

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 280

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ENACTING THE GROSS RECEIPTS TAX ON FOOD ACT; DISTRIBUTING THE
REVENUE FROM THAT TAX TO MUNICIPALITIES AND COUNTIES; EXEMPTING
DIVIDENDS AND INTEREST FROM THE INCOME OF PERSONS OVER THE AGE
OF SIXTY; EXEMPTING MILITARY RETIREMENT INCOME FROM INCOME
TAXATION; REPEALING THE HOLD HARMLESS DISTRIBUTIONS TO
MUNICIPALITIES AND COUNTIES THAT OFFSET THE FOOD AND HEALTH
CARE PRACTITIONER DEDUCTIONS FROM GROSS RECEIPTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 5 of this act may be cited as the "Gross Receipts Tax
on Food Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Gross Receipts Tax on Food Act:

.210675.1

underscored material = new
[bracketed material] = delete

1 A. "engaging in business" means carrying on or
2 causing to be carried on the selling of food at a retail food
3 store with the purpose of direct or indirect benefit;

4 B. "food" means any food or food product for home
5 consumption that meets the definition of food in 7 USCA
6 2012(k)(1) for purposes of the federal supplemental nutrition
7 assistance program;

8 C. "food gross receipts" means the total amount of
9 money or the value of other consideration received from selling
10 food at a retail food store in New Mexico, or, if in an
11 exchange in which the money or other consideration received
12 does not represent the value of the food, "food gross receipts"
13 means the reasonable value of the food. "Food gross receipts"
14 excludes:

- 15 (1) cash discounts allowed and taken;
- 16 (2) food gross receipts tax payable on
17 transactions for the reporting period;
- 18 (3) gross receipts tax payable pursuant to the
19 Gross Receipts and Compensating Tax Act on transactions for the
20 reporting period;
- 21 (4) taxes imposed pursuant to the provisions
22 of any local option gross receipts tax, as that term is defined
23 in the Tax Administration Act, that is payable for the
24 reporting period;
- 25 (5) a time-price differential; and

.210675.1

underscoring material = new
~~[bracketed material] = delete~~

1 (6) any gross receipts or sales taxes imposed
 2 by an Indian nation, tribe or pueblo; provided that the tax is
 3 approved, if approval is required by federal law or regulation,
 4 by the United States secretary of the interior; and provided
 5 further that the gross receipts or sales tax imposed by the
 6 Indian nation, tribe or pueblo provides a reciprocal exclusion
 7 from gross receipts, sales or gross receipts-based excise taxes
 8 imposed by the state or its political subdivisions; and

9 D. "retail food store" means an establishment that
 10 sells food for home preparation and consumption and that meets
 11 the definition of retail food store in 7 USCA 2012(p)(1) for
 12 purposes of the federal supplemental nutrition assistance
 13 program, whether or not the establishment participates in the
 14 federal supplemental nutrition assistance program.

15 SECTION 3. [NEW MATERIAL] FOOD GROSS RECEIPTS TAX.--For
 16 the privilege of engaging in business, an excise tax of four
 17 percent of gross receipts on the sale of food at a retail food
 18 store is imposed on any person engaging in business in New
 19 Mexico. The tax imposed by this subsection may be cited as the
 20 "food gross receipts tax".

21 SECTION 4. [NEW MATERIAL] EXEMPTIONS.--Exempted from the
 22 food gross receipts tax are receipts that are exempt from the
 23 gross receipts tax pursuant to the Gross Receipts and
 24 Compensating Tax Act pursuant to Sections 7-9-13, 7-9-13.1,
 25 7-9-18.1, 7-9-28, 7-9-29 and 7-9-41.3 NMSA 1978.

.210675.1

1 SECTION 5. [NEW MATERIAL] DATE PAYMENT DUE.--The tax
2 imposed by the Gross Receipts Tax on Food Act is to be paid on
3 or before the twenty-fifth day of the month following the month
4 in which the taxable event occurs.

5 SECTION 6. Section 7-1-2 NMSA 1978 (being Laws 1965,
6 Chapter 248, Section 2, as amended) is amended to read:

7 "7-1-2. APPLICABILITY.--The Tax Administration Act
8 applies to and governs:

9 A. the administration and enforcement of the
10 following taxes or tax acts as they now exist or may hereafter
11 be amended:

- 12 (1) Income Tax Act;
- 13 (2) Withholding Tax Act;
- 14 (3) Venture Capital Investment Act;
- 15 (4) Gross Receipts and Compensating Tax Act
- 16 and any state gross receipts tax;
- 17 (5) Liquor Excise Tax Act;
- 18 (6) Local Liquor Excise Tax Act;
- 19 (7) any municipal local option gross receipts
- 20 tax;
- 21 (8) any county local option gross receipts
- 22 tax;
- 23 (9) Special Fuels Supplier Tax Act;
- 24 (10) Gasoline Tax Act;
- 25 (11) petroleum products loading fee, which fee

1 shall be considered a tax for the purpose of the Tax
2 Administration Act;

3 (12) Alternative Fuel Tax Act;

4 (13) Cigarette Tax Act;

5 (14) Estate Tax Act;

6 (15) Railroad Car Company Tax Act;

7 (16) Investment Credit Act, rural job tax
8 credit, Laboratory Partnership with Small Business Tax Credit
9 Act, Technology Jobs and Research and Development Tax Credit
10 Act, Film Production Tax Credit Act, Affordable Housing Tax
11 Credit Act and high-wage jobs tax credit;

12 (17) Corporate Income and Franchise Tax Act;

13 (18) Uniform Division of Income for Tax
14 Purposes Act;

15 (19) Multistate Tax Compact;

16 (20) Tobacco Products Tax Act; ~~and~~

17 (21) the telecommunications relay service
18 surcharge imposed by Section 63-9F-11 NMSA 1978, which
19 surcharge shall be considered a tax for the purposes of the Tax
20 Administration Act; and

21 (22) the Gross Receipts Tax on Food Act;

22 B. the administration and enforcement of the
23 following taxes, surtaxes, advanced payments or tax acts as
24 they now exist or may hereafter be amended:

25 (1) Resources Excise Tax Act;

.210675.1

- 1 (2) Severance Tax Act;
- 2 (3) any severance surtax;
- 3 (4) Oil and Gas Severance Tax Act;
- 4 (5) Oil and Gas Conservation Tax Act;
- 5 (6) Oil and Gas Emergency School Tax Act;
- 6 (7) Oil and Gas Ad Valorem Production Tax Act;
- 7 (8) Natural Gas Processors Tax Act;
- 8 (9) Oil and Gas Production Equipment Ad

9 Valorem Tax Act;

- 10 (10) Copper Production Ad Valorem Tax Act;

11 (11) any advance payment required to be made
12 by any act specified in this subsection, which advance payment
13 shall be considered a tax for the purposes of the Tax
14 Administration Act;

- 15 (12) Enhanced Oil Recovery Act;

16 (13) Natural Gas and Crude Oil Production
17 Incentive Act; and

- 18 (14) intergovernmental production tax credit
19 and intergovernmental production equipment tax credit;

20 C. the administration and enforcement of the
21 following taxes, surcharges, fees or acts as they now exist or
22 may hereafter be amended:

- 23 (1) Weight Distance Tax Act;

24 (2) the workers' compensation fee authorized
25 by Section 52-5-19 NMSA 1978, which fee shall be considered a

.210675.1

1 tax for purposes of the Tax Administration Act;

2 (3) Uniform Unclaimed Property Act (1995);

3 (4) 911 emergency surcharge and the network
4 and database surcharge, which surcharges shall be considered
5 taxes for purposes of the Tax Administration Act;

6 (5) the solid waste assessment fee authorized
7 by the Solid Waste Act, which fee shall be considered a tax for
8 purposes of the Tax Administration Act;

9 (6) the water conservation fee imposed by
10 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
11 for the purposes of the Tax Administration Act; and

12 (7) the gaming tax imposed pursuant to the
13 Gaming Control Act; and

14 D. the administration and enforcement of all other
15 laws, with respect to which the department is charged with
16 responsibilities pursuant to the Tax Administration Act, but
17 only to the extent that the other laws do not conflict with the
18 Tax Administration Act."

19 **SECTION 7.** Section 7-1-6.15 NMSA 1978 (being Laws 1983,
20 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
21 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
22 to read:

23 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
24 MUNICIPALITIES OR COUNTIES.--

25 A. The provisions of this section apply to:

.210675.1

1 (1) any distribution to a municipality
2 pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

3 (2) any transfer to a municipality with
4 respect to any local option gross receipts tax imposed by that
5 municipality;

6 (3) any transfer to a county with respect to
7 any local option gross receipts tax imposed by that county;

8 (4) any distribution to a county pursuant to
9 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

10 (5) any distribution to a municipality or a
11 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

12 (6) any transfer to a county with respect to
13 any tax imposed in accordance with the Local Liquor Excise Tax
14 Act;

15 (7) any distribution to a county from the
16 county government road fund pursuant to Section 7-1-6.26 NMSA
17 1978;

18 (8) any distribution to a municipality of
19 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; ~~and~~

20 (9) any distribution to a municipality of
21 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978; and

22 (10) any distribution to a municipality or
23 county pursuant to Section 8 of this 2018 act.

24 B. Before making a distribution or transfer
25 specified in Subsection A of this section to a municipality or

.210675.1

underscored material = new
[bracketed material] = delete

1 county for the month, amounts comprising the net receipts shall
2 be segregated into two mutually exclusive categories. One
3 category shall be for amounts relating to the current month,
4 and the other category shall be for amounts relating to prior
5 periods. The total of each category for a municipality or
6 county shall be reported each month to that municipality or
7 county. If the total of the amounts relating to prior periods
8 is less than zero and its absolute value exceeds the greater of
9 one hundred dollars (\$100) or an amount equal to twenty percent
10 of the average distribution or transfer amount for that
11 municipality or county, then the following procedures shall be
12 carried out:

13 (1) all negative amounts relating to any
14 period prior to the three calendar years preceding the year of
15 the current month, net of any positive amounts in that same
16 time period for the same taxpayers to which the negative
17 amounts pertain, shall be excluded from the total relating to
18 prior periods. Except as provided in Paragraph (2) of this
19 subsection, the net receipts to be distributed or transferred
20 to the municipality or county shall be adjusted to equal the
21 amount for the current month plus the revised total for prior
22 periods; and

23 (2) if the revised total for prior periods
24 determined pursuant to Paragraph (1) of this subsection is
25 negative and its absolute value exceeds the greater of one

.210675.1

1 hundred dollars (\$100) or an amount equal to twenty percent of
2 the average distribution or transfer amount for that
3 municipality or county, the revised total for prior periods
4 shall be excluded from the distribution or transfers and the
5 net receipts to be distributed or transferred to the
6 municipality or county shall be equal to the amount for the
7 current month.

8 C. The department shall recover from a municipality
9 or county the amount excluded by Paragraph (2) of Subsection B
10 of this section. This amount may be referred to as the
11 "recoverable amount".

12 D. Prior to or concurrently with the distribution
13 or transfer to the municipality or county of the adjusted net
14 receipts, the department shall notify the municipality or
15 county whose distribution or transfer has been adjusted
16 pursuant to Paragraph (2) of Subsection B of this section:

17 (1) that the department has made such an
18 adjustment, that the department has determined that a specified
19 amount is recoverable from the municipality or county and that
20 the department intends to recover that amount from future
21 distributions or transfers to the municipality or county;

22 (2) that the municipality or county has ninety
23 days from the date notice is made to enter into a mutually
24 agreeable repayment agreement with the department;

25 (3) that if the municipality or county takes

1 no action within the ninety-day period, the department will
2 recover the amount from the next six distributions or transfers
3 following the expiration of the ninety days; and

4 (4) that the municipality or county may
5 inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application
6 for a claim for refund that gave rise to the recoverable
7 amount, exclusive of any amended returns that may be attached
8 to the application.

9 E. No earlier than ninety days from the date notice
10 pursuant to Subsection D of this section is given, the
11 department shall begin recovering the recoverable amount from a
12 municipality or county as follows:

13 (1) the department may collect the recoverable
14 amount by:

15 (a) decreasing distributions or
16 transfers to the municipality or county in accordance with a
17 repayment agreement entered into with the municipality or
18 county; or

19 (b) except as provided in Paragraphs (2)
20 and (3) of this subsection, if the municipality or county fails
21 to act within the ninety days, decreasing the amount of the
22 next six distributions or transfers to the municipality or
23 county following expiration of the ninety-day period in
24 increments as nearly equal as practicable and sufficient to
25 recover the amount;

.210675.1

1 (2) if, pursuant to Subsection B of this
2 section, the secretary determines that the recoverable amount
3 is more than fifty percent of the average distribution or
4 transfer of net receipts for that municipality or county, the
5 secretary:

6 (a) shall recover only up to fifty
7 percent of the average distribution or transfer of net receipts
8 for that municipality or county; and

9 (b) may, in the secretary's discretion,
10 waive recovery of any portion of the recoverable amount,
11 subject to approval by the state board of finance; and

12 (3) if, after application of a refund claim,
13 audit adjustment, correction of a mistake by the department or
14 other adjustment of a prior period, but prior to any recovery
15 of the department pursuant to this section, the total net
16 receipts of a municipality or county for the twelve-month
17 period beginning with the current month are reduced or are
18 projected to be reduced to less than fifty percent of the
19 average distribution or transfer of net receipts, the secretary
20 may waive recovery of any portion of the recoverable amount,
21 subject to approval by the state board of finance.

22 F. No later than ninety days from the date notice
23 pursuant to Subsection D of this section is given, the
24 department shall provide the municipality or county adequate
25 opportunity to review an application for a claim for refund

.210675.1

1 that gave rise to the recoverable amount, exclusive of any
2 amended returns that may be attached to the application,
3 pursuant to Section 7-1-8.9 NMSA 1978.

4 G. On or before September 1 of each year beginning
5 in 2016, the secretary shall report to the state board of
6 finance and the legislative finance committee the total
7 recoverable amount waived pursuant to Subparagraph (b) of
8 Paragraph (2) and Paragraph (3) of Subsection E of this section
9 for each municipality and county in the prior fiscal year.

10 H. The secretary is authorized to decrease a
11 distribution or transfer to a municipality or county upon being
12 directed to do so by the secretary of finance and
13 administration pursuant to the State Aid Intercept Act or to
14 redirect a distribution or transfer to the New Mexico finance
15 authority pursuant to an ordinance or a resolution passed by
16 the county or municipality and a written agreement of the
17 municipality or county and the New Mexico finance authority.
18 Upon direction to decrease a distribution or transfer or notice
19 to redirect a distribution or transfer to a municipality or
20 county, the secretary shall decrease or redirect the next
21 designated distribution or transfer, and succeeding
22 distributions or transfers as necessary, by the amount of the
23 state distributions intercept authorized by the secretary of
24 finance and administration pursuant to the State Aid Intercept
25 Act or by the amount of the state distribution intercept

.210675.1

1 authorized pursuant to an ordinance or a resolution passed by
2 the county or municipality and a written agreement with the New
3 Mexico finance authority. The secretary shall transfer the
4 state distributions intercept amount to the municipal or county
5 treasurer or other person designated by the secretary of
6 finance and administration or to the New Mexico finance
7 authority pursuant to written agreement to pay the debt service
8 to avoid default on qualified local revenue bonds or meet other
9 local revenue bond, loan or other debt obligations of the
10 municipality or county to the New Mexico finance authority. A
11 decrease to or redirection of a distribution or transfer
12 pursuant to this subsection that arose:

13 (1) prior to an adjustment of a distribution
14 or transfer of net receipts creating a recoverable amount owed
15 to the department takes precedence over any collection of any
16 recoverable amount pursuant to Paragraph (2) of Subsection B of
17 this section, which may be made only from the net amount of the
18 distribution or transfer remaining after application of the
19 decrease or redirection pursuant to this subsection; and

20 (2) after an adjustment of a distribution or
21 transfer of net receipts creating a recoverable amount owed to
22 the department shall be subordinate to any collection of any
23 recoverable amount pursuant to Paragraph (2) of Subsection B of
24 this section.

25 I. Upon the direction of the secretary of finance

.210675.1

1 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
2 secretary shall temporarily withhold the balance of a
3 distribution to a municipality or county, net of any decrease
4 or redirected amount pursuant to Subsection H of this section
5 and any recoverable amount pursuant to Paragraph (2) of
6 Subsection B of this section, that has failed to submit an
7 audit report required by the Audit Act or a financial report
8 required by Subsection F of Section 6-6-2 NMSA 1978. The
9 amount to be withheld, the source of the withheld distribution
10 and the number of months that the distribution is to be
11 withheld shall be as directed by the secretary of finance and
12 administration. A distribution withheld pursuant to this
13 subsection shall remain in the tax administration suspense fund
14 until distributed to the municipality or county and shall not
15 be distributed to the general fund. An amount withheld
16 pursuant to this subsection shall be distributed to the
17 municipality or county upon direction of the secretary of
18 finance and administration.

19 J. As used in this section:

20 (1) "amounts relating to the current month"
21 means any amounts included in the net receipts of the current
22 month that represent payment of tax due for the current month,
23 correction of amounts processed in the current month that
24 relate to the current month or that otherwise relate to
25 obligations due for the current month;

.210675.1

1 (2) "amounts relating to prior periods" means
2 any amounts processed during the current month that adjust
3 amounts processed in a period or periods prior to the current
4 month regardless of whether the adjustment is a correction of a
5 department error or due to the filing of amended returns,
6 payment of department-issued assessments, filing or approval of
7 claims for refund, audit adjustments or other cause;

8 (3) "average distribution or transfer amount"
9 means the following amounts; provided that a distribution or
10 transfer that is negative shall not be used in calculating the
11 amounts:

12 (a) the annual average of the total
13 amount distributed or transferred to a municipality or county
14 in each of the three twelve-month periods preceding the current
15 month;

16 (b) if a distribution or transfer to a
17 municipality or county has been made for less than three years,
18 the total amount distributed or transferred in the year
19 preceding the current month; or

20 (c) if a municipality or county has not
21 received distributions or transfers of net receipts for twelve
22 or more months, the monthly average of net receipts distributed
23 or transferred to the municipality or county preceding the
24 current month multiplied by twelve;

25 (4) "current month" means the month for which

1 the distribution or transfer is being prepared; and

2 (5) "repayment agreement" means an agreement
3 between the department and a municipality or county under which
4 the municipality or county agrees to allow the department to
5 recover an amount determined pursuant to Paragraph (2) of
6 Subsection B of this section by decreasing distributions or
7 transfers to the municipality or county for one or more months
8 beginning with the distribution or transfer to be made with
9 respect to a designated month. No interest shall be charged."

10 SECTION 8. A new section of the Tax Administration Act is
11 enacted to read:

12 "[NEW MATERIAL] DISTRIBUTION--GROSS RECEIPTS TAX ON FOOD--
13 MUNICIPALITIES AND COUNTIES.--

14 A. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to each municipality in an amount equal to
16 eighty-four and three hundred seventy-five thousandths percent
17 of the net receipts attributable to the gross receipts tax on
18 food sold in the municipality.

19 B. A distribution pursuant to Section 7-1-6.1 NMSA
20 1978 shall be made to each county in an amount equal to fifteen
21 and six hundred twenty-five thousandths percent of the net
22 receipts attributable to the gross receipts tax on food sold in
23 that portion of a county that is located inside the boundaries
24 of a municipality.

25 C. A distribution pursuant to Section 7-1-6.1 NMSA

.210675.1

1 1978 shall be made to each county in an amount equal to the net
2 receipts attributable to the gross receipts tax on food sold in
3 that portion of a county located outside the boundaries of a
4 municipality.

5 D. The distribution amounts made pursuant to this
6 section shall be subject to any increase or decrease made
7 pursuant to Section 7-1-6.15 NMSA 1978.

8 E. The department may withhold an administrative
9 fee of three percent of the net amount to be distributed
10 pursuant to this section."

11 SECTION 9. Section 7-2-2 NMSA 1978 (being Laws 1986,
12 Chapter 20, Section 26, as amended) is amended to read:

13 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
14 Act and unless the context requires otherwise:

15 A. "adjusted gross income" means adjusted gross
16 income as defined in Section 62 of the Internal Revenue Code,
17 as that section may be amended or renumbered;

18 B. "base income":

19 (1) means, for estates and trusts, that part
20 of the estate's or trust's income defined as taxable income and
21 upon which the federal income tax is calculated in the Internal
22 Revenue Code for income tax purposes plus, for taxable years
23 beginning on or after January 1, 1991, the amount of the net
24 operating loss deduction allowed by Section 172(a) of the
25 Internal Revenue Code, as that section may be amended or

.210675.1

1 renumbered, and taken by the taxpayer for that year;

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

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

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

20 (a) such amount is transferred to
21 another qualified tuition program, as defined in Section 529 of
22 the Internal Revenue Code, not authorized in the Education
23 Trust Act; or

24 (b) a distribution or refund is made for
25 any reason other than: 1) to pay for qualified higher

.210675.1

1 education expenses, as defined pursuant to Section 529 of the
2 Internal Revenue Code; or 2) upon the beneficiary's death,
3 disability or receipt of a scholarship;

4 C. "compensation" means wages, salaries,
5 commissions and any other form of remuneration paid to
6 employees for personal services;

7 D. "department" means the taxation and revenue
8 department, the secretary or any employee of the department
9 exercising authority lawfully delegated to that employee by the
10 secretary;

11 E. "fiduciary" means a guardian, trustee, executor,
12 administrator, committee, conservator, receiver, individual or
13 corporation acting in any fiduciary capacity;

14 F. "filing status" means "married filing joint
15 returns", "married filing separate returns", "head of
16 household", "surviving spouse" and "single", as those terms are
17 generally defined for federal tax purposes;

18 G. "fiscal year" means any accounting period of
19 twelve months ending on the last day of any month other than
20 December;

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

23 I. "individual" means a natural person, an estate,
24 a trust or a fiduciary acting for a natural person, trust or
25 estate;

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

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

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

- 13 (1) compensation;
- 14 (2) net profit from business;
- 15 (3) gains from dealings in property;
- 16 (4) interest, except of a taxpayer and the
17 taxpayer's spouse that are each over the age of sixty;
- 18 (5) net rents;
- 19 (6) royalties;
- 20 (7) dividends, except of a taxpayer and the
21 taxpayer's spouse that are each over the age of sixty;
- 22 (8) alimony and separate maintenance payments;
- 23 (9) annuities;
- 24 (10) income from life insurance and endowment
25 contracts;

.210675.1

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

13 M. "modified gross income" excludes:

14 (1) payments for hospital, dental, medical or
15 drug expenses to or on behalf of the taxpayer;

16 (2) the value of room and board provided by
17 federal, state or local governments or by private individuals
18 or agencies based upon financial need and not as a form of
19 compensation;

20 (3) payments pursuant to a federal, state or
21 local government program directly or indirectly to a third
22 party on behalf of the taxpayer when identified to a particular
23 use or invoice by the payer; or

24 (4) payments for credits and rebates pursuant
25 to the Income Tax Act and made for a credit pursuant to Section

.210675.1

1 7-3-9 NMSA 1978;

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

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

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

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

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

25 (5) other amounts that the state is prohibited

.210675.1

1 from taxing because of the laws or constitution of this state
2 or the United States;

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

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

9 (b) net operating loss carryover
10 deductions to that year claimed and allowed;

11 (7) for taxable years beginning on or after
12 January 1, 1991 and prior to January 1, 2013, an amount equal
13 to the sum of any net operating loss carryover deductions to
14 that year claimed and allowed; provided that the amount of any
15 net operating loss carryover from a taxable year beginning on
16 or after January 1, 1991 and prior to January 1, 2013 may be
17 excluded only as follows:

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

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

25 (c) in either case, if the net operating

1 loss carryover exceeds the amount of net income exclusive of
2 the net operating loss carryover for the taxable year to which
3 the exclusion first applies, in the next four succeeding
4 taxable years in turn until the net operating loss carryover is
5 exhausted for any net operating loss carryover from a taxable
6 year prior to January 1, 2013; in no event shall a net
7 operating loss carryover from a taxable year beginning prior to
8 January 1, 2013 be excluded in any taxable year after the
9 fourth taxable year beginning after the taxable year to which
10 the exclusion first applies;

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

16 (a) in the case of a timely filed
17 return, in the taxable year immediately following the taxable
18 year for which the return is filed; or

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

23 (c) in either case, if the net operating
24 loss carryover exceeds the amount of net income exclusive of
25 the net operating loss carryover for the taxable year to which

.210675.1

1 the exclusion first applies, in the next nineteen succeeding
2 taxable years in turn until the net operating loss carryover is
3 exhausted for any net operating loss carryover from a taxable
4 year beginning on or after January 1, 2013; in no event shall a
5 net operating loss carryover from a taxable year beginning: 1)
6 prior to January 1, 2013 be excluded in any taxable year after
7 the fourth taxable year beginning after the taxable year to
8 which the exclusion first applies; and 2) on or after January
9 1, 2013 be excluded in any taxable year after the nineteenth
10 taxable year beginning after the taxable year to which the
11 exclusion first applies; and

12 (9) for taxable years beginning on or after
13 January 1, 2011, an amount equal to the amount included in
14 adjusted gross income that represents a refund of state and
15 local income and sales taxes that were deducted for federal tax
16 purposes in taxable years beginning on or after January 1,
17 2010;

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

24 P. "net operating loss carryover" means the amount,
25 or any portion of the amount, of a net operating loss for any

1 taxable year that, pursuant to Paragraph (6), (7) or (8) of
2 Subsection N of this section, may be excluded from base income;

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

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

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

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

.210675.1

1 U. "state" means any state of the United States,
2 the District of Columbia, the commonwealth of Puerto Rico, any
3 territory or possession of the United States or any political
4 subdivision of a foreign country;

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

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

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

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

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

22 SECTION 10. A new section of the Income Tax Act is
23 enacted to read:

24 "[NEW MATERIAL] EXEMPTION--MILITARY RETIREMENT INCOME.--

25 A. Military retirement income paid to a uniformed

1 services retiree is exempt from income taxation.

2 B. As used in this section:

3 (1) "uniformed services" means the army, navy,
4 air force, marine corps, coast guard and the commissioned corps
5 of the national oceanic and atmospheric administration; and

6 (2) "uniformed services retiree" means a
7 former member of the uniformed services of the United States
8 who has qualified by years of service or disability to separate
9 from military service with lifetime benefits."

10 SECTION 11. REPEAL.--Sections 7-1-6.46 and 7-1-6.47 NMSA
11 1978 (being Laws 2004, Chapter 116, Sections 1 and 2, as
12 amended) are repealed.

13 SECTION 12. APPLICABILITY.--The provisions of Sections 9
14 and 10 of this act apply to taxable years beginning on or after
15 January 1, 2018.

16 SECTION 13. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2018.

18 - 29 -
19
20
21
22
23
24
25

