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SENATE BILL 613

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

William E. Sharer

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE INCOME TAX ACT  
TO PROVIDE FOR A FLAT TAX.

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

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1 Revenue Code for income tax purposes plus, for taxable years  
2 beginning on or after January 1, 1991, the amount of the net  
3 operating loss deduction allowed by Section 172(a) of the  
4 Internal Revenue Code, as that section may be amended or  
5 renumbered, and taken by the taxpayer for that year;

6 (2) means, for taxpayers other than estates or  
7 trusts, that part of the taxpayer's income defined as adjusted  
8 gross income plus, for taxable years beginning on or after  
9 January 1, 1991, the amount of the net operating loss deduction  
10 allowed by Section 172(a) of the Internal Revenue Code, as that  
11 section may be amended or renumbered, and taken by the taxpayer  
12 for that year; and

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

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 of taxation and revenue or any

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1 employee of the department exercising authority lawfully  
2 delegated to that employee by the secretary;

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

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

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

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

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

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

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

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1 applied;

2 L. "modified gross income" means all income of the  
3 taxpayer and, if any, the taxpayer's spouse and dependents,  
4 undiminished by losses and from whatever source derived,  
5 including:

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

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- 1 (19) public assistance and welfare benefits;
- 2 (20) cost-of-living allowances; and
- 3 (21) gifts;

4 M "modified gross income" does not include:

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

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

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

15 (4) payments made pursuant to Sections  
16 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

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

22 (1) an amount equal to [~~the~~] a standard  
23 deduction allowed the taxpayer for the taxpayer's taxable year  
24 [~~by Section 63 of the Internal Revenue Code, as that section~~  
25 ~~may be amended or renumbered~~] as follows:

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1                   (a) for married individuals filing  
2 separate returns, eight thousand dollars (\$8,000);

3                   (b) for surviving spouses and married  
4 individuals filing joint returns, sixteen thousand dollars  
5 (\$16,000);

6                   (c) for single individuals and for  
7 estates and trusts, eight thousand dollars (\$8,000); and

8                   (d) for heads of household, eleven  
9 thousand dollars (\$11,000);

10                   (2) an amount equal to the itemized  
11 deductions, as defined in Section 63 of the Internal Revenue  
12 Code, as that section may be amended or renumbered, allowed the  
13 taxpayer for the taxpayer's taxable year less the amount  
14 excluded pursuant to Paragraph (1) of this subsection;

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

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

22                   (5) other amounts that the state is prohibited  
23 from taxing because of the laws or constitution of this state  
24 or the United States;

25                   (6) for taxable years that began prior to

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1 January 1, 1991, an amount equal to the sum of:

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

6 (b) net operating loss carryover  
7 deductions to that year claimed and allowed; and

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

14 (a) in the case of a timely filed  
15 return, in the taxable year immediately following the taxable  
16 year for which the return is filed; or

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

21 (c) in either case, if the net operating  
22 loss carryover exceeds the amount of net income exclusive of  
23 the net operating loss carryover for the taxable year to which  
24 the exclusion first applies, in the next four succeeding  
25 taxable years in turn until the net operating loss carryover is

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1 exhausted; in no event shall a net operating loss carryover be  
2 excluded in any taxable year after the fourth taxable year  
3 beginning after the taxable year to which the exclusion first  
4 applies;

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

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

15 Q. "nonresident" means every individual not a  
16 resident of this state;

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

24 S. "resident" means an individual who is domiciled  
25 in this state during any part of the taxable year; but any



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1 individual who, on or before the last day of the taxable year,  
2 changed his place of abode to a place without this state with  
3 the bona fide intention of continuing actually to abide  
4 permanently without this state is not a resident for the  
5 purposes of the Income Tax Act;

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

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

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

18 W. "surviving spouse" means "surviving spouse" as  
19 generally defined for federal income tax purposes;

20 X. "taxable income" means net income less any lump-  
21 sum amount;

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

1 Income Tax Act, the period for which the 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 7-2-7 NMSA 1978 (being Laws 1994,  
5 Chapter 5, Section 20, as amended) is amended to read:

6 "7-2-7. INDIVIDUAL INCOME TAX [RATES] RATE. -- The tax  
7 imposed by Section 7-2-3 NMSA 1978 shall be at the [following  
8 rates] rate of three and one-half percent of taxable income for  
9 any taxable year beginning on or after [January 1, 1998]  
10 January 1, 2003.

11 [A. ~~For married individuals filing separate returns:~~

12 ~~If the taxable income is: The tax shall be:~~

13 ~~Not over \$4,000 1.7% of taxable income~~

14 ~~Over \$ 4,000 but not over \$ 8,000 \$ 68.00 plus 3.2% of~~  
15 ~~excess over \$ 4,000~~

16 ~~Over \$ 8,000 but not over \$ 12,000 \$ 196 plus 4.7% of~~  
17 ~~excess over \$ 8,000~~

18 ~~Over \$ 12,000 but not over \$ 20,000 \$ 384 plus 6.0% of~~  
19 ~~excess over \$ 12,000~~

20 ~~Over \$ 20,000 but not over \$ 32,000 \$ 864 plus 7.1% of~~  
21 ~~excess over \$ 20,000~~

22 ~~Over \$ 32,000 but not over \$ 50,000 \$ 1,716 plus 7.9% of~~  
23 ~~excess over \$ 32,000~~

24 ~~Over \$ 50,000 \$ 3,138 plus 8.2% of~~  
25 ~~excess over \$ 50,000.~~

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1 ~~B. For surviving spouses and married individuals~~  
2 ~~filing joint returns:~~

3 ~~If the taxable income is: The tax shall be:~~  
4 ~~Not over \$8,000 1.7% of taxable income~~  
5 ~~Over \$ 8,000 but not over \$ 16,000 \$ 136 plus 3.2% of~~  
6 ~~excess over \$ 8,000~~  
7 ~~Over \$ 16,000 but not over \$ 24,000 \$ 392 plus 4.7% of~~  
8 ~~excess over \$ 16,000~~  
9 ~~Over \$ 24,000 but not over \$ 40,000 \$ 768 plus 6.0% of~~  
10 ~~excess over \$ 24,000~~  
11 ~~Over \$ 40,000 but not over \$ 64,000 \$ 1,728 plus 7.1% of~~  
12 ~~excess over \$ 40,000~~  
13 ~~Over \$ 64,000 but not over \$100,000 \$ 3,432 plus 7.9% of~~  
14 ~~excess over \$ 64,000~~  
15 ~~Over \$100,000 \$ 6,276 plus 8.2% of~~  
16 ~~excess over \$100,000.~~

17 ~~C. For single individuals and for estates and~~  
18 ~~trusts:~~

19 ~~If the taxable income is: The tax shall be:~~  
20 ~~Not over \$5,500 1.7% of taxable income~~  
21 ~~Over \$ 5,500 but not over \$ 11,000 \$ 93.50 plus 3.2% of~~  
22 ~~excess over \$ 5,500~~  
23 ~~Over \$ 11,000 but not over \$ 16,000 \$ 269.50 plus 4.7% of~~  
24 ~~excess over \$ 11,000~~  
25 ~~Over \$ 16,000 but not over \$ 26,000 \$ 504.50 plus 6.0% of~~

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1 ~~excess over \$ 16,000~~  
2 ~~Over \$ 26,000 but not over \$ 42,000 \$1,104.50 plus 7.1% of~~  
3 ~~excess over \$ 26,000~~  
4 ~~Over \$ 42,000 but not over \$ 65,000 \$2,240.50 plus 7.9% of~~  
5 ~~excess over \$ 42,000~~  
6 ~~Over \$ 65,000 \$4,057.50 plus 8.2% of~~  
7 ~~excess over \$ 65,000.~~

8 ~~D. For heads of household filing returns:~~

9 ~~If the taxable income is: The tax shall be:~~

10 ~~Not over \$7,000 1.7% of taxable income~~  
11 ~~Over \$ 7,000 but not over \$ 14,000 \$ 119 plus 3.2% of~~  
12 ~~excess over \$ 7,000~~  
13 ~~Over \$ 14,000 but not over \$ 20,000 \$ 343 plus 4.7% of~~  
14 ~~excess over \$ 14,000~~  
15 ~~Over \$ 20,000 but not over \$ 33,000 \$ 625 plus 6.0% of~~  
16 ~~excess over \$ 20,000~~  
17 ~~Over \$ 33,000 but not over \$ 53,000 \$1,405 plus 7.1% of~~  
18 ~~excess over \$ 33,000~~  
19 ~~Over \$ 53,000 but not over \$ 83,000 \$2,825 plus 7.9% of~~  
20 ~~excess over \$ 53,000~~  
21 ~~Over \$ 83,000 \$5,195 plus 8.2% of~~  
22 ~~excess over \$ 83,000.~~

23 ~~E.] The tax on the sum of any lump-sum amounts~~  
24 ~~included in net income is an amount equal to five multiplied~~  
25 ~~by the difference between:~~

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A. the amount of tax due on the taxpayer's taxable income; and

B. the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income. "

Section 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2003.

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