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HOUSE BILL 61

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO TAXATION; PROVIDING FOR DEDUCTIONS OF STATE AND LOCAL INCOME AND SALES TAXES TO BE INCLUDED IN DEFINING "NET INCOME" FOR STATE PERSONAL INCOME TAX PURPOSES.

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

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

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

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

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

25 (a) such amount is transferred to

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1 another qualified tuition program, as defined in Section 529 of
2 the Internal Revenue Code, not authorized in the Education
3 Trust Act; or

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

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

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

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

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

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

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

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

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

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

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

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

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

16 M. "modified gross income" excludes:

17 (1) payments for hospital, dental, medical or

18 drug expenses to or on behalf of the taxpayer;

19 (2) the value of room and board provided by

20 federal, state or local governments or by private individuals

21 or agencies based upon financial need and not as a form of

22 compensation;

23 (3) payments pursuant to a federal, state or

24 local government program directly or indirectly to a third

25 party on behalf of the taxpayer when identified to a particular

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1 use or invoice by the payer; or

2 (4) payments for credits and rebates pursuant
3 to the Income Tax Act and made for a credit pursuant to Section
4 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 income and sales taxes included in the~~
20 ~~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 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;

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; and

11 (8) for taxable years beginning on or after
12 January 1, 2011, an amount equal to the amount included in
13 adjusted gross income that represents a refund of state and
14 local income and sales taxes that were deducted for federal tax
15 purposes in taxable years beginning on or after January 1,
16 2010;

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

23 P. "net operating loss carryover" means the amount,
24 or any portion of the amount, of a net operating loss for any
25 taxable year that, pursuant to Paragraph (6) or (7) of

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1 Subsection N of this section, may be excluded from base income;

2 Q. "nonresident" means every individual not a
3 resident of this state;

4 R. "person" means any individual, estate, trust,
5 receiver, cooperative association, club, corporation, company,
6 firm, partnership, limited liability company, joint venture,
7 syndicate or other association; "person" also means, to the
8 extent permitted by law, any federal, state or other
9 governmental unit or subdivision or agency, department or
10 instrumentality thereof;

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

23 T. "secretary" means the secretary of taxation and
24 revenue or the secretary's delegate;

25 U. "state" means any state of the United States,

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1 the District of Columbia, the commonwealth of Puerto Rico, any
2 territory or possession of the United States or any political
3 subdivision of a foreign country;

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

10 W. "surviving spouse" means "surviving spouse" as
11 generally defined for federal income tax purposes;

12 X. "taxable income" means net income less any lump-
13 sum amount;

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

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

21 SECTION 2. APPLICABILITY.--The provisions of this act
22 apply to taxable years beginning on or after January 1, 2011.