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HOUSE BILL 270

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO TAXATION; ADDING BACK CERTAIN DEDUCTIONS PERMITTED  
BY THE INTERNAL REVENUE CODE.

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;

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; and

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

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

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

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

11 D. "department" means the taxation and revenue  
12 department, the secretary or any employee of the department  
13 exercising authority lawfully delegated to that employee by the  
14 secretary;

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

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

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

25 H. "head of household" means "head of household" as

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1 generally defined for federal income tax purposes;

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

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

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

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

- 17 (1) compensation;
- 18 (2) net profit from business;
- 19 (3) gains from dealings in property;
- 20 (4) interest;
- 21 (5) net rents;
- 22 (6) royalties;
- 23 (7) dividends;
- 24 (8) alimony and separate maintenance payments;
- 25 (9) annuities;

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

15 M. "modified gross income" excludes:

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

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

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

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

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

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

25 (4) income from obligations of the United

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1 States of America less expenses incurred to earn that income;

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

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

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

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

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

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

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

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

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

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

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

22 R. "person" means any individual, estate, trust,  
23 receiver, cooperative association, club, corporation, company,  
24 firm, partnership, limited liability company, joint venture,  
25 syndicate or other association; "person" also means, to the

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1 extent permitted by law, any federal, state or other  
2 governmental unit or subdivision or agency, department or  
3 instrumentality thereof;

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

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

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

22 V. "state or local bond" means a bond issued by a  
23 state other than New Mexico or by a local government other than  
24 one of New Mexico's political subdivisions, the interest from  
25 which is excluded from income for federal income tax purposes

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1 under Section 103 of the Internal Revenue Code, as that section  
2 may be amended or renumbered;

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

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

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

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

14 Section 2. APPLICABILITY.--The provisions of this act  
15 apply to taxable years beginning on or after January 1, 2010.