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AN ACT
RELATING TO TAXATION; EXCLUDING NET OPERATING LOSS CARRYOVER
FROM NET INCOME IN THE INCOME TAX ACT AND THE CORPORATE
INCOME AND FRANCHISE TAX ACT FOR TWENTY YEARS.

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, 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;

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

1 (3) includes, for all taxpayers, any other
2 income of the taxpayer not included in adjusted gross income
3 but upon which a federal tax is calculated pursuant to the
4 Internal Revenue Code for income tax purposes, except amounts
5 for which a calculation of tax is made pursuant to Section 55
6 of the Internal Revenue Code, as that section may be amended
7 or renumbered; "base income" also includes interest received
8 on a state or local bond; and

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

12 (a) such amount is transferred to
13 another qualified tuition program, as defined in Section 529
14 of the Internal Revenue Code, not authorized in the Education
15 Trust Act; or

16 (b) a distribution or refund is made
17 for any reason other than: 1) to pay for qualified higher
18 education expenses, as defined pursuant to Section 529 of the
19 Internal Revenue Code; or 2) upon the beneficiary's death,
20 disability or receipt of a scholarship;

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

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

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

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

5 G. "fiscal year" means any accounting period of
6 twelve months ending on the last day of any month other than
7 December;

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

10 I. "individual" means a natural person, an estate,
11 a trust or a fiduciary acting for a natural person, trust or
12 estate;

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

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

22 L. "modified gross income" means all income of the
23 taxpayer and, if any, the taxpayer's spouse and dependents,
24 undiminished by losses and from whatever source, including:

- 25 (1) compensation;
- (2) net profit from business;
- (3) gains from dealings in property;
- (4) interest;
- (5) net rents;
- (6) royalties;

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

19 M. "modified gross income" excludes:

- 20 (1) payments for hospital, dental, medical
21 or drug expenses to or on behalf of the taxpayer;
22 (2) the value of room and board provided by
23 federal, state or local governments or by private individuals
24 or agencies based upon financial need and not as a form of
25 compensation;
(3) payments pursuant to a federal, state or
local government program directly or indirectly to a third
party on behalf of the taxpayer when identified to a
particular use or invoice by the payer; or

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

4 N. "net income" means, for estates and trusts,
5 base income adjusted to exclude amounts that the state is
6 prohibited from taxing because of the laws or constitution of
7 this state or the United States and means, for taxpayers
8 other than estates or trusts, base income adjusted to
9 exclude:

10 (1) an amount equal to the standard
11 deduction allowed the taxpayer for the taxpayer's taxable
12 year by Section 63 of the Internal Revenue Code, as that
13 section may be amended or renumbered;

14 (2) an amount equal to the itemized
15 deductions defined in Section 63 of the Internal Revenue
16 Code, as that section may be amended or renumbered, allowed
17 the taxpayer for the taxpayer's taxable year less the amount
18 excluded pursuant to Paragraph (1) of this subsection and
19 less the amount of state and local income and sales taxes
20 included in the taxpayer's itemized deductions;

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

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

(5) other amounts that the state is
prohibited from taxing because of the laws or constitution of

1 this state or the United States;

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

4 (a) net operating loss carryback
5 deductions to that year from taxable years beginning prior to
6 January 1, 1991 claimed and allowed, as provided by the
7 Internal Revenue Code; and

8 (b) net operating loss carryover
9 deductions to that year claimed and allowed;

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

17 (a) in the case of a timely filed
18 return, in the taxable year immediately following the taxable
19 year for which the return is filed; or

20 (b) in the case of amended returns or
21 original returns not timely filed, in the first taxable year
22 beginning after the date on which the return or amended
23 return establishing the net operating loss is filed; and

24 (c) in either case, if the net
25 operating loss carryover exceeds the amount of net income
exclusive of the net operating loss carryover for the taxable
year to which the exclusion first applies, in the next four
succeeding taxable years in turn until the net operating loss
carryover is exhausted for any net operating loss carryover
from a taxable year prior to January 1, 2013; in no event

1 shall a net operating loss carryover from a taxable year
2 beginning prior to January 1, 2013 be excluded in any taxable
3 year after the fourth taxable year beginning after the
4 taxable year to which the exclusion first applies;

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

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

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

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

1 which the exclusion first applies; and

2 (9) for taxable years beginning on or after
3 January 1, 2011, an amount equal to the amount included in
4 adjusted gross income that represents a refund of state and
5 local income and sales taxes that were deducted for federal
6 tax purposes in taxable years beginning on or after
7 January 1, 2010;

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

14 P. "net operating loss carryover" means the
15 amount, or any portion of the amount, of a net operating loss
16 for any taxable year that, pursuant to Paragraph (6), (7) or
17 (8) of Subsection N of this section, may be excluded from
18 base income;

19 Q. "nonresident" means every individual not a
20 resident of this state;

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

S. "resident" means an individual who is domiciled
in this state during any part of the taxable year or an
individual who is physically present in this state for one

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

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

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

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

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

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

Y. "taxable year" means the calendar year or
fiscal year upon the basis of which the net income is
computed under the Income Tax Act and includes, in the case
of the return made for a fractional part of a year under the
provisions of the Income Tax Act, the period for which the

1 return is made; and

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

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

6 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
7 Income and Franchise Tax Act and unless the context requires
8 otherwise:

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

11 B. "bank" means any national bank, national
12 banking association, state bank or bank holding company;

13 C. "base income" means that part of the taxpayer's
14 income defined as taxable income and upon which the federal
15 income tax is calculated in the Internal Revenue Code for
16 income tax purposes plus, for taxable years beginning on or
17 after January 1, 1991, the amount of the net operating loss
18 deduction allowed by Section 172(a) of the Internal Revenue
19 Code, as that section may be amended or renumbered, and
20 claimed by the taxpayer for that year; "base income" also
includes interest received on a state or local bond;

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

E. "department" means the taxation and revenue
department, the secretary of taxation and revenue or any
employee of the department exercising authority lawfully

1 delegated to that employee by the secretary;

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

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

7 H. "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
any net operating loss carryover from a taxable year
beginning on or after January 1, 1991 and prior to
January 1, 2013 may be excluded only as follows:

(a) in the case of a timely filed
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 four
10 succeeding taxable years in turn until the net operating loss
11 carryover is exhausted for any net operating loss carryover
12 from a taxable year prior to January 1, 2013; in no event may
13 a net operating loss carryover from a taxable year beginning
14 prior to January 1, 2013 be excluded in any taxable year
15 after the fourth taxable year beginning after the taxable
year to which the exclusion first applies; and

16 (5) for taxable years beginning on or after
17 January 1, 2013, an amount equal to the sum of any net
18 operating loss carryover deductions to that year claimed and
19 allowed; provided that the amount of any net operating loss
20 carryover may be 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
beginning after the date on which the return or amended
return establishing the net operating loss is filed; and

(c) in either case, if the net
operating loss carryover exceeds the amount of net income

1 exclusive of the net operating loss carryover for the taxable
2 year to which the exclusion first applies, in the next
3 nineteen succeeding taxable years in turn until the net
4 operating loss carryover is exhausted for any net operating
5 loss carryover from a taxable year beginning on or after
6 January 1, 2013; in no event shall a net operating loss
7 carryover from a taxable year beginning: 1) prior to
8 January 1, 2013 be excluded in any taxable year after the
9 fourth taxable year beginning after the taxable year to which
10 the exclusion first applies; and 2) on or after
11 January 1, 2013 be excluded in any taxable year after the
12 nineteenth taxable year beginning after the taxable year to
13 which the exclusion first applies;

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

20 J. "net operating loss carryover" means the
21 amount, or any portion of the amount, of a net operating loss
22 for any taxable year that, pursuant to Paragraph (3), (4) or
23 (5) of Subsection H of this section, may be excluded from
24 base income;

25 K. "person" means any individual, estate, trust,
receiver, cooperative association, club, corporation,
company, firm, partnership, limited liability company, joint
venture, syndicate or other association; "person" also means,
to the extent permitted by law, any federal, state or other
governmental unit or subdivision or agency, department or

1 instrumentality thereof;

2 L. "secretary" means the secretary of taxation and
3 revenue or the secretary's delegate;

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

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

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

21 P. "taxpayer" means any corporation subject to the
22 taxes imposed by the Corporate Income and Franchise Tax Act;
23 and

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

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

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

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

SECTION 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2013.
