

HOUSE BILL 83

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

INTRODUCED BY

Jim R. Trujillo

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO TAXATION; ALLOWING A DEDUCTION FROM NET INCOME FOR INCOME SET ASIDE FOR FUTURE DISTRIBUTION FROM AN ESTATE OR TRUST TO A NONRESIDENT INDIVIDUAL.

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] DEDUCTION--INCOME SET ASIDE FOR FUTURE DISTRIBUTION FROM AN ESTATE OR TRUST TO A NONRESIDENT INDIVIDUAL.--

.209111.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

A. Before January 1, 2024, a taxpayer that is an estate or trust may claim a deduction from net income in the amount equal to income, excluding income derived from real property located in New Mexico, mineral, oil and gas interests located in New Mexico Hfl→, ~~and~~←Hfl water rights located in New Mexico Hfl→**and any other business income allocated or apportioned to New Mexico**←Hfl, set aside for future distribution to a nonresident individual beneficiary as provided in the estate's or trust's governing instrument.

B. The purpose of the deduction allowed by this section is to increase estate and trust business in New Mexico.

C. Concerning the deduction allowed by this section, in determining:

(1) the extent to which income of an estate or trust is set aside for future distribution to a nonresident individual beneficiary, if all or part of the estate's or trust's federal taxable income, regardless of whether it is added to the estate or trust corpus for estate or trust accounting purposes, is distributable in future taxable years to or for the benefit of a named individual beneficiary or a first-named class of individual beneficiaries and if, on the last day of the estate's or trust's taxable year, one or more named individual beneficiaries or one or more members of the first-named class of individual beneficiaries is living, then the portion of the federal taxable income considered set aside

.209111.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

for future distribution to:

(a) a named individual beneficiary is determined by: 1) ascertaining the share or shares of each named individual beneficiary as if the estate or trust had terminated on the last day of the taxable year and then ascertaining the portion of that income realized by the estate or trust during the taxable year while the beneficiary was a nonresident; and 2) presuming that the beneficiary was living and residing in the state in which the putative parents resided during the taxable year; and

(b) a first-named class of individual beneficiaries is determined by: 1) ascertaining the members of the class and the share of each member as if the estate or trust had terminated on the last day of the taxable year and then ascertaining the portion of that income of each share realized by the estate or trust while the member was a nonresident; and 2) presuming that the member was living and residing with the person the relationship to whom defines membership in the class;

(2) the share of income of each beneficiary of an estate or trust in the federal taxable income, it is presumed that the discretion of a person over the distribution of that income, regardless of whether the person acts in a fiduciary capacity or is subject to a standard, has not been exercised, unless that discretion is irrevocably exercised as

.209111.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

of the last day of the taxable year; and

(3) the time federal taxable income is realized:

(a) interest income is considered realized when payable;

(b) dividend income is considered realized on the day the dividend is payable;

(c) gains and losses from the sale or exchange of property are considered realized or deductible, as appropriate, on the settlement date of the sale or the effective date of the exchange; and

(d) commissions on income or principal are deemed deductible on the date charged.

D. A taxpayer allowed a deduction in accordance with this section shall report the amount of the deduction separately and as required by the department.

E. Beginning in 2019, the department shall compile an annual report on the deduction allowed by this section that includes the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and other information necessary to evaluate the deduction's effectiveness. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the

.209111.1

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

deduction is fulfilling its purpose."

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2018.