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AN ACT

RELATING TO TAXATION; CONVERTING A CERTAIN EXEMPTION TO A CREDIT FOR PASS-THROUGH ENTITIES THAT ELECT TO PAY AN ENTITY-LEVEL TAX; AMENDING THE DEFINITIONS OF "BASE INCOME" AND "NET INCOME" IN THE INCOME TAX ACT.

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

SECTION 1. Section 7-2-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS.--For the purpose of the Income Tax Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust'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:

(a) 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 taken by the taxpayer for that year; and

(b) for taxable years beginning on or

1 after January 1, 2023, an amount equal to the amount of
2 credit claimed and allowed for that year pursuant to Section
3 7-3A-10 NMSA 1978 with respect to the distributed net income
4 of a pass-through entity;

5 (2) means, for taxpayers other than estates
6 or trusts, that part of the taxpayer's income defined as
7 adjusted gross income plus:

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

13 (b) for taxable years beginning on or
14 after January 1, 2023, an amount equal to the amount of
15 credit claimed and allowed for that year pursuant to Section
16 7-3A-10 NMSA 1978 with respect to the distributed net income
17 of a pass-through entity;

18 (3) includes, for all taxpayers, any other
19 income of the taxpayer not included in adjusted gross income
20 but upon which a federal tax is calculated pursuant to the
21 Internal Revenue Code for income tax purposes, except amounts
22 for which a calculation of tax is made pursuant to Section 55
23 of the Internal Revenue Code, as that section may be amended
24 or renumbered; "base income" also includes interest received
25 on a state or local bond;

1 (4) includes, for all taxpayers, an amount
2 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
3 taxable year if:

4 (a) such amount is transferred to
5 another qualified tuition program, as defined in Section 529
6 of the Internal Revenue Code, not authorized in the Education
7 Trust Act; or

8 (b) a distribution or refund is made
9 for any reason other than: 1) to pay for qualified higher
10 education expenses, as defined pursuant to Section 529 of the
11 Internal Revenue Code; or 2) upon the beneficiary's death,
12 disability or receipt of a scholarship; and

13 (5) excludes, for a taxpayer who conducts a
14 lawful business pursuant to the laws of the state, an amount
15 equal to any expenditure that is eligible to be claimed as a
16 federal income tax deduction but is disallowed by Section
17 280E of the Internal Revenue Code, as that section may be
18 amended or renumbered;

19 C. "compensation" means wages, salaries,
20 commissions and any other form of remuneration paid to
21 employees for personal services;

22 D. "department" means the taxation and revenue
23 department, the secretary or any employee of the department
24 exercising authority lawfully delegated to that employee by
25 the secretary;

1 E. "fiduciary" means a guardian, trustee,
2 executor, administrator, committee, conservator, receiver,
3 individual or corporation acting in any fiduciary capacity;

4 F. "filing status" means "married filing joint
5 returns", "married filing separate returns", "head of
6 household", "surviving spouse" and "single", as those terms
7 are generally defined for federal tax purposes;

8 G. "fiscal year" means any accounting period of
9 twelve months ending on the last day of any month other than
10 December;

11 H. "head of household" means "head of household"
12 as generally defined for federal income tax purposes;

13 I. "individual" means a natural person, an estate,
14 a trust or a fiduciary acting for a natural person, trust or
15 estate;

16 J. "Internal Revenue Code" means the United States
17 Internal Revenue Code of 1986, as amended;

18 K. "lump-sum amount" means, for the purpose of
19 determining liability for federal income tax, an amount that
20 was not included in adjusted gross income but upon which the
21 five-year-averaging or the ten-year-averaging method of tax
22 computation provided in Section 402 of the Internal Revenue
23 Code, as that section may be amended or renumbered, was
24 applied;

25 L. "modified gross income" means all income of the

1 taxpayer and, if any, the taxpayer's spouse and dependents,
2 undiminished by losses and from whatever source, including:

- 3 (1) compensation;
- 4 (2) net profit from business;
- 5 (3) gains from dealings in property;
- 6 (4) interest;
- 7 (5) net rents;
- 8 (6) royalties;
- 9 (7) dividends;
- 10 (8) alimony and separate maintenance
11 payments;
- 12 (9) annuities;
- 13 (10) income from life insurance and
14 endowment contracts;
- 15 (11) pensions;
- 16 (12) discharge of indebtedness;
- 17 (13) distributive share of partnership
18 income;
- 19 (14) income in respect of a decedent;
- 20 (15) income from an interest in an estate or
21 a trust;
- 22 (16) social security benefits;
- 23 (17) unemployment compensation benefits;
- 24 (18) workers' compensation benefits;
- 25 (19) public assistance and welfare benefits;

1 (20) cost-of-living allowances; and

2 (21) gifts;

3 M. "modified gross income" excludes:

4 (1) payments for hospital, dental, medical
5 or drug expenses to or on behalf of the taxpayer;

6 (2) the value of room and board provided by
7 federal, state or local governments or by private individuals
8 or agencies based upon financial need and not as a form of
9 compensation;

10 (3) payments pursuant to a federal, state or
11 local government program directly or indirectly to a third
12 party on behalf of the taxpayer when identified to a
13 particular use or invoice by the payer; or

14 (4) payments for credits and rebates
15 pursuant to the Income Tax Act and made for a credit pursuant
16 to Section 7-3-9 NMSA 1978;

17 N. "net income" means, for estates and trusts,
18 base income adjusted to exclude amounts that the state is
19 prohibited from taxing because of the laws or constitution of
20 this state or the United States and means, for taxpayers
21 other than estates or trusts, base income adjusted to
22 exclude:

23 (1) an amount equal to the standard
24 deduction allowed the taxpayer for the taxpayer's taxable
25 year by Section 63 of the Internal Revenue Code, as that

1 section may be amended or renumbered;

2 (2) an amount equal to the itemized
3 deductions defined in Section 63 of the Internal Revenue
4 Code, as that section may be amended or renumbered, allowed
5 the taxpayer for the taxpayer's taxable year less the amount
6 excluded pursuant to Paragraph (1) of this subsection and
7 less the amount of state and local income and sales taxes
8 included in the taxpayer's itemized deductions;

9 (3) an amount equal to the product of the
10 exemption amount allowed for the taxpayer's taxable year by
11 Section 151 of the Internal Revenue Code, as that section may
12 be amended or renumbered, multiplied by the number of
13 personal exemptions allowed for federal income tax purposes;

14 (4) income from obligations of the United
15 States of America less expenses incurred to earn that income;

16 (5) other amounts that the state is
17 prohibited from taxing because of the laws or constitution of
18 this state or the United States;

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

24 (a) in the case of a timely filed
25 return, in the taxable year immediately following the taxable

1 year for which the return is filed; or

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

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

21 (7) for taxable years beginning on or after
22 January 1, 2011, an amount equal to the amount included in
23 adjusted gross income that represents a refund of state and
24 local income and sales taxes that were deducted for federal
25 tax purposes in taxable years beginning on or after January

1 1, 2010;

2 O. "net operating loss" means any net operating
3 loss, as defined by Section 172(c) of the Internal Revenue
4 Code, as that section may be amended or renumbered, for a
5 taxable year as further increased by the income, if any, from
6 obligations of the United States for that year less related
7 expenses;

8 P. "net operating loss carryover" means the
9 amount, or any portion of the amount, of a net operating loss
10 for any taxable year that, pursuant to Paragraph (6) of
11 Subsection N of this section, may be excluded from base
12 income;

13 Q. "nonresident" means every individual not a
14 resident of this state;

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

22 S. "resident" means an individual who is domiciled
23 in this state during any part of the taxable year or an
24 individual who is physically present in this state for one
25 hundred eighty-five days or more during the taxable year; but

1 any individual, other than someone who was physically present
2 in the state for one hundred eighty-five days or more during
3 the taxable year, who, on or before the last day of the
4 taxable year, changed the individual's place of abode to a
5 place without this state with the bona fide intention of
6 continuing actually to abide permanently without this state
7 is not a resident for the purposes of the Income Tax Act for
8 periods after that change of abode;

9 T. "secretary" means the secretary of taxation and
10 revenue or the secretary's delegate;

11 U. "state" means any state of the United States,
12 the District of Columbia, the commonwealth of Puerto Rico,
13 any territory or possession of the United States or any
14 political subdivision of a foreign country;

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

21 W. "surviving spouse" means "surviving spouse" as
22 generally defined for federal income tax purposes;

23 X. "taxable income" means net income less any
24 lump-sum amount;

25 Y. "taxable year" means the calendar year or

1 fiscal year upon the basis of which the net income is
2 computed under the Income Tax Act and includes, in the case
3 of the return made for a fractional part of a year under the
4 provisions of the Income Tax Act, the period for which the
5 return is made; and

6 Z. "taxpayer" means any individual subject to the
7 tax imposed by the Income Tax Act."

8 SECTION 2. Section 7-2-13 NMSA 1978 (being Laws 1965,
9 Chapter 202, Section 11, as amended) is amended to read:

10 "7-2-13. CREDIT FOR TAXES PAID OTHER STATES BY RESIDENT
11 INDIVIDUALS.--

12 A. When a resident individual is liable to another
13 state for tax upon income derived from sources outside this
14 state but also included in net income under the Income Tax
15 Act as income allocated or apportioned to New Mexico pursuant
16 to Section 7-2-11 NMSA 1978, the individual, upon filing with
17 the secretary satisfactory evidence of the payment of the tax
18 to the other state, shall receive a credit against the tax
19 due this state in the amount of the tax paid the other state
20 with respect to income that is required to be either
21 allocated or apportioned to New Mexico. However, in no case
22 shall the credit exceed the amount of the taxpayer's New
23 Mexico income tax liability on that portion of income that is
24 required to be either allocated or apportioned to New Mexico
25 on which the tax payable to the other state was determined.

1 The credit provided by this section does not apply to or
2 include income taxes paid to any municipality, county or
3 other political subdivision of a state.

4 B. The credit allowed pursuant to Subsection A of
5 this section shall be calculated without regard to the credit
6 allowed pursuant to Section 7-3A-10 NMSA 1978."

7 **SECTION 3.** Section 7-3A-10 NMSA 1978 (being Laws 2022,
8 Chapter 46, Section 3) is amended to read:

9 "7-3A-10. ELECTION OF ENTITY-LEVEL TAX--CREDIT.--

10 A. A pass-through entity may elect on an annual
11 basis to pay a tax at the entity level for a taxable year.
12 The tax that may elected to be paid pursuant to this section
13 may be referred to as the "entity-level tax".

14 B. A pass-through entity electing to pay the
15 entity-level tax shall make the election by filing a complete
16 entity-level tax return with the department in the form and
17 manner as prescribed by the department. The election shall
18 be binding on all owners of the electing pass-through entity.
19 The return shall be filed no later than the original or
20 extended due date of the entity's federal partnership or S
21 corporation return for the taxable year. Payment of the
22 entity-level tax shall accompany or precede the filing of the
23 return.

24 C. The entity-level tax is imposed on the
25 distributed net income of the pass-through entity for the

1 taxable year. The rate of entity-level tax is equal to the
2 higher of the maximum tax rate imposed pursuant to Section
3 7-2-7 NMSA 1978 or the maximum tax rate imposed pursuant to
4 Section 7-2A-5 NMSA 1978 for the taxable year.

5 D. Distributed net income of a pass-through entity
6 shall equal the amount allocated and apportioned to New
7 Mexico pursuant to the Uniform Division of Income for Tax
8 Purposes Act from the following:

9 (1) the total income of the pass-through
10 entity properly reported for federal income tax purposes
11 plus, for partnerships, the amount of guaranteed payments
12 other than premiums for health insurance paid by the
13 partnership on behalf of a partner, less the net income or
14 guaranteed payments properly allocated or made to:

15 (a) the United States, this state or a
16 political subdivision of either;

17 (b) a federally recognized Indian
18 nation, tribe or pueblo located wholly or partially in New
19 Mexico, or any political subdivision thereof;

20 (c) an organization that has been
21 granted exemption from the federal income tax by the United
22 States commissioner of internal revenue as an organization
23 described in Section 501(c)(3) of the Internal Revenue Code;

24 (d) a corporate partner that would
25 properly include the income in the partner's New Mexico tax

1 return as part of the partner's unitary business income; or

2 (e) a pass-through entity that is an
3 owner of the electing pass-through entity; and

4 (2) less the amount of net capital gains
5 that may be deducted pursuant to Section 7-2-34 NMSA 1978 and
6 is properly allocated to owners who are subject to tax
7 pursuant to the Income Tax Act.

8 E. A net operating loss shall not be included in
9 the distributed net income calculated pursuant to Subsection
10 D of this section but may be carried forward until exhausted.

11 F. Pass-through entities electing to pay the
12 entity-level tax shall make estimated payments of the tax on
13 forms and in the manner as determined by the department.
14 Amounts remitted pursuant to Subsection B of Section 7-3A-3
15 NMSA 1978 by entities electing to pay the entity-level tax
16 shall be deemed payments of estimated entity-level tax.

17 G. If, for a taxable year, the sum of the
18 estimated payments of tax made by a pass-through entity
19 pursuant to Subsection F of this section exceeds the amount
20 of entity-level tax owed, the pass-through entity may apply
21 for a refund of the difference. If, for a taxable year, the
22 entity-level tax owed by a pass-through entity exceeds the
23 sum of the estimated payments made by the pass-through
24 entity, the pass-through entity shall remit the difference on
25 or before the date the pass-through entity's entity-level tax

1 is due.

2 H. An owner of a pass-through entity electing to
3 pay the tax imposed under this section may be allowed a tax
4 credit in an amount equal to the owner's share of the tax;
5 provided that the pass-through entity paid the tax and
6 furnished sufficient information on the pass-through entity's
7 tax return to identify that owner. If the amount of the
8 credit exceeds the amount of the owner's tax liabilities
9 pursuant to the Income Tax Act or the Corporate Income and
10 Franchise Tax Act, the excess shall be refunded to the owner.

11 I. As used in this section:

12 (1) "guaranteed payments" means the
13 guaranteed payments described in Section 707(c) of the
14 Internal Revenue Code, as that section may be amended or
15 renumbered;

16 (2) "net capital gain" means "net capital
17 gain" as defined in Section 1222(11) of the Internal Revenue
18 Code;

19 (3) "net operating loss" means "net
20 operating loss" as defined in Section 7-2-2 NMSA 1978; and

21 (4) "pass-through entity" means a
22 partnership or corporation that elects to pass income,
23 losses, deductions and credits through to the entity's owners
24 for federal tax purposes."

25 SECTION 4. REPEAL.--Sections 7-2-5.12 and 7-2A-4.1 NMSA

1 1978 (being Laws 2022, Chapter 46, Sections 1 and 2) are
2 repealed.

3 SECTION 5. APPLICABILITY.--The provisions of this act
4 apply to taxable years beginning on or after January 1, 2023. = HB 368/a
5 Page 16
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