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SENATE BILL 209

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

INTRODUCED BY

Gay G. Kernan

AN ACT

RELATING TO TAXATION; CONFORMING THE INCOME TAX ACT TO CHANGES
MADE IN THE FEDERAL INTERNAL REVENUE CODE OF 1986 RELATED TO
SECTION 529 PROGRAMS.

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) such amount is transferred to an
5 eligible account pursuant to the federal Stephen Beck, Jr.,
6 Achieving a Better Life Experience Act of 2014, as allowed
7 pursuant to Section 529 of the Internal Revenue Code, that is
8 not a qualified program as provided in Subsection K of Section
9 6-8A-2 NMSA 1978; or

10 [~~(b)~~] (c) a distribution or refund is
11 made for any reason other than: 1) to pay for qualified higher
12 education expenses as [~~defined pursuant to~~] provided in Section
13 529 of the Internal Revenue Code; or 2) upon the beneficiary's
14 death, disability or receipt of a scholarship;

15 C. "compensation" means wages, salaries,
16 commissions and any other form of remuneration paid to
17 employees for personal services;

18 D. "department" means the taxation and revenue
19 department, the secretary or any employee of the department
20 exercising authority lawfully delegated to that employee by the
21 secretary;

22 E. "fiduciary" means a guardian, trustee, executor,
23 administrator, committee, conservator, receiver, individual or
24 corporation acting in any fiduciary capacity;

25 F. "filing status" means "married filing joint

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1 returns", "married filing separate returns", "head of
2 household", "surviving spouse" and "single", as those terms are
3 generally defined for federal tax purposes;

4 G. "fiscal year" means any accounting period of
5 twelve months ending on the last day of any month other than
6 December;

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

9 I. "individual" means a natural person, an estate,
10 a trust or a fiduciary acting for a natural person, trust or
11 estate;

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

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

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

24 (1) compensation;

25 (2) net profit from business;

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

22 M. "modified gross income" excludes:

- 23 (1) payments for hospital, dental, medical or
- 24 drug expenses to or on behalf of the taxpayer;
- 25 (2) the value of room and board provided by

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1 federal, state or local governments or by private individuals
2 or agencies based upon financial need and not as a form of
3 compensation;

4 (3) payments pursuant to a federal, state or
5 local government program directly or indirectly to a third
6 party on behalf of the taxpayer when identified to a particular
7 use or invoice by the payer; or

8 (4) payments for credits and rebates pursuant
9 to the Income Tax Act and made for a credit pursuant to Section
10 7-3-9 NMSA 1978;

11 N. "net income" means, for estates and trusts, base
12 income adjusted to exclude amounts that the state is prohibited
13 from taxing because of the laws or constitution of this state
14 or the United States and means, for taxpayers other than
15 estates or trusts, base income adjusted to exclude:

16 (1) an amount equal to the standard deduction
17 allowed the taxpayer for the taxpayer's taxable year by Section
18 63 of the Internal Revenue Code, as that section may be amended
19 or renumbered;

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

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1 taxpayer's itemized deductions;

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

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

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

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

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

18 (b) net operating loss carryover
19 deductions to that year claimed and allowed;

20 (7) for taxable years beginning on or after
21 January 1, 1991 and prior to January 1, 2013, an amount equal
22 to the sum of any net operating loss carryover deductions to
23 that year claimed and allowed, provided that the amount of any
24 net operating loss carryover from a taxable year beginning on
25 or after January 1, 1991 and prior to January 1, 2013 may be

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1 excluded only as follows:

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

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

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

20 (8) for taxable years beginning on or after
21 January 1, 2013, an amount equal to the sum of any net
22 operating loss carryover deductions to that year claimed and
23 allowed; provided that the amount of any net operating loss
24 carryover may be excluded only as follows:

25 (a) in the case of a timely filed

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1 return, in the taxable year immediately following the taxable
2 year for which the return is filed; or

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

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

21 (9) for taxable years beginning on or after
22 January 1, 2011, an amount equal to the amount included in
23 adjusted gross income that represents a refund of state and
24 local income and sales taxes that were deducted for federal tax
25 purposes in taxable years beginning on or after January 1,

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1 2010;

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

8 P. "net operating loss carryover" means the amount,
9 or any portion of the amount, of a net operating loss for any
10 taxable year that, pursuant to Paragraph (6), (7) or (8) of
11 Subsection N of this section, may be excluded from base income;

12 Q. "nonresident" means every individual not a
13 resident of this state;

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

21 S. "resident" means an individual who is domiciled
22 in this state during any part of the taxable year or an
23 individual who is physically present in this state for one
24 hundred eighty-five days or more during the taxable year; but
25 any individual, other than someone who was physically present

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

8 T. "secretary" means the secretary of taxation and
9 revenue or the secretary's delegate;

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

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

20 W. "surviving spouse" means "surviving spouse" as
21 generally defined for federal income tax purposes;

22 X. "taxable income" means net income less any lump-
23 sum amount;

24 Y. "taxable year" means the calendar year or fiscal
25 year upon the basis of which the net income is computed under

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1 the Income Tax Act and includes, in the case of the return made
2 for a fractional part of a year under the provisions of the
3 Income Tax Act, the period for which the return is made; and

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

6 SECTION 2. Section 7-2-32 NMSA 1978 (being Laws 1997,
7 Chapter 259, Section 8) is amended to read:

8 "7-2-32. DEDUCTION--PAYMENTS INTO EDUCATION TRUST FUND.--

9 A taxpayer may claim a deduction from net income in an amount
10 equal to the payments made by the taxpayer into the education
11 trust fund pursuant to a college investment agreement or
12 prepaid tuition contract under the Education Trust Act in the
13 taxable year for which the deduction is being claimed. The
14 amount of payments made on behalf of any one beneficiary that
15 may be deducted shall not exceed in the aggregate the cost of
16 attendance at the [~~applicable~~] educational institution [~~of~~
17 ~~higher education, as determined by the education trust board.~~
18 ~~A husband and wife~~] eligible to receive payment for qualified
19 higher education expenses in accordance with Section 529 of the
20 Internal Revenue Code. Married individuals who file separate
21 returns for the taxable year in which they could have filed a
22 joint return may each claim only one-half of the deduction that
23 would have been allowed on the joint return. Individuals
24 having income both within and without this state shall
25 apportion this deduction in accordance with regulations of the

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1 secretary."

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