

# New Mexico enacts sweeping tax legislation

## Overview

On April 4th, 2019, New Mexico's Governor, Michelle Lujan Grisham, signed House Bill 6 (H.B. 6), which implements significant reforms to the state's tax code. This legislation makes a number of changes to the income tax provisions, such as mandating combined reporting and adopting market sourcing, modifying certain personal income tax provisions and updating New Mexico's gross receipts tax provisions on internet sales to establish an economic nexus standard. Certain key changes, as well as effective dates, are summarized in this tax alert.

## Income tax changes

### Mandatory combined reporting

H.B. 6 enacts mandatory worldwide combined reporting for unitary groups, effective for tax years beginning on or after January 1, 2020.<sup>1</sup> A unitary group is defined as a group of two or more corporations, including a captive real estate investment trust, but not S corporation or certain insurance companies.<sup>2</sup> Corporations that are part of a unitary group are jointly and severally liable for the tax.<sup>3</sup> The filing group may designate a member to act as the principal corporation to file the return, make any elections, claim tax credits or refunds or perform any other acts on behalf of the group with respect to the corporate income tax.<sup>4</sup> However, the members must remain jointly and severally liable for tax.

By allowing two different filing group elections, the revised New Mexico law provides some flexibility for taxpayers. Corporations that are part of unitary group shall file a return on a worldwide combined group, unless a water's edge or consolidated group is elected on the first original return required for taxable year beginning on or after January 1<sup>st</sup>, 2020.<sup>5</sup> Corporations electing to file a consolidated return must file on the same basis for federal income tax purposes.<sup>6</sup> The group making the water's edge election must file under the elected method for at least seven consecutive years, unless the state grants permission otherwise.<sup>7</sup>

### Definition updates

In addition to defining a unitary group, H.B. 6 also updates various definitions for purposes of corporate income tax effective January 1, 2020, including:

- "Base income"- federal taxable income of a corporation after special deductions but without any deduction for NOLs, as if the corporation filed a federal return as a separate domestic entity, modified as follows:
  - Add: Interest from municipal bonds, captive REIT trust deductions, and payments to a commonly controlled entity that is exempt; and
  - Subtract: Income from US obligations, other tax-exempt income, 100% of subpart F income (as defined in IRC section 852, 100% GILTI income (IRC section 951A gross income net of the GILTI deduction in IRC section 250), and
  - Making other adjustments necessary to reflect unitary income (including attribution of income/expense related to unitary assets help by related corporations that are not part of the filing group).<sup>8</sup>
- "Net operating loss carryover" - **apportioned** net loss for tax years beginning on or after 1/1/2020

<sup>1</sup> H.B. 6, Section 19, amending N.M. Stat. Ann § 7-2A-8.3, Laws 2019.

<sup>2</sup> H.B. 6, Section 12, amending N.M. Stat. Ann § 7-2A-.2(AA), Laws 2019. The bill further provides that a unitary group is related through common ownership and economically interdependent with one another as demonstrated by: centralized management, functional integration and economies of scale.

<sup>3</sup> H.B. 6, Section 19, amending N.M. Stat. Ann § 7-2A-8.3(A), Laws 2019.

<sup>4</sup> H.B. 6, Section 19, amending N.M. Stat. Ann § 7-2A-8.3(B), Laws 2019.

<sup>5</sup> H.B. 6, Section 19, amending N.M. Stat. Ann § 7-2A-8.3(A), Laws 2019.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> H.B. 6, Section 12, amending N.M. Stat. Ann § 7-2A-.2(C), Laws 2019.

- plus:
  - the portion of the apportioned net loss properly reported for a taxable year beginning on or after 1/1/2020 on a separate return, to the extent the taxpayer would have been entitled to include the portion of apportioned net loss in the taxpayer's consolidated net operating loss (NOL) carryforward under the IRC if the taxpayer filed a consolidated federal return;
  - and the taxpayer's grandfathered NOL carryover;
- less:
  - the amount of the NOL attributed to an entity that has left the filing group;
  - and the amount of the NOL deductions properly taken by the taxpayer.<sup>9</sup>
- "Grandfathered net operating loss carryover"- amount properly reported to New Mexico for taxable years beginning January 1, 2013 and before January 1, 2020, as part of a timely filed original return or amended return, apportioned to New Mexico using the apportionment factors utilized in the year of the loss.<sup>10</sup>
- "Net operating loss deduction" - portion of the NOL carryover that may be deducted from the taxpayer's apportioned net income, including the 80% limitation of IRC section 172(a) calculated based on the taxpayer's apportioned net income.<sup>11</sup>
- "Water's edge group" - corporations that are part of a unitary group, except exempt corporations and 80/20 corporations (corporations wherever organized or incorporated that have less than 20% of their property, payroll and sales sourced to locations within the United States, following UDITPA).<sup>12</sup>
- "Worldwide combined group" - all members of a unitary group, except exempt corporations, irrespective of the country in which corporations are incorporated or conduct business activity.<sup>13</sup>

### **Tax rate changes**

Effective for January 1, 2020, the corporate income tax rate is 4.8% for taxable income up until \$500,000.<sup>14</sup> For taxable income exceeding \$500,000, the rate increases to 5.9% (plus \$24,000 on the first \$500,000 of state taxable income).<sup>15</sup>

### **New deduction for financial statement impacts due to New Mexico law changes**

Effective January 1, 2020, for ten taxable years beginning on or after January 1, 2026, a filing group whose members are part of a publicly traded company may claim a deduction from taxable income, before NOLs are deducted, to effectuate the financial statement impacts due to the New Mexico law changes.<sup>16</sup> The deduction for each year cannot exceed 1/10th of the aggregate increase in net deferred tax liabilities (DTL), the aggregate decrease in net deferred tax assets (DTA) or an aggregate change from a net DTA to a net DTL, as the result of the income tax changes. However, the amount of the aggregate change must have been properly included in the calculation of the DTA/DTLs as reported as part of the consolidated financial statements. The calculated excess deduction, which is greater than net income, shall be carried forward and applied as a deduction to the taxpayer's net income in future income years until fully utilized.

A filing group cannot claim this deduction unless it files a preliminary notice with the secretary prior to January 1, 2023 and provides necessary information to show the calculation of the deduction.<sup>17</sup>

### **Apportionment of business income**

Effective January 1, 2020, New Mexico modifies the election for manufacturers and New Mexico headquartered companies to use a single sales factor apportionment formula.<sup>18</sup> The election will now remain effective until a taxpayer notifies the

---

<sup>9</sup> H.B. 6, Section 12, amending N.M. Stat. Ann § 7-2A-.2(N), Laws 2019.

<sup>10</sup> H.B. 6, Section 12, amending N.M. Stat. Ann § 7-2A-.2(K), Laws 2019.

<sup>11</sup> H.B. 6, Section 12, amending N.M. Stat. Ann § 7-2A-.2(O), Laws 2019.

<sup>12</sup> H.B. 6, Section 12, amending N.M. Stat. Ann § 7-2A-.2(BB), Laws 2019.

<sup>13</sup> H.B. 6, Section 16, amending N.M. Stat. Ann. § 7-2A-2(CC), Laws 2019.

<sup>14</sup> H.B. 6, Section 18, amending N.M. Stat. Ann. § 7-2A-5, Laws 2019.

<sup>15</sup> *Id.*

<sup>16</sup> H.B. 6, Section 20.

<sup>17</sup> H.B. 6, Section 20, Laws 2019.

<sup>18</sup> H.B. 6, Section 21, amending N.M. Stat. Ann. § 7-4-10, Laws 2019.

department in writing that the taxpayer has terminated the election. However, the election may not be terminated until used for at least three consecutive tax years. Further, this section of H.B. 6 also provides that if the election is made by a qualified filing group (a filing group in which one member is a manufacturer or headquartered in New Mexico), it will apply to the members of the filing group.

### **Market sourcing**

Effective for tax years beginning on or after January 1, 2020, New Mexico essentially adopts market sourcing.<sup>19</sup> The following items will be sourced to New Mexico for apportionment purposes (occasionally referred to as the state of assignment):

- For sales, rental, lease or license of real property, if and to the extent the real property is located in the state.
- For rental, lease and license of tangible personal property, if and to the extent the tangible personal property is located in the state.
- For sale of services, if and to the extent the service is delivered to a location in this state.
- For sale, rental, lease or license of intangible property, if and to the extent the intangible property is used in this state.
- If a particular sourcing state cannot be determined using these criteria, the state of assignment must be reasonably approximated. If the taxpayer is not taxable in the state of assignment or the state of assignment cannot be determined, then the sale must be excluded from the numerator and the denominator of the sales factor.

### **Personal income tax changes**

In addition to corporate changes, H.B. 6 includes a number of updates impacting New Mexico's individual income tax, including updated personal income tax rates effective January 1, 2021:

- Married individuals filing separate returns:
  - If taxable income is not over \$4,000, tax shall be 1.7% of taxable income.
  - Over \$4,000 but not over \$8,000, tax shall be \$68 plus 3.2% of excess over \$4,000
  - Over \$8,000 but not over \$12,000, tax shall be \$196 plus 4.7% of excess over \$8,000
  - Over \$12,000 but not over \$157,500, tax shall be \$384 plus 4.9% of excess over \$12,000
  - Over \$157,500, tax shall be \$7,513.50 plus 5.9% of excess over \$157,500
- Heads of household, surviving spouses and married individuals filing joint returns:
  - If taxable income is not over \$8,000, tax shall be 1.7% of taxable income.
  - Over \$8,000 but not over \$16,000, tax shall be \$136 plus 3.2% of excess over \$8,000
  - Over \$16,000 but not over \$24,000, tax shall be \$392 plus 4.7% of excess over \$16,000
  - Over \$24,000 but not over \$315,000, tax shall be \$768 plus 4.9% of excess over \$24,000
  - Over \$315,000, tax shall be \$15,027 plus 5.9% of excess over \$315,000
- Single individuals and for estates and trusts:
  - If taxable income is not over \$5,500, tax shall be 1.7% of taxable income.
  - Over \$5,500 but not over \$11,000, tax shall be \$93.50 plus 3.2% of excess over \$5,500
  - Over \$11,000 but not over \$16,000, tax shall be \$269.50 plus 4.7% of excess over \$11,000
  - Over \$16,000 but not over \$210,000, tax shall be \$504.50 plus 4.9% of excess over \$16,000
  - Over \$210,000, tax shall be \$10,010.50 plus 5.9% of excess over \$210,000.<sup>20</sup>

---

<sup>19</sup> H.B. 6, Section 22, amending N.M. Stat. Ann. § 7-4-18, Laws 2019.

<sup>20</sup> H.B. 6, Section 12, amending N.M. Stat. Ann. § 7-2-7, Laws 2019.

Furthermore, for tax years starting on or after January 1, 2019, an individual is allowed a deduction of \$4,000 for every dependent beyond the first deduction claimed by a taxpayer.<sup>21</sup>

***New deduction for net capital gain***

New Mexico also has a new deduction for net capital gain.<sup>22</sup> Starting for tax years beginning on or after January 1, 2019, individual income taxpayers will be allowed a deduction from net income in an amount equal to the greater of:

- 1) net capital gain income for the taxable year for which the deduction is being claimed, but not to exceed \$1,000;  
or
- 2) 40% of the net capital gain income for the taxable year for which the deduction is being claimed.

Married individuals who file separate returns for a taxable year, but who could have filed a joint return, may each claim only one-half of the deduction.<sup>23</sup>

**Gross Receipt Tax and Compensating Tax**

***Nexus standards***

Effective beginning July 1, 2019, New Mexico applies an economic nexus standard for gross receipts and deductions required to be reported for the New Mexico Gross Receipts Tax (Gross Receipts Tax).<sup>24</sup> For a person who lacks physical presence, including a marketplace provider, “engaging in business” for New Mexico purposes means having, in the previous calendar year, total taxable gross receipts from sales, leases and licenses of tangible personal property, sales of licenses and sales of services and licenses for use of real property sourced to New Mexico during the previous calendar year of at least \$100,000.<sup>25</sup>

Under the Gross Receipts Tax, gross receipts includes receipts collected by a marketplace provider engaging in business in the state from sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are sourced to New Mexico and are facilitated by the marketplace provider on behalf of marketplace sellers (regardless of whether the marketplace sellers are engaging in business in New Mexico).<sup>26</sup> This list is not all inclusive.

Further, a marketplace provider is defined as a person who facilitates, on behalf of a marketplace seller or on its own behalf, a sale, lease or license of tangible personal property or service, or license for use of real property by:

- Listing or advertising the sale, lease or license by any means, whether physical or electronic, including by catalog, internet website or television or radio broadcast; and
- Collecting payment from customers and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider’s services.<sup>27</sup>

New Mexico also defines a marketplace seller as a person who sells, leases or licenses tangible personal property or services or who licenses the use of real property through a marketplace provider.<sup>28</sup>

A marketplace provider will not be liable for amounts of Gross Receipts tax collected incorrectly due to the marketplace provider reasonably relying on erroneous information provided by the seller.<sup>29</sup> A marketplace seller may deduct receipts for sales, leases, and licenses of tangible personal property, sales of licenses and sales of services or license for use of real

---

<sup>21</sup> H.B. 6, Section 15, Laws 2019.

<sup>22</sup> H.B. 6, Section 14, amending N.M. Stat. Ann. § 7-2-34, Laws 2019.

<sup>23</sup> H.B. 6, Section 14, amending N.M. Stat. Ann. § 7-2-34(B), Laws 2019.

<sup>24</sup> H.B. 6, Section 25, amending N.M. Stat. Ann. § 7-9-3.3, Laws 2019.

<sup>25</sup> *Id.*

<sup>26</sup> H.B. 6, Section 26, amending N.M. Stat. Ann. § 7-9-3.5, Laws 2019.

<sup>27</sup> H.B. 6, Section 23, amending N.M. Stat. Ann. § 7-9-3(J), Laws 2019.

<sup>28</sup> H.B. 6, Section 26, amending N.M. Stat. Ann. § 7-9-3.5(A)(2)(g), Laws 2019.

<sup>29</sup> H.B. 6, Section 28, amending N.M. Stat. Ann. § 7-9-5(C), Laws 2019.

property that are facilitated by a marketplace provider if the marketplace seller obtains documentation indicating it is registered with and has remitted the taxes due from those transactions.<sup>30</sup>

For periods prior to July 1, 2019, if persons engaging in business lacked physical presence in New Mexico and did not report, the New Mexico Department of Revenue (Department) will not act to enforce collections of the applicable Gross Receipts tax.<sup>31</sup>

### **Sourcing**

H.B. 6 also sets forth requirements for sourcing relating to the Gross Receipts Tax<sup>32</sup>, which are effective July 1, 2021. In general, these sourcing rules contained in this section are summarized below:

- Gross receipts and deductions from the sale or lease of tangible personal property or licenses and from the licensing of tangible personal property are reported to the location of delivery of the tangible personal property to the customer;
- Gross receipts and deductions from the licensing of tangible personal property are reported to the location of delivery of the tangible personal property to the customer; if, however, gross receipts are from leasing a vehicle, the reporting location is the location where the customer makes first use of the vehicle;
- Professional services are reported to the seller's place of business;
- For a person in the construction business, the location where the construction project is performed is the "place of business" and all gross receipts and deductions from the project are to be reported from that place of business;
- For a person in the real estate business, the location of the real property is the "place of business" and all gross receipts and deduction from the sale of real property are to be reported from that place of business;
- Other services not described are to be reported at the location where the service is performed;
- Gross receipts and deductions from the sale, lease or granting of a license to use real property are reported to the location of the real property;
- The reporting location for gross receipts and deductions from a customer for services provided by a transportation network company are reported to the location where the customer enters the vehicle.

Further, the Compensating Tax, which is essentially a use tax, must be reported consistently with the above rules.<sup>33</sup> An exception applies if a taxpayer can demonstrate the taxable first use in New Mexico first occurred after the purchase, lease, license or other transition giving rise to that value and the first taxable use occurred in another location within New Mexico.<sup>34</sup>

### **Other provisions**

When billing a customer for Gross Receipts Tax on or after July 1<sup>st</sup>, 2019, New Mexico mandates that taxpayers need to separately state the amount of tax associated with the transaction.<sup>35</sup> Alternatively, the taxpayer may provide a statement affirmatively indicating that the gross receipts tax is included in the amount billed.<sup>36</sup>

Applicable Gross Receipts Tax rates have been adjusted as well. The use of a license or franchise in New Mexico triggers the same Gross Receipts Tax rate as the Compensating Tax rate, which may vary by location.<sup>37</sup> The Department by rule, ruling or instruction will fairly apportion the value of a license or franchise to its value in use in New Mexico.<sup>38</sup> The Gross Receipts Tax applies if the value of the license or franchise is acquired inside or outside the state as the result of a transaction with a

---

<sup>30</sup> H.B. 6, Section 36, Laws 2019.

<sup>31</sup> H.B. 6, Section 31, amending N.M. Stat. Ann. § 7-9-7.1, Laws 2019.

<sup>32</sup> H.B. 6, Section 11, amending N.M. Stat. Ann. § 7-1-14(A), Laws 2019.

<sup>33</sup> *Id.*

<sup>34</sup> H.B. 6, Section 11, amending N.M. Stat. Ann. § 7-1-14(C), Laws 2019.

<sup>35</sup> H.B. 6, Section 29, amending N.M. Stat. Ann. § 7-9-6, Laws 2019.

<sup>36</sup> *Id.*

<sup>37</sup> H.B. 6, Section 30, amending N.M. Stat. Ann. § 7-9-7(A), Laws 2019.

<sup>38</sup> H.B. 6, Section 30, amending N.M. Stat. Ann. § 7-9-7(C), Laws 2019

## External Multistate Tax Alert

person located outside the state that would have been subject to the gross receipts tax had the license or franchise been acquired from a person with nexus to the state.<sup>39</sup>

In addition to the preceding items, H.B. 6 makes changes in a variety of other taxes and fees, including motor vehicle fees and excise taxes, tobacco products tax, and hospital tax reform.<sup>40</sup>

### Considerations

Taxpayers should consult with their tax advisers regarding this legislation and be aware of the numerous changes. These changes include mandating combined reporting and adopting market sourcing, modifying certain personal income tax provisions and updating New Mexico's gross receipts tax provisions to establish an economic nexus standard.

### Contacts:

If you have questions regarding H.B. 6 or other New Mexico tax matters, please contact any of the following Deloitte professionals:

#### Cynthia James

##### Tax Senior Manager

Deloitte Tax LLP, Phoenix  
+1 602 234 5158  
[cjames@deloitte.com](mailto:cjames@deloitte.com)

#### Courtney Unger

##### Tax Manager

Deloitte Tax LLP, Phoenix  
+1 602 631 4664  
[cunger@deloitte.com](mailto:cunger@deloitte.com)

#### Kyle Cardita

##### Tax Manager

Deloitte Tax LLP, Phoenix  
+1 602 631 4652  
[kcardita@deloitte.com](mailto:kcardita@deloitte.com)

For further information, visit our website at [www.deloitte.com/us/multistatetax](http://www.deloitte.com/us/multistatetax)

Follow [@DeloitteTax](https://twitter.com/DeloitteTax)

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

#### About Deloitte

As used in this document, "Deloitte" means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see [www.deloitte.com/us/about](http://www.deloitte.com/us/about) for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2019 Deloitte Development LLC. All rights reserved.

---

<sup>39</sup> *Id.*

<sup>40</sup> Please refer to H.B. 6, Sections 39, 40, 42, 43, 44 Laws 2019.