outstanding voting stock, ownership of which is determined
9 pursuant to Section 1563 of the Internal Revenue Code, as
10 that section may be amended or renumbered, of:

11 (1) a parent-subsidiary controlled group as
12 defined in Section 1563 of the Internal Revenue Code, except
13 that fifty percent shall be substituted for eighty percent;

14 (2) a brother-sister controlled group as
15 defined in Section 1563 of the Internal Revenue Code; or

16 (3) three or more corporations each of which
17 is a member of a group of corporations described in Paragraph
18 (1) or (2) of this subsection, and one of which is:

19 (a) a common parent corporation
20 included in a group of corporations described in Paragraph
21 (1) of this subsection; and

22 (b) included in a group of corporations
23 described in Paragraph (2) of this subsection;

24 F. "consolidated group" means the group of
25 entities properly filing a federal consolidated return under

1 the Internal Revenue Code for the taxable year;

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

8 H. "department" means the taxation and revenue
9 department, the secretary of taxation and revenue or any
10 employee of the department exercising authority lawfully
11 delegated to that employee by the secretary;

12 I. "filing group" means a group of corporations
13 properly included in a return pursuant to Section 7-2A-8.3
14 NMSA 1978 for a particular taxable year;

15 J. "fiscal year" means any accounting period of
16 twelve months ending on the last day of any month other than
17 December;

18 K. "grandfathered net operating loss carryover"
19 means:

20 (1) the amount of net loss properly reported
21 to New Mexico for taxable years beginning January 1, 2013 and
22 prior to January 1, 2020 as part of a timely filed original
23 return, or an amended return for those taxable years filed
24 prior to January 1, 2020, to the extent such loss can be
25 attributed to one or more corporations that are properly

1 included in the taxpayer's return for the first taxable year
2 beginning on or after January 1, 2020;

3 (2) reduced by:

4 (a) adding back deductions that were
5 taken by the corporation or corporations for royalties or
6 interest paid to one or more related corporations, but only
7 to the extent that such adjustment would not create a net
8 loss for such related corporations; and

9 (b) the amount of net operating loss
10 deductions taken prior to January 1, 2020 that would be
11 charged against those losses consistent with the Internal
12 Revenue Code and provisions of the Corporate Income and
13 Franchise Tax Act applicable to the year of the deduction;
14 and

15 (3) apportioned to New Mexico using the
16 apportionment factors that can properly be attributed to the
17 corporation or corporations for the year of the net loss;

18 L. "Internal Revenue Code" means the United States
19 Internal Revenue Code of 1986, as amended;

20 M. "net income" means:

21 (1) the base income of a corporation
22 properly filing a tax return as a separate entity; or

23 (2) the combined base income and losses of
24 corporations that are part of a filing group that is computed
25 after eliminating intercompany income and expense in a manner

1 consistent with the consolidated filing requirements of the
2 Internal Revenue Code and the Corporate Income and Franchise
3 Tax Act;

4 N. "net operating loss carryover" means the
5 apportioned net loss properly reported on an original or
6 amended tax return for taxable years beginning on or after
7 January 1, 2020 by the taxpayer:

8 (1) plus:

9 (a) the portion of an apportioned net
10 loss properly reported to New Mexico for a taxable year
11 beginning on or after January 1, 2020, on a separate year
12 return, to the extent the taxpayer would have been entitled
13 to include the portion of such apportioned net loss in the
14 taxpayer's consolidated net operating loss carryforward under
15 the Internal Revenue Code if the taxpayer filed a
16 consolidated federal return; and

17 (b) the taxpayer's grandfathered net
18 operating loss carryover; and

19 (2) minus:

20 (a) the amount of the net operating
21 loss carryover attributed to an entity that has left the
22 filing group, computed in a manner consistent with the
23 consolidated filing requirements of the Internal Revenue Code
24 and applicable regulations, as if the taxpayer were filing a
25 consolidated return; and

1 (b) the amount of net operating loss
2 deductions properly taken by the taxpayer;

3 O. "net operating loss deduction" means the
4 portion of the net operating loss carryover that may be
5 deducted from the taxpayer's apportioned net income under the
6 Internal Revenue Code as of January 1, 2018 for the taxable
7 year in which the deduction is taken, including the eighty
8 percent limitation of Section 172(a) of the Internal Revenue
9 Code as of January 1, 2018 calculated on the basis of the
10 taxpayer's apportioned net income;

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

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

21 R. "related corporation" means a corporation that
22 is under common ownership with one or more corporations but
23 that is not included in the same tax return;

24 S. "return" means any tax or information return,
25 including a water's-edge or worldwide combined return, a

1 consolidated return, a declaration of estimated tax or a
2 claim for refund, including any amendments or supplements to
3 the return, required or permitted pursuant to a law subject
4 to administration and enforcement pursuant to the Tax
5 Administration Act and filed with the department by or on
6 behalf of any person;

7 T. "secretary" means the secretary of taxation and
8 revenue or the secretary's delegate;

9 U. "separate year return" means a properly filed
10 original or amended return for a taxable year beginning on or
11 after January 1, 2020 by a taxpayer reporting a loss, a
12 portion of which is claimed as part of the net operating loss
13 carryover by another taxpayer in a subsequent return period;

14 V. "state" means any state of the United States,
15 the District of Columbia, the commonwealth of Puerto Rico,
16 any territory or possession of the United States or political
17 subdivision thereof or any political subdivision of a foreign
18 country;

19 W. "state or local bond" means a bond issued by a
20 state other than New Mexico or by a local government other
21 than one of New Mexico's political subdivisions, the interest
22 from which is excluded from income for federal income tax
23 purposes under Section 103 of the Internal Revenue Code, as
24 that section may be amended or renumbered;

25 X. "taxable income" means a taxpayer's apportioned

1 net income minus the net operating loss deduction for the
2 taxable year;

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

9 Z. "taxpayer" means any corporation or group of
10 corporations filing a return pursuant to Section 7-2A-8.3
11 NMSA 1978 subject to the taxes imposed by the Corporate
12 Income and Franchise Tax Act;

13 AA. "unitary group" means a group of two or more
14 corporations, including a captive real estate investment
15 trust, but not including an S corporation, an insurance
16 company subject to the provisions of the New Mexico Insurance
17 Code, an insurance company that would be subject to the New
18 Mexico Insurance Code if the insurance company engaged in
19 business in this state or a real estate investment trust that
20 is not a captive real estate investment trust, that are:

21 (1) related through common ownership; and

22 (2) economically interdependent with one

23 another as demonstrated by the following factors:

24 (a) centralized management;

25 (b) functional integration; and

1 (c) economies of scale;

2 BB. "water's-edge group" means all corporations
3 that are part of a unitary group, except:

4 (1) corporations that are exempt from
5 corporate income tax pursuant to Section 7-2A-4 NMSA 1978;
6 and

7 (2) corporations wherever organized or
8 incorporated that have less than twenty percent of their
9 property, payroll and sales sourced to locations within the
10 United States, following the sourcing rules of the Uniform
11 Division of Income for Tax Purposes Act; and

12 CC. "worldwide combined group" means all members
13 of a unitary group, except members that are exempt from
14 corporate income tax pursuant to Section 7-2A-4 NMSA 1978,
15 irrespective of the country in which the corporations are
16 incorporated or conduct business activity."

17 SECTION 3. A new section of the Gross Receipts and
18 Compensating Tax Act is enacted to read:

19 "EXEMPTION--GROSS RECEIPTS--CERTAIN HEALTH CARE
20 PROVIDERS FROM FEDERAL CORONAVIRUS AID, RELIEF, AND ECONOMIC
21 SECURITY ACT PAYMENTS.--Exempted from the gross receipts tax
22 are receipts of health care providers, other than hospitals
23 licensed by the department of health, from payments by the
24 United States department of health and human services from
25 the federal public health and social services emergency fund

1 to providers eligible to receive the payments pursuant to the
2 federal Coronavirus Aid, Relief, and Economic Security Act."

3 SECTION 4. TEMPORARY PROVISION--PENALTIES AND INTEREST
4 WAIVED FOR CERTAIN TAXES DUE IN 2020.--

5 A. Notwithstanding Sections 7-1-67 and 7-1-69 NMSA
6 1978, no interest shall accrue and no penalty shall be
7 assessed to a taxpayer for:

8 (1) tax liabilities pursuant to the Income
9 Tax Act or the Corporate Income and Franchise Tax Act for
10 failure to pay the tax that became due April 15, 2020 through
11 July 15, 2020; provided that the failure to pay the tax was
12 made without intent to evade or defeat the tax; and provided
13 further that payment for the unpaid payments is made in full
14 on or before April 15, 2021;

15 (2) tax liabilities pursuant to the
16 Withholding Tax Act for failure to pay the tax that became
17 due March 25, 2020 through July 25, 2020; provided that the
18 failure to pay the tax was made without intent to evade or
19 defeat the tax; and provided further that payment for the
20 unpaid taxes is made in full on or before April 25, 2021;

21 (3) gross receipts tax, local option gross
22 receipts tax or compensating tax liabilities for failure to
23 pay any of those taxes that became due March 25, 2020 through
24 July 25, 2020; provided that the failure to pay the tax was
25 made without intent to evade or defeat the tax; and provided

1 further that payment for the unpaid taxes is made in full on
2 or before April 25, 2021; and

3 (4) tax liabilities assessed between
4 September 3, 2019 and January 3, 2020 as the result of a
5 managed audit performed in accordance with a managed audit
6 agreement pursuant to Section 7-1-11.1 NMSA 1978; provided
7 that payment for those liabilities is made pursuant to terms
8 of the managed audit agreement on or before December 31,
9 2020.

10 B. Notwithstanding Sections 7-38-49 and 7-38-50
11 NMSA 1978, no interest shall accrue and no penalty shall be
12 assessed to a property owner for unpaid property taxes that
13 became due April 10, 2020 pursuant to Section 7-38-38 NMSA
14 1978; provided that:

15 (1) the unpaid property taxes did not become
16 delinquent because of an intent to defraud by the property
17 owner;

18 (2) payment for the unpaid property taxes is
19 made in full on or before May 10, 2021; and

20 (3) the subject property does not have
21 property taxes that became delinquent pursuant to Section
22 7-38-46 NMSA 1978 prior to May 10, 2020.

23 **SECTION 5. EMERGENCY.**--It is necessary for the public
24 peace, health and safety that this act take effect
25 immediately. _____