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SENATE BILL 740

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO TAXATION; ENACTING SECTIONS OF THE INCOME TAX ACT
AND THE CORPORATE INCOME AND FRANCHISE TAX ACT TO PROVIDE TAX
CREDITS FOR CERTAIN CONTRIBUTIONS TO QUALIFIED ENDOWMENTS.

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 CREDIT-- GIFTS TO QUALIFIED ENDOWMENTS. --

A. A taxpayer who files an individual New Mexico
income tax return may claim a credit in an amount equal to
fifty percent of the present value of the aggregate amount of
the charitable gift portion of a planned gift made by the
taxpayer during the taxable year to any qualified endowment up
to a maximum amount of ten thousand dollars (\$10,000), subject
to the limitations in Subsection D of this section. The credit

underscored material = new
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1 allowed under this section may not be claimed by an individual
2 taxpayer if the taxpayer has included the full amount of the
3 contribution upon which the amount of the credit was computed
4 as a deduction for federal income tax purposes.

5 B. A contribution to a qualified endowment by an
6 estate qualifies for the credit provided in Subsection A of
7 this section if the contribution is a planned gift or if the
8 contribution is an outright gift to a qualified endowment. A
9 credit not used by the estate may be attributed to each
10 beneficiary of the estate in the same proportion used to report
11 the beneficiary's income from the estate for New Mexico income
12 tax purposes. The maximum amount of credit that a beneficiary
13 may claim is ten thousand dollars (\$10,000), subject to the
14 limitations in Subsection D of this section.

15 C. A contribution to a qualified endowment by a
16 small business corporation, partnership or limited liability
17 company carrying on any trade or business for which deductions
18 would be allowed under 26 U. S. C. 162 or carrying on any rental
19 activity qualifies for the credit provided in Subsection A of
20 this section. The credit must be attributed to shareholders,
21 partners or members or managers of a limited liability company
22 in the same proportion used to report the corporation's,
23 partnership's or limited liability company's income or loss for
24 New Mexico income tax purposes. The maximum credit that a
25 shareholder of a small business corporation, a partner of a

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1 partnership or a member or manager of a limited liability
2 company may claim in a taxable year is ten thousand dollars
3 (\$10,000), subject to the limitations in Subsection D of this
4 section.

5 D. The credit provided in this section may only be
6 deducted from the taxpayer's New Mexico income tax liability
7 for the taxable year. No carryback or carryforward of the
8 credit shall be allowed.

9 E. A husband and wife who file separate returns for
10 a taxable year in which they could have filed a joint return
11 may each claim only one-half of the credit provided in this
12 section that would have been allowed on a joint return.

13 F. As used in this section:

14 (1) "planned gift" means an irrevocable
15 contribution to a permanent endowment held by or for a tax-
16 exempt organization, when the contribution uses any of the
17 following techniques that are authorized under the Internal
18 Revenue Code:

19 (a) charitable remainder unitrusts or
20 charitable remainder annuity trusts, as defined by 26 U.S.C.
21 664; provided that neither of these techniques is a planned
22 gift unless the trust agreement provides that the trust may not
23 terminate and the beneficiaries' interest in the trust may not
24 be assigned or contributed to the qualified endowment sooner
25 than the earlier of the date of death of the beneficiaries or

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1 five years from the date of the contribution;

2 (b) pooled income fund trusts, as
3 defined by 26 U. S. C. 642(c) (5);

4 (c) charitable lead unitrusts or
5 charitable lead annuity trusts qualifying under 26 U. S. C.
6 170(f) (2) (B);

7 (d) charitable gift annuities or
8 deferred charitable gift annuities undertaken pursuant to 26
9 U. S. C. 1011(b); provided that: 1) a contribution using a
10 deferred charitable gift annuity is not a planned gift unless
11 the payment of the annuity is required to begin within the life
12 expectancy of the annuitant or of the joint life expectancies
13 of the annuitants, if more than one annuitant, as determined
14 using the actuarial tables adopted by department regulation in
15 effect on the date of the contribution; and 2) a contribution
16 using either technique described in this subparagraph is not a
17 planned gift unless the annuity agreement provides that the
18 interest of the annuitant or annuitants in the gift annuity may
19 not be assigned to the qualified endowment sooner than the
20 earlier of the date of death of the annuitant or annuitants or
21 five years after the date of the contribution;

22 (e) charitable life estate agreements
23 qualifying under 26 U. S. C. 170(f) (3) (B); or

24 (f) paid-up life insurance policies
25 meeting the requirements of 26 U. S. C. 170; and

. 145042. 1

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1 (2) "qualified endowment" means a permanent,
2 irrevocable fund that is held by a New Mexico incorporated or
3 established organization that is a tax-exempt organization
4 under 26 U.S.C. 501(c)(3) or is a bank or trust company that is
5 holding the fund on behalf of such a tax-exempt organization.

6 G. To carry out the provisions of this section, the
7 department shall provide by regulation for life expectancy
8 tables that are derived from the actuarial tables contained in
9 the most recent publication 1457 issued by the internal revenue
10 service or any successor publication. "

11 Section 2. A new section of the Corporate Income and
12 Franchise Tax Act is enacted to read:

13 "[NEW MATERIAL] CREDIT--GIFTS TO QUALIFIED ENDOWMENTS. --

14 A. A taxpayer who files a New Mexico corporate
15 income tax return may claim a credit in an amount equal to
16 fifty percent of the present value of the aggregate amount of
17 the charitable gift portion of a planned gift made by the
18 taxpayer during the taxable year to any qualified endowment.
19 The maximum amount of credit allowed for all contributions made
20 pursuant to this section shall not exceed ten thousand dollars
21 (\$10,000). The credit allowed under this section may not be
22 claimed by a corporation if the corporation has included the
23 full amount of the contribution upon which the amount of the
24 credit was computed as a deduction for federal income tax
25 purposes.

. 145042. 1

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1 B. A contribution to a qualified endowment by a
2 small business corporation, partnership or limited liability
3 company carrying on any trade or business for which deductions
4 would be allowed under 26 U. S. C. 162, or carrying on any rental
5 activity qualifies for the credit provided in Subsection A of
6 this section. The credit must be attributed to shareholders,
7 partners or members or managers of a limited liability company
8 in the same proportion used to report the corporation's,
9 partnership's or limited liability company's income or loss for
10 New Mexico income tax purposes. The maximum credit that a
11 shareholder of a small business corporation, a partner of a
12 partnership or a member or manager of a limited liability
13 company may claim in a taxable year is ten thousand dollars
14 (\$10,000), subject to the limitations in Subsection C of this
15 section.

16 C. The credit provided in this section may only be
17 deducted from the taxpayer's New Mexico corporate income tax
18 liability for the taxable year. No carryback or carryforward
19 of the credit shall be allowed.

20 D. As used in this section:

21 (1) "planned gift" means an irrevocable
22 contribution to a permanent endowment held by or for a tax-
23 exempt organization, when the contribution uses any of the
24 following techniques that are authorized under the Internal
25 Revenue Code:

. 145042. 1

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1 (a) charitable remainder unitrusts or
2 charitable remainder annuity trusts, as defined by 26 U. S. C.
3 664; provided that neither of these techniques is a planned
4 gift unless the trust agreement provides that the trust may not
5 terminate and the beneficiaries' interest in the trust may not
6 be assigned or contributed to the qualified endowment sooner
7 than the earlier of the date of death of the beneficiaries or
8 five years from the date of the contribution;

9 (b) pooled income fund trusts, as
10 defined by 26 U. S. C. 642(c)(5);

11 (c) charitable lead unitrusts or
12 charitable lead annuity trusts qualifying under 26 U. S. C.
13 170(f)(2)(B);

14 (d) charitable gift annuities or
15 deferred charitable gift annuities undertaken pursuant to 26
16 U. S. C. 1011(b); provided that: 1) a contribution using a
17 deferred charitable gift annuity is not a planned gift unless
18 the payment of the annuity is required to begin within the life
19 expectancy of the annuitant or of the joint life expectancies
20 of the annuitants, if more than one annuitant, as determined
21 using the actuarial tables adopted by department regulation in
22 effect on the date of the contribution; and 2) a contribution
23 using either technique described in this subparagraph is not a
24 planned gift unless the annuity agreement provides that the
25 interest of the annuitant or annuitants in the gift annuity may

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1 not be assigned to the qualified endowment sooner than the
2 earlier of the date of death of the annuitant or annuitants or
3 five years after the date of the contribution;

4 (e) charitable life estate agreements
5 qualifying under 26 U.S.C. 170(f)(3)(B); or

6 (f) paid-up life insurance policies
7 meeting the requirements of 26 U.S.C. 170; and

8 (2) "qualified endowment" means a permanent,
9 irrevocable fund that is held by a New Mexico incorporated or
10 established organization that is a tax-exempt organization
11 under 26 U.S.C. 501(c)(3) or is a bank or trust company that is
12 holding the fund on behalf of a tax-exempt organization.

13 E. To carry out the provisions of this section, the
14 department shall provide by regulation for life expectancy
15 tables that are derived from the actuarial tables contained in
16 the most recent publication 1457 issued by the internal revenue
17 service or any successor publication. "

18 Section 3. APPLICABILITY. -- The provisions of this act
19 apply to taxable years beginning on or after January 1, 2003.