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SENATE BILL 440

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO TAXATION; AMENDING THE INCOME TAX ACT TO PROVIDE
THAT CERTAIN AMOUNTS BE INCLUDED IN NEW MEXICO TAXABLE INCOME.

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 by Laws 2003, Chapter 13,
Section 1 and by Laws 2003, Chapter 275, Section 1) 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

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1 of the estate's or trust's income defined as taxable income and
2 upon which the federal income tax is calculated in the Internal
3 Revenue Code for income tax purposes plus, for taxable years
4 beginning on or after January 1, 1991, the amount of the net
5 operating loss deduction allowed by Section 172(a) of the
6 Internal Revenue Code, as that section may be amended or
7 renumbered, and taken by the taxpayer for that year;

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

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

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

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

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

10 C. "compensation" means wages, salaries,
11 commissions and any other form of remuneration paid to
12 employees for personal services;

13 D. "department" means the taxation and revenue
14 department, the secretary [~~of taxation and revenue~~] or any
15 employee of the department exercising authority lawfully
16 delegated to that employee by the secretary;

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

20 F. "filing status" means "married filing joint
21 returns", "married filing separate returns", "head of
22 household", "surviving spouse" and "single", as those terms are
23 generally defined for federal tax purposes;

24 G. "fiscal year" means any accounting period of
25 twelve months ending on the last day of any month other than

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1 December;

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

4 I. "individual" means a natural person, an estate,
5 a trust or a fiduciary acting for a natural person, trust or
6 estate;

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

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

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

- 19 (1) compensation;
20 (2) net profit from business;
21 (3) gains from dealings in property;
22 (4) interest;
23 (5) net rents;
24 (6) royalties;
25 (7) dividends;

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

17 M. "modified gross income" excludes:

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

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1 party on behalf of the taxpayer when identified to a particular
2 use or invoice by the payer; or

3 (4) payments pursuant to Sections 7-2-14,
4 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

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

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

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

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

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

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

8 (a) net operating loss carryback
9 deductions to that year from taxable years beginning prior to
10 January 1, 1991 claimed and allowed, as provided by the
11 Internal Revenue Code; and

12 (b) net operating loss carryover
13 deductions to that year claimed and allowed; and

14 (7) for taxable years beginning on or after
15 January 1, 1991, an amount equal to the sum of any net
16 operating loss carryover deductions to that year claimed and
17 allowed, provided that the amount of any net operating loss
18 carryover from a taxable year beginning on or after January 1,
19 1991 may be excluded only as follows:

20 (a) in the case of a timely filed
21 return, in the taxable year immediately following the taxable
22 year for which the return is filed; or

23 (b) in the case of amended returns or
24 original returns not timely filed, in the first taxable year
25 beginning after the date on which the return or amended return

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1 establishing the net operating loss is filed; and

2 (c) in either case, if the net operating
3 loss carryover exceeds the amount of net income exclusive of
4 the net operating loss carryover for the taxable year to which
5 the exclusion first applies, in the next four succeeding
6 taxable years in turn until the net operating loss carryover is
7 exhausted; in no event shall a net operating loss carryover be
8 excluded in any taxable year after the fourth taxable year
9 beginning after the taxable year to which the exclusion first
10 applies;

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

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

21 Q. "nonresident" means every individual not a
22 resident of this state;

23 R. "person" means any individual, estate, trust,
24 receiver, cooperative association, club, corporation, company,
25 firm, partnership, limited liability company, joint venture,

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1 syndicate or other association; "person" also means, to the
2 extent permitted by law, any federal, state or other
3 governmental unit or subdivision or agency, department or
4 instrumentality thereof;

5 S. "resident" means an individual who is domiciled
6 in this state during any part of the taxable year or an
7 individual who is physically present in this state for one
8 hundred eighty-five days or more during the taxable year; but
9 any individual, other than someone who was physically present
10 in the state for one hundred eighty-five days or more during
11 the taxable year, who, on or before the last day of the taxable
12 year, changed his place of abode to a place without this state
13 with the bona fide intention of continuing actually to abide
14 permanently without this state is not a resident for the
15 purposes of the Income Tax Act for periods after that change of
16 abode;

17 T. "secretary" means the secretary of taxation and
18 revenue or the secretary's delegate;

19 U. "state" means any state of the United States,
20 the District of Columbia, the commonwealth of Puerto Rico, any
21 territory or possession of the United States or any political
22 subdivision of a foreign country;

23 V. "state or local bond" means a bond issued by a
24 state other than New Mexico or by a local government other than
25 one of New Mexico's political subdivisions, the interest from

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1 which is excluded from income for federal income tax purposes
2 under Section 103 of the Internal Revenue Code, as that section
3 may be amended or renumbered;

4 W. "surviving spouse" means "surviving spouse" as
5 generally defined for federal income tax purposes;

6 X. "taxable income" means net income less any lump-
7 sum amount;

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

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

15 Section 2. APPLICABILITY.--The provisions of this act
16 apply to taxable years beginning on or after January 1, 2004.