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HOUSE BILL 19

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Linda Serrato and Meredith Dixon

AN ACT

RELATING TO TAXATION; ENACTING THE REAL ESTATE TRANSFER TAX ACT; EXEMPTING SOCIAL SECURITY INCOME FROM INCOME TAX FOR CERTAIN INDIVIDUALS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 3 of this act may be cited as the "Real Estate Transfer Tax Act".

SECTION 2. [NEW MATERIAL] REAL ESTATE TRANSFER TAX-- TRANSFERS OF REAL PROPERTY.--

A. An excise tax is imposed on all instruments evidencing a transfer of any interest in real property. The rate of tax shall be:

(1) seventy-five hundredths percent of the consideration for the interest in real property transferred by

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1 the instrument if the price of the real property was at least
2 five hundred thousand dollars (\$500,000) and up to seven
3 hundred fifty thousand dollars (\$750,000); and

4 (2) one and twenty-five hundredths percent of
5 the consideration for the interest in real property transferred
6 by the instrument if the price of the real property was at
7 least seven hundred fifty thousand dollars (\$750,000).

8 B. If the price paid does not represent the value
9 of the real property, the tax rate shall be applied to the
10 value of each instrument transferring the interest, which value
11 shall be based on the prior year's assessed value of the real
12 property being transferred. In the event the prior year's
13 assessed value of the real property being transferred is based
14 on undeveloped land that has since been subdivided or otherwise
15 developed, the county shall, upon request, assess the value of
16 the real property since being developed and provide a statement
17 of the value to the taxpayer.

18 C. A person who obtains more than one deed or other
19 instrument of conveyance for the same transfer of the same
20 tract or parcel of real property shall pay the tax imposed by
21 this section only once with respect to that transfer.

22 D. The tax imposed by this section shall be paid by
23 the grantee or transferee of the interest in the real property
24 to the county clerk of the county in which the real property is
25 located. If the instrument transfers a parcel of real property

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1 lying in two or more counties, the tax shall be paid to the
2 county clerk of the county in which the greater part of the
3 real property with respect to value lies. The county clerk
4 shall not record the transfer until the tax has been paid.

5 E. The tax imposed by this section shall not be
6 imposed on the transfer of:

7 (1) a leasehold estate; or

8 (2) real property where such transfer is:

9 (a) the creation or dissolution of a
10 tenancy by the entirety the conveyance from: 1) one spouse to
11 another; 2) one spouse or both spouses to the original grantor
12 in the instrument or the original grantor's spouse; or 3) one
13 spouse or both spouses to a trustee and immediate reconveyance
14 by the trustee in the same instrument as tenants in common,
15 tenants in common with right of survivorship, joint tenants or
16 joint tenants with right of survivorship;

17 (b) a deed of division in kind of real
18 property formerly held by tenants in common;

19 (c) release of a life estate to the
20 beneficiaries of the remainder interest;

21 (d) a deed or will executed by an
22 executor to implement a testamentary devise;

23 (e) a decree or deed that is an
24 adjustment of property rights between divorcing parties;

25 (f) a transfer by a transferor of real

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1 property to a revocable living trust created by the same
2 transferor or by a spouse of the transferor, or a transfer by
3 the trustee of a revocable living trust back to the same
4 transferor or to the transferor's spouse;

5 (g) a deed executed by the trustee of a
6 revocable living trust to implement a testamentary devise by
7 the trustor of the trust;

8 (h) a transfer of real property to an
9 organization that has been granted exemption from the federal
10 income tax by the United States commissioner of internal
11 revenue as an organization described in Section 501(c)(3) of
12 the United States Internal Revenue Code of 1986, as amended or
13 renumbered;

14 (i) a transfer of real property to the
15 state or any of its instrumentalities; or

16 (j) a transfer of real property pursuant
17 to the Local Economic Development Act.

18 SECTION 3. [NEW MATERIAL] REPORT TO TAXATION AND REVENUE
19 DEPARTMENT--ADMINISTRATION FEE.--The county clerk shall report
20 all collections of taxes made pursuant to the Real Estate
21 Transfer Tax Act on forms prescribed by the taxation and
22 revenue department and shall submit the proceeds of the taxes
23 collected to the taxation and revenue department at the end of
24 each month. A county may withhold an administrative fee of
25 three percent of the net amount of the tax proceeds collected.

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1 SECTION 4. Section 7-1-2 NMSA 1978 (being Laws 1965,
2 Chapter 248, Section 2, as amended by Laws 2019, Chapter 47,
3 Section 1 and by Laws 2019, Chapter 53, Section 10 and also by
4 Laws 2019, Chapter 270, Section 1) is amended to read:

5 "7-1-2. APPLICABILITY.--The Tax Administration Act
6 applies to and governs:

7 A. the administration and enforcement of the
8 following taxes or tax acts as they now exist or may hereafter
9 be amended:

- 10 (1) Income Tax Act;
- 11 (2) Withholding Tax Act;
- 12 (3) Oil and Gas Proceeds and Pass-Through
13 Entity Withholding Tax Act;
- 14 (4) Gross Receipts and Compensating Tax Act,
15 Interstate Telecommunications Gross Receipts Tax Act and Leased
16 Vehicle Gross Receipts Tax Act;
- 17 (5) Liquor Excise Tax Act;
- 18 (6) Local Liquor Excise Tax Act;
- 19 (7) any municipal local option gross receipts
20 tax or municipal compensating tax;
- 21 (8) any county local option gross receipts tax
22 or county compensating tax;
- 23 (9) Special Fuels Supplier Tax Act;
- 24 (10) Gasoline Tax Act;
- 25 (11) petroleum products loading fee, which fee

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1 shall be considered a tax for the purpose of the Tax
2 Administration Act;
3 (12) Alternative Fuel Tax Act;
4 (13) Cigarette Tax Act;
5 (14) Estate Tax Act;
6 (15) Railroad Car Company Tax Act;
7 (16) Investment Credit Act, rural job tax
8 credit, Laboratory Partnership with Small Business Tax Credit
9 Act, Technology Jobs and Research and Development Tax Credit
10 Act, Film Production Tax Credit Act, Affordable Housing Tax
11 Credit Act and high-wage jobs tax credit;
12 (17) Corporate Income and Franchise Tax Act;
13 (18) Uniform Division of Income for Tax
14 Purposes Act;
15 (19) Multistate Tax Compact;
16 (20) Tobacco Products Tax Act;
17 (21) the telecommunications relay service
18 surcharge imposed by Section 63-9F-11 NMSA 1978, which
19 surcharge shall be considered a tax for the purposes of the Tax
20 Administration Act; ~~and~~
21 (22) the Insurance Premium Tax Act;
22 (23) the Health Care Quality Surcharge Act;
23 and
24 (24) the Real Estate Transfer Tax Act;
25 B. the administration and enforcement of the

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1 following taxes, surtaxes, advanced payments or tax acts as
2 they now exist or may hereafter be amended:

- 3 (1) Resources Excise Tax Act;
- 4 (2) Severance Tax Act;
- 5 (3) any severance surtax;
- 6 (4) Oil and Gas Severance Tax Act;
- 7 (5) Oil and Gas Conservation Tax Act;
- 8 (6) Oil and Gas Emergency School Tax Act;
- 9 (7) Oil and Gas Ad Valorem Production Tax Act;
- 10 (8) Natural Gas Processors Tax Act;
- 11 (9) Oil and Gas Production Equipment Ad
12 Valorem Tax Act;
- 13 (10) Copper Production Ad Valorem Tax Act;
- 14 (11) any advance payment required to be made
15 by any act specified in this subsection, which advance payment
16 shall be considered a tax for the purposes of the Tax
17 Administration Act;
- 18 (12) Enhanced Oil Recovery Act;
- 19 (13) Natural Gas and Crude Oil Production
20 Incentive Act; and
- 21 (14) intergovernmental production tax credit
22 and intergovernmental production equipment tax credit;

23 C. the administration and enforcement of the
24 following taxes, surcharges, fees or acts as they now exist or
25 may hereafter be amended:

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- 1 (1) Weight Distance Tax Act;
- 2 (2) the workers' compensation fee authorized
- 3 by Section 52-5-19 NMSA 1978, which fee shall be considered a
- 4 tax for purposes of the Tax Administration Act;
- 5 (3) Uniform Unclaimed Property Act (1995);
- 6 (4) 911 emergency surcharge and the network
- 7 and database surcharge, which surcharges shall be considered
- 8 taxes for purposes of the Tax Administration Act;
- 9 (5) the solid waste assessment fee authorized
- 10 by the Solid Waste Act, which fee shall be considered a tax for
- 11 purposes of the Tax Administration Act;
- 12 (6) the water conservation fee imposed by
- 13 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
- 14 for the purposes of the Tax Administration Act; and
- 15 (7) the gaming tax imposed pursuant to the
- 16 Gaming Control Act; and

17 D. the administration and enforcement of all other
18 laws, with respect to which the department is charged with
19 responsibilities pursuant to the Tax Administration Act, but
20 only to the extent that the other laws do not conflict with the
21 Tax Administration Act."

22 SECTION 5. A new section of the Income Tax Act is enacted
23 to read:

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

25 A. The following individuals may claim an exemption

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1 in an amount equal to the amount included in adjusted gross
2 income pursuant to Section 86 of the Internal Revenue Code, as
3 that section may be amended or renumbered, of income includable
4 except for this exemption in net income; provided that the
5 exempted amount shall not exceed the individual's net income:

6 (1) married individuals filing separate
7 returns with an adjusted gross income of sixty thousand dollars
8 (\$60,000) or less;

9 (2) heads of household, surviving spouses and
10 married individuals filing joint returns with an adjusted gross
11 income of one hundred twenty thousand dollars (\$120,000) or
12 less; and

13 (3) single individuals with an adjusted gross
14 income of seventy-two thousand dollars (\$72,000) or less.

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

18 SECTION 6. APPLICABILITY.--The provisions of Section 5 of
19 this act apply to taxable years beginning on or after January
20 1, 2021.

21 SECTION 7. EFFECTIVE DATE.--The effective date of the
22 provisions of Sections 1 through 3 of this act is July 1, 2021.