

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 167 AND SENATE BILL 167

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

AN ACT

RELATING TO TAXATION; REDUCING INCOME TAX RATES; EXPANDING THE  
CAPITAL GAINS DEDUCTION; CONDITIONING CERTAIN EFFECTIVE DATES  
ON GENERAL FUND RESERVE LEVELS; CHANGING REQUIREMENTS FOR  
PAYMENT OF INTEREST ON CERTAIN REFUNDS.

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

Section 1. Section 7-1-68 NMSA 1978 (being Laws 1965,  
Chapter 248, Section 69, as amended) is amended to read:

"7-1-68. INTEREST ON OVERPAYMENTS. --

A. As provided in this section, interest shall be  
allowed and paid on the amount of tax overpaid by a person that  
is subsequently refunded or credited to that person.

B. Interest payable on overpayments of tax shall be  
paid at the rate of fifteen percent a year, computed on a daily  
basis; provided that if a different rate is specified by a

1 compact or other interstate agreement to which New Mexico is a  
2 party, that rate shall be applied to amounts due under the  
3 compact or other agreement.

4 C. Unless otherwise provided by this section,  
5 interest on an overpayment not arising from an assessment by  
6 the department shall be paid from the date the claim for refund  
7 was made until a date preceding by not more than thirty days  
8 the date on which the amount thereof is credited or refunded to  
9 any person; interest on an overpayment arising from an  
10 assessment by the department shall be paid from the date  
11 overpayment was made until a date preceding by not more than  
12 thirty days the date on which the amount thereof is credited or  
13 refunded to any person.

14 D. No interest shall be allowed or paid with  
15 respect to an amount credited or refunded if:

16 (1) the amount of interest due is less than  
17 one dollar (\$1.00);

18 (2) the credit or refund is made within  
19 [~~seventy-five~~]:

20 (a) fifty-five days of the date of the  
21 claim for refund of [~~(a)~~] income tax, pursuant to either the  
22 Income Tax Act or the Corporate Income and Franchise Tax Act  
23 for the tax year immediately preceding the tax year in which  
24 the claim is made; or

25 (b) seventy-five days of the date of the

1 claim for refund of gasoline tax to users of gasoline off the  
2 highways;

3 (3) the credit or refund is made within one  
4 hundred twenty days of the date of the claim for refund of  
5 income tax, pursuant to the Income Tax Act or the Corporate  
6 Income and Franchise Tax Act, for any tax year more than one  
7 year prior to the year in which the claim is made;

8 (4) Sections 6611(f) and 6611(g) of the  
9 Internal Revenue Code, as those sections may be amended or  
10 renumbered, prohibit payment of interest for federal income tax  
11 purposes;

12 (5) the credit or refund is made within sixty  
13 days of the date of the claim for refund of any tax other than  
14 income tax; or

15 (6) the credit results from overpayments found  
16 in an audit of multiple reporting periods and applied to  
17 underpayments found in that audit or refunded as a net  
18 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
19 1978.

20 E. Nothing in this section shall be construed to  
21 require the payment of interest upon interest."

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

24 "7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by  
25 Section 7-2-3 NMSA 1978 shall be at the following rates for any  
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1 taxable year beginning ~~[on or after January 1, 1998]~~ in 2003:

2 A. For married individuals filing separate returns:

3 If the taxable income is: The tax shall be:

4 Not over \$4,000	1.7% of taxable income
5 Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of
6	excess over \$ 4,000
7 Over \$ 8,000 but not over \$ 12,000	\$ 196 plus 4.7% of
8	excess over \$ 8,000
9 Over \$ 12,000 but not over \$ 20,000	\$ 384 plus 6.0% of
10	excess over \$ 12,000
11 Over \$ 20,000 but not over \$ 32,000	\$ 864 plus 7.1% of
12	excess over \$ 20,000
13 Over \$ 32,000 <del>[but not over \$ 50,000]</del>	\$ 1,716 plus <del>[7.9%]</del> <u>7.7%</u> of
14	excess over \$ 32,000
15 <del>[Over \$ 50,000]</del>	<del>\$ 3,138 plus 8.2% of</del>
16	<del>excess over \$ 50,000].</del>

17 B. For surviving spouses and married individuals  
18 filing joint returns:

19 If the taxable income is: The tax shall be:

20 Not over \$8,000	1.7% of taxable income
21 Over \$ 8,000 but not over \$ 16,000	\$ 136 plus 3.2% of
22	excess over \$ 8,000
23 Over \$ 16,000 but not over \$ 24,000	\$ 392 plus 4.7% of
24	excess over \$ 16,000
25 Over \$ 24,000 but not over \$ 40,000	\$ 768 plus 6.0% of

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1 excess over \$ 24,000  
 2 Over \$ 40,000 but not over \$ 64,000 \$ 1,728 plus 7.1% of  
 3 excess over \$ 40,000  
 4 Over \$ 64,000 [~~but not over \$100,000~~] \$ 3,432 plus [~~7.9%~~] 7.7% of  
 5 excess over \$ 64,000  
 6 [~~Over \$100,000~~] ~~\$ 6,276 plus 8.2% of~~  
 7 ~~excess over \$100,000~~].

8 C. For single individuals and for estates and  
 9 trusts:

10	If the taxable income is:	The tax shall be:
11	Not over \$5,500	1.7% of taxable income
12	Over \$ 5,500 but not over \$ 11,000	\$ 93.50 plus 3.2% of
13		excess over \$ 5,500
14	Over \$ 11,000 but not over \$ 16,000	\$ 269.50 plus 4.7% of
15		excess over \$ 11,000
16	Over \$ 16,000 but not over \$ 26,000	\$ 504.50 plus 6.0% of
17		excess over \$ 16,000
18	Over \$ 26,000 but not over \$ 42,000	\$1,104.50 plus 7.1% of
19		excess over \$ 26,000
20	Over \$ 42,000 [ <del>but not over \$ 65,000</del> ]	\$2,240.50 plus [ <del>7.9%</del> ] <u>7.7%</u> of
21		excess over \$ 42,000
22	[ <del>Over \$ 65,000</del> ]	<del>\$4,057.50 plus 8.2% of</del>
23		<del>excess over \$ 65,000</del> ].

24 D. For heads of household filing returns:

25 If the taxable income is: The tax shall be:

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1	Not over \$7,000	1.7% of taxable income
2	Over \$ 7,000 but not over \$ 14,000	\$ 119 plus 3.2% of
3		excess over \$ 7,000
4	Over \$ 14,000 but not over \$ 20,000	\$ 343 plus 4.7% of
5		excess over \$ 14,000
6	Over \$ 20,000 but not over \$ 33,000	\$ 625 plus 6.0% of
7		excess over \$ 20,000
8	Over \$ 33,000 but not over \$ 53,000	\$1,405 plus 7.1% of
9		excess over \$ 33,000
10	Over \$ 53,000 [ <del>but not over \$ 83,000</del> ]	\$2,825 plus [ <del>7.9%</del> ] <u>7.7%</u> of
11		excess over \$ 53,000
12	<del>[Over \$ 83,000</del>	<del>\$5,195 plus 8.2% of</del>
13		<del>excess over \$ 83,000].</del>

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

- 17 (1) the amount of tax due on the taxpayer's  
18 taxable income; and  
19 (2) the amount of tax that would be due on  
20 an amount equal to the taxpayer's taxable income and twenty  
21 percent of the taxpayer's lump-sum amounts included in net  
22 income. "

23 Section 3. Section 7-2-7 NMSA 1978 (being Laws 1994,  
24 Chapter 5, Section 20, as amended and as further amended by  
25 Section 2 of this act) is repealed and a new Section 7-2-7

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1 NMSA 1978 is enacted to read:

2 "7-2-7. [NEW MATERIAL] INDIVIDUAL INCOME TAX RATES. --

3 The tax imposed by Section 7-2-3 NMSA 1978 shall be at the  
4 following rates for any taxable year beginning on or after  
5 January 1, 2004:

6 A. For married individuals filing separate  
7 returns:

8	If the taxable income is:	The tax shall be:
9	Not over \$4,000	1.7% of taxable income
10	Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of
11		excess over \$ 4,000
12	Over \$ 8,000 but not over \$ 12,000	\$ 196 plus 4.7% of
13		excess over \$ 8,000
14	Over \$ 12,000 but not over \$ 20,000	\$ 384 plus 6.0% of
15		excess over \$ 12,000
16	Over \$ 20,000	\$ 864 plus 7.0% of
17		excess over \$ 20,000.

18 B. For surviving spouses and married individuals  
19 filing joint returns:

20	If the taxable income is:	The tax shall be:
21	Not over \$8,000	1.7% of taxable income
22	Over \$ 8,000 but not over \$ 16,000	\$ 136 plus 3.2% of
23		excess over \$ 8,000
24	Over \$ 16,000 but not over \$ 24,000	\$ 392 plus 4.7% of
25		excess over \$ 16,000

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[bracketed material] = delete

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1 Over \$ 24, 000 but not over \$ 40, 000 \$ 768 plus 6. 0% of  
2 excess over \$ 24, 000  
3 Over \$ 40, 000 \$ 1, 728 plus 7. 0% of  
4 excess over \$ 40, 000.

5 C. For single individuals and for estates and  
6 trusts:

7	If the taxable income is:	The tax shall be:
8	Not over \$5, 500	1. 7% of taxable income
9	Over \$ 5, 500 but not over \$ 11, 000	\$ 93. 50 plus 3. 2% of
10		excess over \$ 5, 500
11	Over \$ 11, 000 but not over \$ 16, 000	\$ 269. 50 plus 4. 7% of
12		excess over \$ 11, 000
13	Over \$ 16, 000 but not over \$ 26, 000	\$ 504. 50 plus 6. 0% of
14		excess over \$ 16, 000
15	Over \$ 26, 000	\$1, 104. 50 plus 7. 0% of
16		excess over \$ 26, 000.

17 D. For heads of household filing returns:

18	If the taxable income is:	The tax shall be:
19	Not over \$7, 000	1. 7% of taxable income
20	Over \$ 7, 000 but not over \$ 14, 000	\$ 119 plus 3. 2% of
21		excess over \$ 7, 000
22	Over \$ 14, 000 but not over \$ 20, 000	\$ 343 plus 4. 7% of
23		excess over \$ 14, 000
24	Over \$ 20, 000 but not over \$ 33, 000	\$ 625 plus 6. 0% of
25		excess over \$ 20, 000

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1 Over \$ 33,000 \$1,405 plus 7.0% of  
2 excess over \$ 33,000.

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

6 (1) the amount of tax due on the taxpayer's  
7 taxable income; and

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

12 Section 4. Section 7-2-7 NMSA 1978 (being Section 3 of  
13 this act if it becomes law) is repealed and a new Section  
14 7-2-7 NMSA 1978 is enacted to read:

15 "7-2-7. [NEW MATERIAL] INDIVIDUAL INCOME TAX RATES. --  
16 The tax imposed by Section 7-2-3 NMSA 1978 shall be at the  
17 following rates for any taxable year beginning on or after  
18 January 1 of a year in which this version of Section 7-2-7  
19 NMSA 1978 is in effect:

20 A. For married individuals filing separate  
21 returns:

22	If the taxable income is:	The tax shall be:
23	Not over \$4,000	1.7% of taxable income
24	Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of
25		excess over \$ 4,000

underscored material = new  
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1 Over \$ 8,000 but not over \$ 12,000 \$ 196 plus 4.7% of  
2 excess over \$ 8,000  
3 Over \$ 12,000 \$ 384 plus 6.0% of  
4 excess over \$ 12,000.

5 B. For surviving spouses and married individuals  
6 filing joint returns:

7	If the taxable income is:	The tax shall be:
8	Not over \$8,000	1.7% of taxable income
9	Over \$ 8,000 but not over \$ 16,000	\$ 136 plus 3.2% of
10		excess over \$ 8,000
11	Over \$ 16,000 but not over \$ 24,000	\$ 392 plus 4.7% of
12		excess over \$ 16,000
13	Over \$ 24,000	\$ 768 plus 6.0% of
14		excess over \$ 24,000.

15 C. For single individuals and for estates and  
16 trusts:

17	If the taxable income is:	The tax shall be:
18	Not over \$5,500	1.7% of taxable income
19	Over \$ 5,500 but not over \$ 11,000	\$ 93.50 plus 3.2% of
20		excess over \$ 5,500
21	Over \$ 11,000 but not over \$ 16,000	\$ 269.50 plus 4.7% of
22		excess over \$ 11,000
23	Over \$ 16,000	\$ 504.50 plus 6.0% of
24		excess over \$ 16,000.

25 D. For heads of household filing returns:

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1	<b>If the taxable income is:</b>	<b>The tax shall be:</b>
2	Not over \$7,000	1.7% of taxable income
3	Over \$ 7,000 but not over \$ 14,000	\$ 119 plus 3.2% of
4		excess over \$ 7,000
5	Over \$ 14,000 but not over \$ 20,000	\$ 343 plus 4.7% of
6		excess over \$ 14,000
7	Over \$ 20,000	\$ 625 plus 6.0% of
8		excess over \$ 20,000.

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

- 12                               (1) the amount of tax due on the taxpayer's
- 13 taxable income; and
- 14                               (2) the amount of tax that would be due on
- 15 an amount equal to the taxpayer's taxable income and twenty
- 16 percent of the taxpayer's lump-sum amounts included in net
- 17 income. "

18                   Section 5. Section 7-2-7 NMSA 1978 (being Section 4 of  
19 this act if it becomes law) is repealed and a new Section  
20 7-2-7 NMSA 1978 is enacted to read:

21                   "7-2-7. [NEW MATERIAL] INDIVIDUAL INCOME TAX RATES. --  
22 The tax imposed by Section 7-2-3 NMSA 1978 shall be at the  
23 following rates for any taxable year beginning on or after  
24 January 1 of any year in which this version of Section 7-2-7  
25 NMSA 1978 is in effect:

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[bracketed material] = delete

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1                   A. For married individuals filing separate  
2 returns:

3           If the taxable income is:	The tax shall be:
4 Not over \$4,000	1.7% of taxable income
5 Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of
6	excess over \$ 4,000
7 Over \$ 8,000 but not over \$ 12,000	\$ 196 plus 4.7% of
8	excess over \$ 8,000
9 Over \$ 12,000	\$ 384 plus 5.0% of
10	excess over \$ 12,000.

11                   B. For surviving spouses and married individuals  
12 filing joint returns:

13           If the taxable income is:	The tax shall be:
14 Not over \$8,000	1.7% of taxable income
15 Over \$ 8,000 but not over \$ 16,000	\$ 136 plus 3.2% of
16	excess over \$ 8,000
17 Over \$ 16,000 but not over \$ 24,000	\$ 392 plus 4.7% of
18	excess over \$ 16,000
19 Over \$ 24,000	\$ 768 plus 5.0% of
20	excess over \$ 24,000.

21                   C. For single individuals and for estates and  
22 trusts:

23           If the taxable income is:	The tax shall be:
24 Not over \$5,500	1.7% of taxable income
25 Over \$ 5,500 but not over \$ 11,000	\$ 93.50 plus 3.2% of

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1 excess over \$ 5,500  
 2 Over \$ 11,000 but not over \$ 16,000 \$ 269.50 plus 4.7% of  
 3 excess over \$ 11,000  
 4 Over \$ 16,000 \$ 504.50 plus 5.0% of  
 5 excess over \$ 16,000.

D. For heads of household filing returns:

7 If the taxable income is: The tax shall be:  
 8 Not over \$7,000 1.7% of taxable income  
 9 Over \$ 7,000 but not over \$ 14,000 \$ 119 plus 3.2% of  
 10 excess over \$ 7,000  
 11 Over \$ 14,000 but not over \$ 20,000 \$ 343 plus 4.7% of  
 12 excess over \$ 14,000  
 13 Over \$ 20,000 \$ 625 plus 5.0% of  
 14 excess over \$ 20,000.

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

- 18 (1) the amount of tax due on the taxpayer's
- 19 taxable income; and
- 20 (2) the amount of tax that would be due on
- 21 an amount equal to the taxpayer's taxable income and twenty
- 22 percent of the taxpayer's lump-sum amounts included in net
- 23 income."

24 Section 6. Section 7-2-34 NMSA 1978 (being Laws 1999,  
 25 Chapter 205, Section 1) is amended to read:

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underscoring material = new  
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1 "7-2-34. DEDUCTION--NET CAPITAL GAIN INCOME. --

2 A. Except as provided in Subsection [B] C of this  
3 section, a taxpayer may claim a deduction from net income in  
4 an amount equal to the greater of:

5 (1) the taxpayer's net capital gain income  
6 for the taxable year for which the deduction is being  
7 claimed, but not to exceed one thousand dollars (\$1,000); or

8 (2) the following percentage of the  
9 taxpayer's net capital gain income for the taxable year for  
10 which the deduction is being claimed:

11 (a) for a taxable year beginning in  
12 2003, ten percent;

13 (b) for a taxable year beginning in  
14 2004, twenty percent;

15 (c) for a taxable year beginning in  
16 2005, thirty percent; and

17 (d) for taxable years beginning on or  
18 after January 1, 2006, fifty percent.

19 B. A husband and wife who file separate returns  
20 for a taxable year in which they could have filed a joint  
21 return may each claim only one-half of the deduction provided  
22 by this section that would have been allowed on the joint  
23 return.

24 [~~B.~~] C. A taxpayer may not claim the deduction  
25 provided in Subsection A of this section if the taxpayer has

1 claimed the credit provided in Section 7-2D-8.1 NMSA 1978.

2 [E-] D. As used in this section, "net capital  
3 gain" means "net capital gain" as defined in Section 1222  
4 (11) of the Internal Revenue Code."

5 Section 7. EFFECTIVE DATE.--

6 A. The effective date of the provisions of  
7 Section 1 of this act is July 1, 2003.

8 B. The effective date of the provisions of  
9 Section 3 of this act is January 1, 2004.

10 C. The effective date of the provisions of  
11 Section 4 of this act is January 1, 2005, or January 1 of any  
12 subsequent year; provided that prior to December 1 of the  
13 preceding calendar year the governor finds and certifies to  
14 the legislature that:

15 (1) the total general fund reserve balances  
16 at the end of the preceding fiscal year were greater than  
17 four percent of that fiscal year's operating budget; and

18 (2) the estimated total general fund reserve  
19 balances at the end of the current fiscal year are projected  
20 to be greater than five percent of the current fiscal year's  
21 operating budget. The estimate of the reserve balances shall  
22 be based on appropriations contained in the operating budget  
23 and on the most recent revenue projections prepared through a  
24 consensus process involving analysts from the executive and  
25 legislative branches.

26 D. The effective date of the provisions of  
27 Section 5 of this act is January 1, 2006 if the provisions of  
28 Section 4 of this act take effect on January 1, 2005, or

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1 January 1 of any year following the year in which the  
2 provisions of Section 4 of this act take effect; provided  
3 that prior to December 1 of the preceding calendar year the  
4 governor finds and certifies to the legislature that:

5 (1) the total general fund reserve balances  
6 at the end of the preceding fiscal year were greater than  
7 four percent of that fiscal year's operating budget; and

8 (2) the estimated total general fund reserve  
9 balances at the end of the current fiscal year are projected  
10 to be greater than five percent of the current fiscal year's  
11 operating budget. The estimate of the reserve balances will  
12 be based on appropriations contained in the operating budget  
13 and on revenue projections prepared through a consensus  
14 process involving analysts from the executive and legislative  
15 branches.

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