

HOUSE RULES AND ORDER OF BUSINESS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 367

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ALLOWING CERTAIN TAXPAYERS TO CLAIM INCOME TAX DEDUCTIONS AND
EXEMPTIONS FOR TAXABLE YEAR 2018 THAT WOULD HAVE BEEN ALLOWED
IF NOT FOR PASSAGE OF FEDERAL TAX REFORM.

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

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 or any employee of the department
15 exercising authority lawfully delegated to that employee by the
16 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;

- 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 for credits and rebates pursuant
4 to the Income Tax Act and made for a credit pursuant to Section
5 7-3-9 NMSA 1978;

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

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

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

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

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1 exemptions allowed for federal income tax purposes; except, for
2 a head of household for the taxable year beginning January 1,
3 2018, an amount equal to the product of the exemption amount
4 allowed for the taxable year beginning January 1, 2018, by that
5 version of Section 151 of the Internal Revenue Code that was in
6 effect for the taxable year beginning January 1, 2017,
7 multiplied by the number of personal exemptions that would have
8 been allowed for federal income tax purposes had that version
9 of Section 151 still been in effect;

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

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

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

17 (a) net operating loss carryback
18 deductions to that year from taxable years beginning prior to
19 January 1, 1991 claimed and allowed, as provided by the
20 Internal Revenue Code; and

21 (b) net operating loss carryover
22 deductions to that year claimed and allowed;

23 (7) for taxable years beginning on or after
24 January 1, 1991 and prior to January 1, 2013, an amount equal
25 to the sum of any net operating loss carryover deductions to

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1 that year claimed and allowed, provided that the amount of any
2 net operating loss carryover from a taxable year beginning on
3 or after January 1, 1991 and prior to January 1, 2013 may be
4 excluded only as follows:

5 (a) in the case of a timely filed
6 return, in the taxable year immediately following the taxable
7 year for which the return is filed; or

8 (b) in the case of amended returns or
9 original returns not timely filed, in the first taxable year
10 beginning after the date on which the return or amended return
11 establishing the net operating loss is filed; and

12 (c) in either case, if the net operating
13 loss carryover exceeds the amount of net income exclusive of
14 the net operating loss carryover for the taxable year to which
15 the exclusion first applies, in the next four succeeding
16 taxable years in turn until the net operating loss carryover is
17 exhausted for any net operating loss carryover from a taxable
18 year prior to January 1, 2013; in no event shall a net
19 operating loss carryover from a taxable year beginning prior to
20 January 1, 2013 be excluded in any taxable year after the
21 fourth taxable year beginning after the taxable year to which
22 the exclusion first applies;

23 (8) for taxable years beginning on or after
24 January 1, 2013, an amount equal to the sum of any net
25 operating loss carryover deductions to that year claimed and

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1 allowed; provided that the amount of any net operating loss
2 carryover may be excluded only as follows:

3 (a) in the case of a timely filed
4 return, in the taxable year immediately following the taxable
5 year for which the return is filed; or

6 (b) in the case of amended returns or
7 original returns not timely filed, in the first taxable year
8 beginning after the date on which the return or amended return
9 establishing the net operating loss is filed; and

10 (c) in either case, if the net operating
11 loss carryover exceeds the amount of net income exclusive of
12 the net operating loss carryover for the taxable year to which
13 the exclusion first applies, in the next nineteen succeeding
14 taxable years in turn until the net operating loss carryover is
15 exhausted for any net operating loss carryover from a taxable
16 year beginning on or after January 1, 2013; in no event shall a
17 net operating loss carryover from a taxable year beginning: 1)
18 prior to January 1, 2013 be excluded in any taxable year after
19 the fourth taxable year beginning after the taxable year to
20 which the exclusion first applies; and 2) on or after January
21 1, 2013 be excluded in any taxable year after the nineteenth
22 taxable year beginning after the taxable year to which the
23 exclusion first applies; and

24 (9) for taxable years beginning on or after
25 January 1, 2011, an amount equal to the amount included in

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1 adjusted gross income that represents a refund of state and
2 local income and sales taxes that were deducted for federal tax
3 purposes in taxable years beginning on or after January 1,
4 2010;

5 O. "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), (7) or (8) 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 or an

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

11 T. "secretary" means the secretary of taxation and
12 revenue or the secretary's delegate;

13 U. "state" means any state of the United States,
14 the District of Columbia, the commonwealth of Puerto Rico, any
15 territory or possession of the United States or any political
16 subdivision of a foreign country;

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

23 W. "surviving spouse" means "surviving spouse" as
24 generally defined for federal income tax purposes;

25 X. "taxable income" means net income less any lump-

1 sum amount;

2 Y. "taxable year" means the calendar year or fiscal
3 year upon the basis of which the net income is computed under
4 the Income Tax Act and includes, in the case of the return made
5 for a fractional part of a year under the provisions of the
6 Income Tax Act, the period for which the return is made; and

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

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