

1 HOUSE BILL 349
2 44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

3 INTRODUCED BY
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5

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7
8 FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE
9

10 AN ACT

11 RELATING TO TAXATION; AMENDING CERTAIN PROVISIONS OF THE
12 INCOME TAX ACT TO CORRECT ERRORS, PROVIDE AN EXCEPTION FROM
13 ESTIMATED TAX PAYMENTS FOR FIRST-YEAR FILERS AND PROVIDE
14 CONDITIONS BY WHICH OPTIONAL REFUND CONTRIBUTION PROVISIONS
15 WOULD BE REPEALED; AMENDING THE CORPORATE INCOME AND FRANCHISE
16 TAX ACT TO REMOVE A SUPERFLUOUS DEFINITION; AMENDING THE
17 UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT TO CHANGE A
18 DEFINITION; AMENDING THE ESTATE TAX ACT TO CLARIFY APPLICATION
19 OF A PROVISION; AMENDING THE TAX REFUND INTERCEPT PROGRAM ACT
20 TO REPEAL AN OBSOLETE PROVISION; AMENDING, REPEALING AND
21 ENACTING CERTAIN SECTIONS OF THE NMSA 1978.
22

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

24 Section 1. Section 7-2-7 NMSA 1978 (being Laws 1994,
25 Chapter 5, Section 20, as amended) is amended to read:

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1 "7-2-7. INDIVIDUAL INCOME TAX RATES. --The tax imposed by
2 Section 7-2-3 NMSA 1978 shall be at the following rates for
3 any taxable year beginning on or after January 1, [~~1996~~] 1998:

4 A. For married individuals filing separate
5 returns:

6 If the taxable income is:	The tax shall be:
7 Not over \$4,000	1.7% of taxable income
8 Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of
9	excess over \$ 4,000
10 Over \$ 8,000 but not over \$ 12,000	\$ 196 plus 4.7% of
11	excess over \$ 8,000
12 Over \$ 12,000 but not over \$ 20,000	\$ 384 plus 6.0% of
13	excess over \$ 12,000
14 Over \$ 20,000 but not over \$ 32,000	\$ 864 plus 7.1% of
15	excess over \$ 20,000
16 Over \$ 32,000 but not over \$ 50,000	\$ 1,716 plus 7.9% of
17	excess over \$ 32,000
18 Over \$ 50,000	\$ 3,138 plus
19	8.2% of excess over
20	\$ 50,000.

21 B. For surviving spouses and married individuals
22 filing joint returns:

23 If the taxable income is:	The tax shall be:
24 Not over \$8,000	1.7% of taxable income
25 Over \$ 8,000 but not over \$ 16,000	\$ 136 plus 3.2% of

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1		excess over \$ 8,000
2	Over \$ 16,000 but not over \$ 24,000	\$ 392 plus 4.7% of
3		excess over \$ 16,000
4	Over \$ 24,000 but not over \$ 40,000	\$ 768 plus 6.0% of
5		excess over \$ 24,000
6	Over \$ 40,000 but not over \$ 64,000	\$ 1,728 plus 7.1% of
7		excess over \$ 40,000
8	Over \$ 64,000 but not over \$100,000	\$ 3,432 plus 7.9% of
9		excess over \$ 64,000
10	Over \$100,000	\$ 6,276 plus
11		8.2% of excess over
12		\$100,000.

13 C. For single individuals and for estates and
14 trusts:

15	If the taxable income is:	The tax shall be:
16	Not over \$5,500	1.7% of taxable income
17	Over \$ 5,500 but not over \$ 11,000	\$ 93.50 plus 3.2% of
18		excess over \$ 5,500
19	Over \$ 11,000 but not over \$ 16,000	\$ 269.50 plus 4.7% of
20		excess over \$ 11,000
21	Over \$ 16,000 but not over \$ 26,000	\$ 504.50 plus 6.0% of
22		excess over \$ 16,000
23	Over \$ 26,000 but not over \$ 42,000	\$1,104.50 plus 7.1% of
24		excess over \$ 26,000
25	Over \$ 42,000 but not over \$ 65,000	\$2,240.50 plus 7.9% of

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1 excess over \$ 42,000
2 Over \$ 65,000 \$4,057.50 plus
3 8.2% of excess over
4 \$ 65,000.

5 D. For heads of household filing returns:

6 If the taxable income is:	The tax shall be:
7 Not over \$7,000	1.7% of taxable income
8 Over \$ 7,000 but not over \$ 14,000	\$ 119 plus 3.2% of
9	excess over \$ 7,000
10 Over \$ 14,000 but not over \$ 20,000	\$ 343 plus 4.7% of
11	excess over \$ 14,000
12 Over \$ 20,000 but not over \$ 33,000	\$ 625 plus 6.0% of
13	excess over \$ 20,000
14 Over \$ 33,000 but not over \$ 53,000	\$1,405 plus 7.1% of
15	excess over \$ 33,000
16 Over \$ 53,000 but not over \$ 83,000	\$2,825 plus 7.9% of
17	excess over \$ 53,000
18 Over \$ 83,000	\$5,195 plus 8.2% of
19	excess over
20	\$ 83,000.

21 E. The tax on the sum of any lump-sum amounts
22 included in net income is an amount equal to five multiplied by
23 the difference between:

- 24 (1) the amount of tax due on the taxpayer's
- 25 taxable income; and

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1 (2) the amount of tax that would be due on an
2 amount equal to the taxpayer's taxable income and twenty
3 percent of the taxpayer's lump-sum amounts included in net
4 income. "

5 Section 2. Section 7-2-12.2 NMSA 1978 (being Laws 1996,
6 Chapter 17, Section 1, as amended) is amended to read:

7 "7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--
8 PENALTY. --

9 A. Except as otherwise provided in this section,
10 every individual who is required to file an income tax return
11 under the Income Tax Act shall pay the required annual payment
12 in installments through either withholding or estimated tax
13 payments.

14 B. For the purposes of this section:

15 (1) "required annual payment" means the
16 lesser of:

17 (a) ninety percent of the tax shown on
18 the return of the taxable year or, if no return is filed,
19 ninety percent of the tax for the taxable year; or

20 (b) one hundred percent of the tax shown
21 on the return for the preceding taxable year if the preceding
22 taxable year was a taxable year of twelve months and the
23 taxpayer filed a New Mexico tax return for that preceding
24 taxable year; and

25 (2) "tax" means the tax imposed under Section

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1 7-2-3 NMSA 1978 less any amount allowed for credits provided by
2 Sections 7-2-13 and 7-2-18.1 through 7-2-18.4 NMSA 1978 and for
3 any applicable tax rebates provided by the Income Tax Act.

4 C. There shall be four required installments for
5 each taxable year. If a taxpayer is not liable for estimated
6 tax payments on March 31, but becomes liable for estimated tax
7 at some point after March 31, he must make estimated tax
8 payments as follows:

9 (1) if the taxpayer becomes required to pay
10 estimated tax after March 31 and before June 1, fifty percent
11 of the required annual payment must be paid on or before June
12 15, twenty-five percent on September 15 and twenty-five percent
13 on or before January 15 of the following taxable year;

14 (2) if the taxpayer becomes required to pay
15 estimated tax after May 31, but before September 1, seventy-
16 five percent of the required annual payment must be paid on or
17 before September 15 and twenty-five percent on or before
18 January 15 of the following taxable year; and

19 (3) if the taxpayer becomes required to pay
20 estimated tax after August 31, one hundred percent of the
21 required annual payment must be paid on or before January 15 of
22 the following taxable year.

23 D. Except as otherwise provided in this section,
24 for taxpayers reporting on a calendar year basis, estimated
25 payments of the required annual payment are due on or before

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1 April 15, June 15 and September 15 of the taxable year and
2 January 15 of the following taxable year. For taxpayers
3 reporting on a fiscal year other than a calendar year, the due
4 dates for the installments are the fifteenth day of the fourth,
5 sixth and ninth months of the fiscal year and the fifteenth day
6 of the first month following the fiscal year.

7 E. A rancher or farmer who expects to receive at
8 least two-thirds of his gross income for the taxable year from
9 ranching or farming, or who has received at least two-thirds of
10 his gross income for the previous taxable year from ranching or
11 farming, may:

12 (1) pay the required annual payment for the
13 taxable year in one installment on or before January 15 of the
14 following taxable year; or

15 (2) on or before March 1 of the following
16 taxable year, file a return for the taxable year and pay in
17 full the amount computed on the return as payable.

18 No penalty under Subsection G of this section shall be
19 imposed unless the rancher or farmer underpays his tax by more
20 than one-third. If a joint return is filed, a rancher or
21 farmer must consider his or her spouse's gross income in
22 determining whether at least two-thirds of gross income is from
23 ranching or farming.

24 F. For the purposes of this section, the amount of
25 tax deducted and withheld with respect to a taxpayer under the

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1 Withholding Tax Act shall be deemed a payment of estimated tax.
2 An equal part of the amount of withheld tax shall be deemed
3 paid on each due date for the applicable taxable year unless
4 the taxpayer establishes the dates on which all amounts were
5 actually withheld, in which case the amounts withheld shall be
6 deemed payments of estimated tax on the dates on which the
7 amounts were actually withheld. The taxpayer may apply the
8 provisions of this subsection separately to wage withholding
9 and any other amounts withheld under the Withholding Tax Act.

10 G. Except as otherwise provided in this section, in
11 the case of any underpayment of the required annual payment by
12 a taxpayer, there shall be added to the tax an amount as
13 penalty determined by applying the rate specified in Subsection
14 B of Section 7-1-67 NMSA 1978 to the amount of the underpayment
15 for the period of the underpayment, provided:

16 (1) the amount of the underpayment shall be
17 the excess of the amount of the required annual payment over
18 the amount, if any, paid on or before the due date for the
19 installment;

20 (2) the period of the underpayment runs from
21 the due date for the installment to whichever of the following
22 dates is earlier:

23 (a) the fifteenth day of the fourth
24 month following the close of the taxable year; or

25 (b) with respect to any portion of the

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1 underpayment, the date on which the portion was paid; and
2 (3) a payment of estimated tax shall be
3 credited against unpaid or underpaid installments in the order
4 in which the installments are required to be paid.

5 H. No penalty shall be imposed under Subsection G
6 of this section for any taxable year if:

7 (1) the difference between the following is
8 less than five hundred dollars (\$500):

9 (a) the tax shown on the return for the
10 taxable year or, when no return is filed, the tax for the
11 taxable year; and

12 (b) any amount withheld under the
13 provisions of the Withholding Tax Act for that taxpayer for
14 that taxable year;

15 (2) the individual's preceding taxable year
16 was a taxable year of twelve months, the individual did not
17 have any tax liability for the preceding taxable year and the
18 individual was a resident of New Mexico for the entire taxable
19 year;

20 (3) through either withholding or estimated
21 tax payments, the individual paid the required annual payment
22 as defined in Subsection B of this section; or

23 (4) the secretary determines that the
24 underpayment was not due to fraud, negligence or disregard of
25 rules and regulations.

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1 I. If, on or before January 31 of the following
2 taxable year, the taxpayer files a return for the taxable year
3 and pays in full the amount computed on the return as payable,
4 then no penalty under Subsection G of this section shall be
5 imposed with respect to any underpayment of the fourth required
6 installment for the taxable year.

7 J. This section shall be applied to taxable years
8 of less than twelve months and to taxpayers reporting on a
9 fiscal year other than a calendar year in the manner determined
10 by regulation or instruction of the secretary.

11 K. Except as otherwise provided in Subsection L of
12 this section, this section applies to any estate or trust.

13 L. This section does not apply to any trust that is
14 subject to the tax imposed by Section 511 of the Internal
15 Revenue Code or that is a private foundation. With respect to
16 any taxable year ending before the date two years after the
17 date of the decedent's death, this section does not apply to:

18 (1) the estate of the decedent; or

19 (2) any trust all of which was treated under
20 Subpart E of Part I of Subchapter J of Chapter 1 of the
21 Internal Revenue Code as owned by the decedent and to which the
22 residue of the decedent's estate will pass under the decedent's
23 will or, if no will is admitted to probate, that is the trust
24 primarily responsible for paying debts, taxes and expenses of
25 administration.

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1 M The provisions of this section do not apply to
2 first-year residents. "

3 Section 3. Section 7-2-18 NMSA 1978 (being Laws 1977,
4 Chapter 196, Section 1, as amended) is amended to read:

5 "7-2-18. TAX REBATE OF PROPERTY TAX DUE THAT EXCEEDS THE
6 ELDERLY TAXPAYER' S MAXIMUM PROPERTY TAX LIABILITY-- REFUND. --

7 A. Any resident who has attained the age of
8 sixty-five and files an individual New Mexico income tax return
9 and is not a dependent of another individual may claim a tax
10 rebate for the taxable year for which the return is filed. The
11 tax rebate shall be the amount of property tax due on the
12 resident's principal place of residence for the taxable year
13 that exceeds the property tax liability indicated by the table
14 in Subsection F or G, as appropriate, of this section, based
15 upon the taxpayer's modified gross income.

16 B. Any resident otherwise qualified under this
17 section who rents a principal place of residence from another
18 person may calculate the amount of property tax due by
19 multiplying the gross rent for the taxable year by six percent.
20 The tax rebate shall be the amount of property tax due on the
21 taxpayer's principal place of residence for the taxable year
22 that exceeds the property tax liability indicated by the table
23 in Subsection F or G, as appropriate, of this section, based
24 upon the taxpayer's modified gross income.

25 C. As used in this section, "principal place of

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1 residence" means the resident's dwelling, whether owned or
2 rented, and so much of the land surrounding it, not to exceed
3 five acres, as is reasonably necessary for use of the dwelling
4 as a home and may consist of a part of a multi-dwelling or a
5 multi-purpose building and a part of the land upon which it is
6 built.

7 D. No claim for the tax rebate provided in this
8 section shall be allowed a resident who was an inmate of a
9 public institution for more than six months during the taxable
10 year or who was not physically present in New Mexico for at
11 least six months during the taxable year for which the tax
12 rebate could be claimed.

13 E. A husband and wife who file separate returns for
14 a taxable year in which they could have filed a joint return
15 may each claim only one-half of the tax rebate that would have
16 been allowed on a joint return.

17 F. For taxpayers whose principal place of residence
18 is in a county that does not have in effect for the taxable
19 year a resolution in accordance with Subsection J of this
20 section, the tax rebate provided for in this section may be
21 claimed in the amount of the property tax due each taxable year
22 that exceeds the amount shown as property tax liability in the
23 following table:

24 ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Property Tax

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1	Taxpayer's Modified Gross Income	Liability
2	But Not	
3	Over	Over
4	\$ 0	\$ 1,000 \$20
5	1,000	2,000 25
6	2,000	3,000 30
7	3,000	4,000 35
8	4,000	5,000 40
9	5,000	6,000 45
10	6,000	7,000 50
11	7,000	8,000 55
12	8,000	9,000 60
13	9,000	10,000 75
14	10,000	11,000 90
15	11,000	12,000 105
16	12,000	13,000 120
17	13,000	14,000 135
18	<u>14,000</u>	<u>15,000</u> <u>150</u>
19	15,000	16,000 180.

20 G. For taxpayers whose principal place of residence
21 is in a county that has in effect for the taxable year a
22 resolution in accordance with Subsection J of this section, the
23 tax rebate provided for in this section may be claimed in the
24 amount of the property tax due each taxable year that exceeds
25 the amount shown as property tax liability in the following

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table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

		Property Tax
Taxpayer's Modified Gross Income		Liability
Over	But Not Over	
\$ 0	\$ 1,000	\$ 20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120
13,000	14,000	135
14,000	15,000	150
15,000	16,000	165
16,000	17,000	180
17,000	18,000	195
18,000	19,000	210

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1	19, 000	20, 000	225
2	20, 000	21, 000	240
3	21, 000	22, 000	255
4	22, 000	23, 000	270
5	23, 000	24, 000	285
6	24, 000	25, 000	300.

7 H. If a taxpayer's modified gross income is zero,
8 the taxpayer may claim a tax rebate based upon the amount shown
9 in the first row of the appropriate table. The tax rebate
10 provided for in this section shall not exceed two hundred fifty
11 dollars (\$250) per return, and, if a return is filed separately
12 that could have been filed jointly, the tax rebate shall not
13 exceed one hundred twenty-five dollars (\$125). No tax rebate
14 shall be allowed any taxpayer whose modified gross income
15 exceeds sixteen thousand dollars (\$16,000) for taxpayers whose
16 principal place of residence is in a county that does not have
17 in effect for the taxable year a resolution in accordance with
18 Subsection J of this section and twenty-five thousand dollars
19 (\$25,000) for all other taxpayers.

20 I. The tax rebate provided for in this section may
21 be deducted from the taxpayer's New Mexico income tax liability
22 for the taxable year. If the tax rebate exceeds the taxpayer's
23 income tax liability, the excess shall be refunded to the
24 taxpayer.

25 J. The board of county commissioners may adopt a

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1 resolution authorizing otherwise qualified taxpayers whose
2 principal place of residence is in the county to claim the
3 rebate provided by this section in the amounts set forth in
4 Subsection G of this section. The resolution must also provide
5 that the county will reimburse the state for the additional
6 amount of tax rebates paid to such taxpayers over the amount
7 that would have been paid to such taxpayers under Subsection F
8 of this section. The resolution may apply to one or more
9 taxable years. The county must adopt the resolution and notify
10 the department of the adoption by no later than September 1 of
11 the taxable year to which the resolution first applies. The
12 department shall determine the additional amounts paid to
13 taxpayers of the county for each taxable year and shall bill
14 the county for the amount at the time and in the manner
15 determined by the department. If the county fails to pay any
16 bill within thirty days, the department may deduct the amount
17 due from any amount to be transferred or distributed to the
18 county by the state, other than debt interceptions."

19 Section 4. Section 7-2-18.1 NMSA 1978 (being Laws 1981,
20 Chapter 170, Section 1, as amended) is amended to read:

21 "7-2-18.1. CREDIT FOR EXPENSES FOR DEPENDENT CHILD DAY
22 CARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT
23 INDIGENCY. --

24 A. As used in this section:

25 (1) "caregiver" means a corporation or an

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1 individual eighteen years of age or over who receives
2 compensation from the resident for providing direct care,
3 supervision and guidance to a qualifying dependent of the
4 resident for less than twenty-four hours daily and includes
5 related individuals of the resident but does not include a
6 dependent of the resident;

7 (2) "cost of maintaining a household" means
8 the expenses incurred for the mutual benefit of the occupants
9 thereof by reason of its operation as the principal place of
10 abode of such occupants, including property taxes, mortgage
11 interest, rent, utility charges, upkeep and repairs, property
12 insurance and food consumed on the premises. "Cost of
13 maintaining a household" shall not include expenses otherwise
14 incurred, including cost of clothing, education, medical
15 treatment, vacations, life insurance, transportation and
16 mortgages;

17 (3) "dependent" means "dependent" as defined
18 by Section 152 of the Internal Revenue Code, as that section
19 may be amended or renumbered, but also includes any minor child
20 or stepchild of the resident who would be a dependent for
21 federal income tax purposes if the public assistance
22 contributing to the support of the child or stepchild was
23 considered to have been contributed by the resident;

24 (4) "disabled person" means a person who has
25 a medically determinable physical or mental impairment, as

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1 certified by a licensed physician, that renders such person
2 unable to engage in gainful employment;

3 (5) "gainfully employed" means working for
4 remuneration for others, either full time or part time, or
5 self-employment in a business or partnership; and

6 (6) "qualifying dependent" means a dependent
7 under the age of fifteen at the end of the taxable year who
8 receives the services of a caregiver.

9 B. Any resident who files an individual New Mexico
10 income tax return and who is not a dependent of another
11 taxpayer may claim a credit for child day care expenses
12 incurred and paid to a caregiver in New Mexico during the
13 taxable year by such resident if the resident:

14 (1) singly or together with a spouse
15 furnishes over half the cost of maintaining the household for
16 one or more qualifying dependents for any period in the taxable
17 year for which the credit is claimed;

18 (2) is gainfully employed for any period for
19 which the credit is claimed or, if a joint return is filed,
20 both spouses are gainfully employed or one is disabled for any
21 period for which the credit is claimed;

22 (3) compensates a caregiver for child
23 day care for a qualifying dependent to enable such resident
24 together with his spouse, if any and if not disabled, to be
25 gainfully employed;

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1 (4) is not a recipient of public assistance
2 under a program of aid to families with dependent children, a
3 program under the New Mexico Works Act or any successor program
4 during any period for which the credit provided by this section
5 is claimed; and

6 (5) has a modified gross income, including
7 child support payments, if any, of not more than the annual
8 income that would be derived from earnings at double the
9 federal minimum wage.

10 C. The credit provided for in this section shall be
11 forty percent of the actual compensation paid to a caregiver by
12 the resident for a qualifying dependent not to exceed four
13 hundred eighty dollars (\$480) for each qualifying dependent or
14 a total of one thousand two hundred dollars (\$1,200) for all
15 qualifying dependents for a taxable year. For the purposes of
16 computing the credit, actual compensation shall not exceed
17 eight dollars (\$8.00) per day for each qualifying dependent.

18 D. The caregiver shall furnish the resident with a
19 signed statement of compensation paid by the resident to the
20 caregiver for day care services. Such statements shall specify
21 the dates and the total number of days for which payment has
22 been made.

23 E. If the resident taxpayer has a federal tax
24 liability, the taxpayer shall claim from the state not more
25 than the difference between the amount of the state child care

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1 credit for which the taxpayer is eligible and the federal
2 credit for child and dependent care expenses the taxpayer is
3 able to deduct from federal tax liability for the same taxable
4 year; provided, for first year residents only, the amount of
5 the federal credit for child and dependent care expenses may be
6 reduced to an amount equal to the amount of federal credit for
7 child and dependent care expenses the resident is able to
8 deduct from federal tax liability multiplied by the ratio of
9 the number of days of residence in New Mexico during the
10 resident's taxable year to the total number of days in the
11 resident's taxable year.

12 F. The credit provided for in this section may be
13 deducted from the taxpayer's New Mexico income tax liability
14 for the taxable year. If the credit exceeds the taxpayer's
15 income tax liability, the excess shall be refunded to the
16 taxpayer.

17 G. A husband and wife maintaining a household for
18 one or more qualifying dependents and filing separate returns
19 for a taxable year for which they could have filed a joint
20 return:

21 (1) may each claim only one-half of the
22 credit that would have been claimed on a joint return; and

23 (2) are eligible for the credit provided in
24 this section only if their joint modified gross income,
25 including child support payments, if any, is not more than the

1 annual income that would be derived from earnings at double the
2 federal minimum wage. "

3 Section 5. A new section of the Income Tax Act is
4 enacted to read:

5 "[NEW MATERIAL] OPTIONAL REFUND CONTRIBUTION PROVISIONS--
6 CONDITIONAL REPEAL. --

7 A. By August 31, 2000, and by August 31 of every
8 succeeding year, the secretary shall determine the total amount
9 contributed through the preceding July 31 on returns filed for
10 taxable years ending in the preceding calendar year pursuant to
11 each provision of the Income Tax Act that allows a taxpayer the
12 option of directing the department to contribute all or any
13 part of an income tax refund due the taxpayer to a specified
14 account, fund or entity.

15 B. If the secretary's determination pursuant to
16 Subsection A of this section regarding an optional refund
17 contribution provision is that the total amount contributed is
18 less than ten thousand dollars (\$10,000), exclusive of
19 directions for contributions disregarded under Subsection C of
20 this section, the secretary shall certify that fact to the
21 secretary of state. Any optional refund contribution provision
22 for which a certification is made for three consecutive years
23 is repealed, effective on the January 1 following the third
24 certification.

25 C. The department shall disregard a direction on a

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1 return to make an optional refund contribution if the amount of
2 refund due on the return is determined by the department to be
3 less than the sum of the amounts directed to be contributed.

4 D. Notwithstanding the provisions of Section 7-1-26
5 NMSA 1978, a taxpayer may not claim and the department may not
6 allow a refund with respect to any optional refund contribution
7 that was made by the department at the direction of the
8 taxpayer. "

9 Section 6. Section 7-2A-2 NMSA 1978 (being Laws 1986,
10 Chapter 20, Section 33, as amended) is amended to read:

11 "7-2A-2. DEFINITIONS. -- For the purpose of the Corporate
12 Income and Franchise Tax Act and unless the context requires
13 otherwise:

14 A. "affiliated group" means that term as it is used
15 in the Internal Revenue Code;

16 B. "bank" means any national bank, national banking
17 association, state bank or bank holding company;

18 C. "base income" means that part of the taxpayer's
19 income defined as taxable income and upon which the federal
20 income tax is calculated in the Internal Revenue Code for
21 income tax purposes plus, for taxable years beginning on or
22 after January 1, 1991, the amount of the net operating loss
23 deduction allowed by Section 172(a) of the Internal Revenue
24 Code, as that section may be amended or renumbered, and claimed
25 by the taxpayer for that year; "base income" also includes

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1 interest received on a state or local bond;

2 D. "corporation" means corporations, joint stock
3 companies, real estate trusts organized and operated under the
4 Real Estate Trust Act, financial corporations and banks, other
5 business associations and, for corporate income tax purposes,
6 partnerships and limited liability companies taxed as
7 corporations under the Internal Revenue Code;

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

12 [~~F.~~] ~~"financial corporation" means any savings or~~
13 ~~building and loan association or any incorporated savings and~~
14 ~~loan company, trust company, mortgage banking company, consumer~~
15 ~~finance company or other financial corporation;~~

16 ~~G.]~~ F. "fiscal year" means any accounting period of
17 twelve months ending on the last day of any month other than
18 December;

19 [~~H.]~~ G. "Internal Revenue Code" means the United
20 States Internal Revenue Code of 1986, as amended;

21 [~~I.]~~ H. "net income" means base income adjusted to
22 exclude:

23 [~~(1)~~] ~~amounts that have been taxed as income~~
24 ~~under the Banking and Financial Corporations Tax Act;~~

25 ~~(2)]~~ (1) income from obligations of the

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1 United States less expenses incurred to earn that income;
2 [~~(3)~~] (2) other amounts that the state is
3 prohibited from taxing because of the laws or constitution of
4 this state or the United States;

5 [~~(4)~~] (3) for taxable years that began prior
6 to January 1, 1991, an amount equal to the sum of:

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

11 (b) net operating loss carryover
12 deductions to that year claimed and allowed; and

13 [~~(5)~~] (4) for taxable years beginning on or
14 after January 1, 1991, an amount equal to the sum of any net
15 operating loss carryover deductions to that year claimed and
16 allowed, provided that the amount of any net operating loss
17 carryover from a taxable year beginning on or after January 1,
18 1991 may be excluded only as follows:

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

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

underscored material = new
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1 (c) in either case, if the net operating
2 loss carryover exceeds the amount of net income exclusive of
3 the net operating loss carryover for the taxable year to which
4 the exclusion first applies, in the next four succeeding
5 taxable years in turn until the net operating loss carryover is
6 exhausted; in no event may a net operating loss carryover be
7 excluded in any taxable year after the fourth taxable year
8 beginning after the taxable year to which the exclusion first
9 applies;

10 [~~J.~~] I. "net operating loss" means any net
11 operating loss, as defined by Section 172(c) of the Internal
12 Revenue Code, as that section may be amended or renumbered, for
13 a taxable year as further increased by the income, if any, from
14 obligations of the United States for that year less related
15 expenses;

16 [~~K.~~] J. "net operating loss carryover" means the
17 amount, or any portion of the amount, of a net operating loss
18 for any taxable year that, pursuant to Paragraph [~~(4)~~] (3) or
19 [~~(5)~~] (4) of Subsection [~~F~~] H of this section, may be excluded
20 from base income;

21 [~~L.~~] K. "person" means any individual, estate,
22 trust, receiver, cooperative association, club, corporation,
23 company, firm, partnership, limited liability company, joint
24 venture, syndicate or other association; "person" also means,
25 to the extent permitted by law, any federal, state or other

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1 governmental unit or subdivision or agency, department or
2 instrumentality thereof;

3 [M-] L. "secretary" means the secretary of taxation
4 and revenue or the secretary's delegate;

5 [N-] M. "state" means any state of the United
6 States, the District of Columbia, the commonwealth of Puerto
7 Rico, any territory or possession of the United States or
8 political subdivision thereof or any political subdivision of a
9 foreign country;

10 [O-] N. "state or local bond" means a bond issued
11 by a state other than New Mexico or by a local government other
12 than one of New Mexico's political subdivisions, the interest
13 from which is excluded from income for federal income tax
14 purposes under Section 103 of the Internal Revenue Code, as
15 that section may be amended or renumbered;

16 [P-] O. "taxable year" means the calendar year or
17 fiscal year upon the basis of which the net income is computed
18 under the Corporate Income and Franchise Tax Act and includes,
19 in the case of the return made for a fractional part of a year
20 under the provisions of that act, the period for which the
21 return is made;

22 [Q-] P. "taxpayer" means any corporation subject to
23 the taxes imposed by the Corporate Income and Franchise Tax
24 Act; and

25 [R-] Q. "unitary corporations" means two or more

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1 integrated corporations, other than any foreign corporation
2 incorporated in a foreign country and not engaged in trade or
3 business in the United States during the taxable year, that are
4 owned in the amount of more than fifty percent and controlled
5 by the same person and for which at least one of the following
6 conditions exists:

7 (1) there is a unity of operations evidenced
8 by central purchasing, advertising, accounting or other
9 centralized services;

10 (2) there is a centralized management or
11 executive force and centralized system of operation; or

12 (3) the operations of the corporations are
13 dependent upon or contribute property or services to one
14 another individually or as a group. "

15 Section 7. Section 7-4-2 NMSA 1978 (being Laws 1965,
16 Chapter 203, Section 2, as amended) is amended to read:

17 "7-4-2. DEFINITIONS. -- As used in the Uniform Division of
18 Income for Tax Purposes Act:

19 A. "business income" means income arising from
20 transactions and activity in the regular course of the
21 taxpayer's trade or business and income from the disposition or
22 liquidation of a business or segment of a business. "Business
23 income" includes income from tangible and intangible property
24 if the acquisition, management [and] or disposition of the
25 property constitute integral parts of the taxpayer's regular

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1 trade or business operations;

2 B. "commercial domicile" means the principal place
3 from which the trade or business of the taxpayer is directed or
4 managed;

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

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

12 E. "nonbusiness income" means all income other than
13 business income;

14 F. "sales" means all gross receipts of the taxpayer
15 not allocated under Sections 7-4-5 through 7-4-9 NMSA 1978 of
16 the Uniform Division of Income for Tax Purposes Act;

17 G. "secretary" means the secretary of taxation and
18 revenue or a division director delegated by the secretary; and

19 H. "state" means any state of the United States,
20 the District of Columbia, the commonwealth of Puerto Rico, any
21 territory or possession of the United States, and any foreign
22 country or political subdivision thereof. "

23 Section 8. Section 7-7-4 NMSA 1978 (being Laws 1973,
24 Chapter 345, Section 4) is amended to read:

25 "7-7-4. NONRESIDENTS-- TAX IMPOSED-- EXEMPTION. --

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1 A. Tax in an amount computed as provided in this
2 section is imposed on the transfer of the net estate located in
3 New Mexico of every nonresident.

4 B. The tax shall be computed by multiplying the
5 federal credit by a fraction, the numerator of which is the
6 value of the property located in New Mexico and the denominator
7 of which is the value of the decedent's gross estate.

8 C. For purposes of this section, the following is
9 included as property located in New Mexico:

10 (1) debts arising from transactions in, or
11 having a business situs in, New Mexico; and

12 (2) the securities of any corporation or
13 other entity organized under the laws of New Mexico.

14 D. The transfer of the personal property of a
15 nonresident is exempt from the tax imposed by this section to
16 the extent that the personal property of residents is exempt
17 from taxation under the laws of the state in which the
18 nonresident is domiciled. "

19 Section 9. REPEAL. -- Section 7-2C-14 NMSA 1978 (being
20 Laws 1985, Chapter 106, Section 14, as amended) is repealed.

21 Section 10. APPLICABILITY. --

22 A. The provisions of Sections 2, 3, 4, 6 and 7 of
23 this act apply to the 1998 and subsequent taxable years.

24 B. The provisions of Section 5 of this act apply to
25 the 1999 and subsequent taxable years.

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3
4
5

6 February 10, 1999
7

8 Mr. Speaker:
9

10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 349
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,
19
20
21

22 _____
23 Jerry W. Sandel, Chairman
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HB 349

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4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

7 Date _____

9 The roll call vote was 11 For 0 Against

10 Yes: 11

11 Excused: Burpo, Gonzales, Hawkins, Silva

12 Absent: None

14 J:\99BillsWP\H0349

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3

4 February 27, 1999
5

6
7 Mr. Speaker:
8

9 Your JUDICIARY COMMITTEE, to whom has been referred
10

11 HOUSE BILL 349

12 has had it under consideration and reports same with
13 recommendation that it DO PASS, amended as follows:
14

15 1. On page 21, line 18, strike "ten thousand dollars
16 (\$10,000)" and insert in lieu thereof "five thousand dollars
17 (\$5,000)".

18 2. On page 29, strike lines 21 through 25, and insert
19 in lieu thereof:
20

21 "Section 10. APPLICABILITY--The provisions of Sections
22 2, 3, 4, 6 and 7 of this act apply to the 1999 and subsequent
23 taxable years."
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJC/HB 349

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Luna, Rios, Taylor, T., Sanchez

Absent: None

J:\99BillsWP\H0349

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HJC/HB 349

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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7

March 10, 1999

8

9

Mr. President:

10

Your WAYS & MEANS COMMITTEE, to whom has been referred

11

12

HOUSE BILL 349, as amended

13

14

has had it under consideration and reports same with
recommendation that it DO PASS.

15

16

Respectfully submitted,

17

18

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21

Carlos R. Cisneros, Chairman

22

23

24

25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HJC/HB 349

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2

Adopted _____ Not Adopted _____

3

(Chief Clerk)

(Chief Clerk)

4

5

6

7

Date _____

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9

The roll call vote was 5 For 0 Against

10

Yes: 5

11

No: 0

12

Excused: Carraro, Duran, Jennings, Kidd

13

Absent: None

14

15

H0349WM1

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