

HOUSE FLOOR SUBSTITUTE FOR  
HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 163

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO TAXATION; CREATING A 2021 INCOME TAX REBATE;  
EXEMPTING SOCIAL SECURITY INCOME FROM INCOME TAX; PROVIDING AN  
INCOME TAX EXEMPTION IN AN AMOUNT EQUAL TO THIRTY THOUSAND  
DOLLARS (\$30,000) OF MILITARY RETIREMENT PAY; REDUCING THE  
RATES OF THE GROSS RECEIPTS TAX AND THE COMPENSATING TAX;  
PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR CERTAIN  
BUSINESS-TO-BUSINESS SERVICES.

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

SECTION 1. A new section of the Income Tax Act is enacted  
to read:

"NEW MATERIAL 2021 INCOME TAX REBATE.--

A. A resident who is not a dependent of another  
individual is entitled to a tax rebate in an amount equal to  
one hundred ten dollars (\$110) multiplied by the number of

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1 federal exemptions allowable for federal income tax purposes  
2 for each individual.

3 B. The rebate provided by this section may be  
4 deducted from the taxpayer's New Mexico income tax liability  
5 for taxable year 2021.

6 C. If the amount of rebate exceeds the taxpayer's  
7 income tax liability, the excess shall be refunded to the  
8 taxpayer.

9 D. The department may require a taxpayer to claim  
10 the rebate provided by this section on forms and in a manner  
11 required by the department.

12 E. The rebate provided by this section shall not be  
13 allowed after June 30, 2023."

14 SECTION 2. A new section of the Income Tax Act is enacted  
15 to read:

16 "[NEW MATERIAL] EXEMPTION--SOCIAL SECURITY INCOME.--

17 A. An individual may claim an exemption in an  
18 amount equal to the amount included in adjusted gross income  
19 pursuant to Section 86 of the Internal Revenue Code, as that  
20 section may be amended or renumbered, of income includable  
21 except for this exemption in net income. The exempted amount  
22 shall not exceed the individual's net income.

23 B. An individual who claims an exemption pursuant  
24 to this section shall not claim the exemption pursuant to  
25 Section 7-2-5.2 NMSA 1978."

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1 SECTION 3. A new section of the Income Tax Act is enacted  
2 to read:

3 "[NEW MATERIAL] EXEMPTION--ARMED FORCES RETIREMENT PAY.--

4 A. An individual who is an armed forces retiree may  
5 claim an exemption in an amount equal to thirty thousand  
6 dollars (\$30,000) of military retirement pay includable, except  
7 for this exemption, in net income.

8 B. As used in this section, "armed forces retiree"  
9 means a former member of the armed forces of the United States  
10 who has qualified by years of service or disability to separate  
11 from military service with lifetime benefits."

12 SECTION 4. Section 7-9-4 NMSA 1978 (being Laws 1966,  
13 Chapter 47, Section 4, as amended) is amended to read:

14 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
15 "GROSS RECEIPTS TAX".--

16 A. For the privilege of engaging in business, an  
17 excise tax equal to [~~five and one-eighth~~] four and five-eighths  
18 percent of gross receipts is imposed on any person engaging in  
19 business in New Mexico.

20 B. The tax imposed by this section shall be  
21 referred to as the "gross receipts tax".

22 SECTION 5. Section 7-9-7 NMSA 1978 (being Laws 1966,  
23 Chapter 47, Section 7, as amended) is amended to read:

24 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
25 "COMPENSATING TAX".--

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1           A. For the privilege of making taxable use of  
2 tangible personal property in New Mexico, there is imposed on  
3 the person using the property an excise tax equal to [~~five and~~  
4 ~~one-eighth~~] four and five-eighths percent of the value of  
5 tangible property that was:

6                   (1) manufactured by the person using the  
7 property in the state; or

8                   (2) acquired in a transaction for which the  
9 seller's receipts were not subject to the gross receipts tax.

10           B. For the purpose of Subsection A of this section,  
11 value of tangible personal property shall be the adjusted basis  
12 of the property for federal income tax purposes determined as  
13 of the time of acquisition or introduction into this state or  
14 of conversion of the property to taxable use, whichever is  
15 later. If no adjusted basis for federal income tax purposes is  
16 established for the property, a reasonable value of the  
17 property shall be used.

18           C. For the privilege of making taxable use of a  
19 license or franchise in New Mexico, there is imposed on the  
20 person using the license or franchise an excise tax equal to  
21 the rate provided in Subsection A of this section against the  
22 value of the license or franchise in its use in this state.  
23 The department by rule, ruling or instruction shall fairly  
24 apportion, where appropriate, the value of a license or  
25 franchise to its value in use in New Mexico. The tax shall

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1 apply only to the value of a license or franchise used in New  
2 Mexico where the license or franchise was acquired in a  
3 transaction the receipts from which were not subject to the  
4 gross receipts tax.

5 D. For the privilege of making taxable use of  
6 services in New Mexico, there is imposed on the person using  
7 the services an excise tax equal to the rate provided in  
8 Subsection A of this section against the value of the services  
9 at the time the services were performed or the product of the  
10 service was acquired. For use of services to be a taxable use  
11 pursuant to this subsection, the services shall have been  
12 acquired in a transaction the receipts from which were not  
13 subject to the gross receipts tax.

14 E. For purposes of this section, receipts are not  
15 subject to the gross receipts tax if the person responsible for  
16 the gross receipts tax on those receipts lacked nexus in New  
17 Mexico or the receipts were exempt or allowed to be deducted  
18 pursuant to the Gross Receipts and Compensating Tax Act.

19 F. The tax imposed by this section shall be  
20 referred to as the "compensating tax".

21 G. As used in this section, "taxable use" means use  
22 by a person who acquires tangible personal property, a license,  
23 a franchise or a service, and the use of which would not have  
24 qualified for an exemption or deduction pursuant to the Gross  
25 Receipts and Compensating Tax Act."

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1           SECTION 6. A new section of the Gross Receipts and  
2           Compensating Tax Act is enacted to read:

3           "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--CERTAIN  
4           BUSINESS-TO-BUSINESS SERVICES.--

5           A. Receipts from the sale of accounting services,  
6           engineering services, financial management services,  
7           information technology services, human resources services,  
8           legal services and temporary services may be deducted from  
9           gross receipts if:

10                   (1) the sale is made to a sole proprietorship,  
11                   a limited liability company, a partnership or a corporation;

12                   (2) the sale is made to an entity with a New  
13                   Mexico tax identification number or an equivalent tax  
14                   identification number from another state; or

15                   (3) the purchaser presents to the seller a  
16                   nontaxable transaction certificate or alternative evidence  
17                   entitling a person to a deduction pursuant to Section 7-9-43  
18                   NMSA 1978.

19           B. A taxpayer allowed a deduction pursuant to this  
20           section shall report the amount of the deduction separately in  
21           a manner required by the department.

22           C. As used in this section:

23                   (1) "accounting services" means the systematic  
24                   and comprehensive recording of financial transactions  
25                   pertaining to a business entity and the process of summarizing,

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1 analyzing and reporting these transactions to oversight  
2 agencies or tax collection entities, including certified public  
3 auditing, attest services and preparing financial statements,  
4 bookkeeping, tax return preparation, advice and consulting and,  
5 where applicable, representing taxpayers before tax collection  
6 agencies. "Accounting services" does not include, except as  
7 provided with respect to financial management services,  
8 investment advice, wealth management advice or consulting or  
9 any tax return preparation, advice, counseling or  
10 representation for individuals, regardless of whether those  
11 individuals are owners of pass-through entities, such as  
12 partnerships, limited liability companies or S-corporations;

13 (2) "engineering services" means consultation,  
14 the production of a creative work, investigation, evaluation,  
15 planning and design, the performance of studies and reviewing  
16 planning documents when performed by, or under the supervision  
17 of, a licensed engineer, including the design, development and  
18 testing of mechanical, electrical, hydraulic, chemical,  
19 pneumatic or thermal machinery or equipment, industrial or  
20 commercial work systems or processes and military equipment.  
21 "Engineering services" does not include medical or medical  
22 laboratory services, any engineering performed in connection  
23 with a construction service or the design and installation of  
24 computer or computer network infrastructure;

25 (3) "financial management services" means

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1 managing and directing the investments of, or providing  
2 investment advisory services to, a hedge fund, mutual fund or  
3 non-captive real estate investment trust;

4 (4) "hedge fund" means a private investment  
5 fund or pool, the assets of which are managed by a professional  
6 management firm that:

7 (a) trades or invests, through public  
8 market or private transactions, in securities, commodities,  
9 currencies, derivatives or similar classes of financial assets;  
10 or

11 (b) that is not an investment company  
12 under 15 USC 80a-3(c)(1) or 15 USC 80a-3(c)(7);

13 (5) "human resources services" means managing  
14 and overseeing the recruitment, management or termination of a  
15 business's employees, including employee recruitment; managing  
16 employee relations; maintaining employment files; setting  
17 personnel policies; managing and administering employee  
18 payroll, benefits and compensation, including employee  
19 withholding; overseeing employee discipline and termination;  
20 and ensuring compliance with labor and antidiscrimination laws.  
21 "Human resources services" does not include training or  
22 providing required certification to a business's employees or  
23 employee efficiency consulting;

24 (6) "information technology services" means  
25 separately stated services for installing and maintaining a



1 business's computers and computer network, including performing  
2 computer network design; installing, repairing, maintaining or  
3 restoring computer networks, hardware or software; and  
4 performing custom software programming or making custom  
5 modifications to existing software programming. "Information  
6 technology services" does not include:

7 (a) software maintenance and update  
8 agreements, unless made in conjunction with custom programming;

9 (b) computers, servers, chilling  
10 equipment and pre-programmed software;

11 (c) data processing services or the  
12 processing or storage of information to compile and produce  
13 records of transactions for retrieval or use, including data  
14 entry, data retrieval, data searches and information  
15 compilation; or

16 (d) access to telecommunications or  
17 internet;

18 (7) "legal services" means services performed  
19 by a licensed attorney or under the supervision of a licensed  
20 attorney for a client, regardless of the attorney's form of  
21 business entity or whether the services are prepaid, including  
22 legal representation before courts or administrative agencies;  
23 drafting legal documents, such as contracts or patent  
24 applications; legal research; advising and counseling;  
25 arbitration; mediation; and notary public and other ancillary

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1 legal services performed for a client in conjunction with and  
2 under the supervision of a licensed attorney. "Legal services"  
3 does not include lobbying or government relations services,  
4 title insurance agent services, licensing or selling legal  
5 software or legal document templates, insurance investigation  
6 services or any legal representation involving financial crimes  
7 or tax evasion in New Mexico;

8 (8) "mutual fund" means an entity registered  
9 pursuant to the federal Investment Company Act of 1940;

10 (9) "real estate investment trust" means an  
11 entity described in Section 856(a) of the Internal Revenue Code  
12 of 1986, as that section may be amended or renumbered, the  
13 investments of which are limited to interest in mortgages on  
14 real property and shares of or transferable certificates of  
15 beneficial interest in an entity described in Section 856(a);  
16 provided that a real estate investment trust does not include a  
17 captive real estate investment trust as defined in the  
18 Corporate Income and Franchise Tax Act; and

19 (10) "temporary services" means an employment  
20 situation in which an employee is expected to remain in a  
21 position for a specified period of time. "Temporary services"  
22 includes services performed by a skilled or unskilled person  
23 replacing or supporting client company staff for business  
24 purposes. "Temporary services" does not include services  
25 performed by a temporary service provider that is not licensed

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1 as such by the state or subcontracted services."

2 SECTION 7. APPLICABILITY.--The provisions of Sections 2  
3 and 3 of this act apply to taxable years beginning on or after  
4 January 1, 2022.

5 SECTION 8. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2022.

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