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HOUSE BILL 735

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JAMES ROGER MADALENA

AN ACT

RELATING TO INCOME TAX; AMENDING SECTIONS OF THE NMSA 1978;  
DECLARING AN EMERGENCY.

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

Section 1. Section 7-2-2 NMSA 1978 (being Laws 1986,  
Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS. --For the purpose of the Income Tax  
Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross  
income as defined in Section 62 of the Internal Revenue Code, as  
that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of  
the estate's or trust's income defined as taxable income and  
upon which the federal income tax is calculated in the Internal

1 Revenue Code for income tax purposes plus, for taxable years  
2 beginning on or after January 1, 1991, the amount of the net  
3 operating loss deduction allowed by Section 172(a) of the  
4 Internal Revenue Code, as that section may be amended or  
5 renumbered, and taken by the taxpayer for that year;

6 (2) means, for taxpayers other than estates or  
7 trusts, that part of the taxpayer's income defined as adjusted  
8 gross income plus, for taxable years beginning on or after  
9 January 1, 1991, the amount of the net operating loss deduction  
10 allowed by Section 172(a) of the Internal Revenue Code, as that  
11 section may be amended or renumbered, and taken by the taxpayer  
12 for that year; and

13 (3) includes, for all taxpayers, any other  
14 income of the taxpayer not included in adjusted gross income but  
15 upon which a federal tax is calculated pursuant to the Internal  
16 Revenue Code for income tax purposes, except amounts for which a  
17 calculation of tax is made pursuant to Section 55 of the  
18 Internal Revenue Code, as that section may be amended or  
19 renumbered; "base income" also includes interest received on a  
20 state or local bond;

21 C. "compensation" means wages, salaries, commissions  
22 and any other form of remuneration paid to employees for  
23 personal services;

24 D. "department" means the taxation and revenue  
25 department, the secretary of taxation and revenue or any

1 employee of the department exercising authority lawfully  
2 delegated to that employee by the secretary;

3 E. "fiduciary" means a guardian, trustee, executor,  
4 administrator, committee, conservator, receiver, individual or  
5 corporation acting in any fiduciary capacity;

6 F. "filing status" means "married filing joint  
7 returns", "married filing separate returns", "head of  
8 household", "surviving spouse" and "single", as those terms are  
9 generally defined for federal tax purposes;

10 G. "fiscal year" means any accounting period of  
11 twelve months ending on the last day of any month other than  
12 December;

13 H. "head of household" means "head of household" as  
14 generally defined for federal income tax purposes;

15 I. "individual" means a natural person, an estate, a  
16 trust or a fiduciary acting for a natural person, trust or  
17 estate;

18 J. "Internal Revenue Code" means the United States  
19 Internal Revenue Code of 1986, as amended;

20 K. "lump-sum amount" means an amount that, for the  
21 purpose of determining liability for federal income tax, was not  
22 included in adjusted gross income but upon which the five-year-  
23 averaging or the ten-year-averaging method of tax computation  
24 provided in Section 402 of the Internal Revenue Code, as that  
25 section may be amended or renumbered, was applied;

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L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source derived, including:

- (1) compensation;
- (2) net profit derived from business;
- (3) gains derived from dealings in property;
- (4) interest;
- (5) net rents;
- (6) royalties;
- (7) dividends;
- (8) alimony and separate maintenance payments;
- (9) annuities;
- (10) income from life insurance and endowment contracts;
- (11) pensions;
- (12) discharge of indebtedness;
- (13) distributive share of partnership income;
- (14) income in respect of a decedent;
- (15) income from an interest in an estate or trust;
- (16) social security benefits;
- (17) unemployment compensation benefits;
- (18) workers' compensation benefits;
- (19) public assistance and welfare benefits;

Underscored material = new  
[bracketed material] = delete

1 (20) cost-of-living allowances; and

2 (21) gifts;

3 M. "modified gross income" does not include:

4 (1) payments for hospital, dental, medical or  
5 drug expenses whether made to or on behalf of the taxpayer;

6 (2) the value of room and board provided by  
7 federal, state or local governments or by private individuals or  
8 agencies based upon financial need and not as a form of  
9 compensation;

10 (3) payments made pursuant to a federal, state  
11 or local government program directly or indirectly to a third  
12 party on behalf of the taxpayer when identified to a particular  
13 use or invoice by the payer; or

14 (4) payments made pursuant to Sections  
15 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

16 N. "net income" means, for estates and trusts, base  
17 income adjusted to exclude amounts that the state is prohibited  
18 from taxing because of the laws or constitution of this state or  
19 the United States and means, for taxpayers other than estates or  
20 trusts, base income adjusted to exclude:

21 (1) an amount equal to the standard deduction  
22 allowed the taxpayer for the taxpayer's taxable year by Section  
23 63 of the Internal Revenue Code, as that section may be amended  
24 or renumbered;

25 (2) an amount equal to the itemized deductions,

1 as defined in Section 63 of the Internal Revenue Code, as that  
2 section may be amended or renumbered, allowed the taxpayer for  
3 the taxpayer's taxable year less the amount excluded pursuant to  
4 Paragraph (1) of this subsection;

5 (3) an amount equal to the product of the  
6 exemption amount allowed for the taxpayer's taxable year by  
7 Section 151 of the Internal Revenue Code, as that section may be  
8 amended or renumbered, multiplied by the number of personal  
9 exemptions allowed for federal income tax purposes;

10 (4) income from obligations of the United  
11 States of America less expenses incurred to earn that income;

12 (5) other amounts that the state is prohibited  
13 from taxing because of the laws or constitution of this state or  
14 the United States;

15 (6) for taxable years that began prior to  
16 January 1, 1991, an amount equal to the sum of:

17 (a) net operating loss carryback  
18 deductions to that year from taxable years beginning prior to  
19 January 1, 1991 claimed and allowed, as provided by the Internal  
20 Revenue Code; and

21 (b) net operating loss carryover  
22 deductions to that year claimed and allowed; and

23 (7) for taxable years beginning on or after  
24 January 1, 1991, an amount equal to the sum of any net operating  
25 loss carryover deductions to that year claimed and allowed,

1 provided that the amount of any net operating loss carryover  
2 from a taxable year beginning on or after January 1, 1991 may be  
3 excluded only as follows:

4 (a) in the case of a timely filed return,  
5 in the taxable year immediately following the taxable year for  
6 which the return is filed; or

7 (b) in the case of amended returns or  
8 original returns not timely filed, in the first taxable year  
9 beginning after the date on which the return or amended return  
10 establishing the net operating loss is filed; and

11 (c) in either case, if the net operating  
12 loss carryover exceeds the amount of net income exclusive of the  
13 net operating loss carryover for the taxable year to which the  
14 exclusion first applies, in the next four succeeding taxable  
15 years in turn until the net operating loss carryover is  
16 exhausted; in no event shall a net operating loss carryover be  
17 excluded in any taxable year after the fourth taxable year  
18 beginning after the taxable year to which the exclusion first  
19 applies;

20 0. "net operating loss" means any net operating  
21 loss, as defined by Section 172(c) of the Internal Revenue Code,  
22 as that section may be amended or renumbered, for a taxable year  
23 as further increased by the income, if any, from obligations of  
24 the United States for that year less related expenses;

25 P. "net operating loss carryover" means the amount,

Underscored material = new  
[bracketed material] = delete

1 or any portion of the amount, of a net operating loss for any  
2 taxable year that, pursuant to Paragraph (6) or (7) of  
3 Subsection N of this section, may be excluded from base income;

4 Q. "nonresident" means every individual not a  
5 resident of this state;

6 R. "person" means any individual, estate, trust,  
7 receiver, cooperative association, club, corporation, company,  
8 firm, partnership, limited liability company, joint venture,  
9 syndicate or other association; "person" also means, to the  
10 extent permitted by law, any federal, state or other  
11 governmental unit or subdivision or agency, department or  
12 instrumentality thereof;

13 S. "resident" means an individual who is domiciled  
14 in this state during any part of the taxable year; but any  
15 individual who, on or before the last day of the taxable year,  
16 changed his place of abode to a place without this state with  
17 the bona fide intention of continuing actually to abide  
18 permanently without this state is not a resident for the  
19 purposes of the Income Tax Act;

20 T. "secretary" means the secretary of taxation and  
21 revenue or the secretary's delegate;

22 U. "state" means any state of the United States, the  
23 District of Columbia, the commonwealth of Puerto Rico, any  
24 territory or possession of the United States or any political  
25 subdivision of a foreign country;

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Underscored material = new  
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1           V. "state or local bond" means a bond issued by a  
2 state other than New Mexico, ~~[or]~~ by a local government other  
3 than one of New Mexico's political subdivisions or by a tribal  
4 government other than an Indian nation, tribe or pueblo located  
5 in whole or in part in New Mexico, the interest from which is  
6 excluded from income for federal income tax purposes under  
7 Section 103 of the Internal Revenue Code, as that section may be  
8 amended or renumbered;

9           W. "surviving spouse" means "surviving spouse" as  
10 generally defined for federal income tax purposes;

11           X. "taxable income" means net income less any lump-  
12 sum amount;

13           Y. "taxable year" means the calendar year or fiscal  
14 year upon the basis of which the net income is computed under  
15 the Income Tax Act and includes, in the case of the return made  
16 for a fractional part of a year under the provisions of the  
17 Income Tax Act, the period for which the return is made; and

18           Z. "taxpayer" means any individual subject to the  
19 tax imposed by the Income Tax Act. "

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

22           "7-2A-2. DEFINITIONS. -- For the purpose of the Corporate  
23 Income and Franchise Tax Act and unless the context requires  
24 otherwise:

25           A. "affiliated group" means that term as it is used

Underscored material = new  
[bracketed material] = delete

1 in the Internal Revenue Code;

2 B. "bank" means any national bank, national banking  
3 association, state bank or bank holding company;

4 C. "base income" means that part of the taxpayer's  
5 income defined as taxable income and upon which the federal  
6 income tax is calculated in the Internal Revenue Code for income  
7 tax purposes plus, for taxable years beginning on or after  
8 January 1, 1991, the amount of the net operating loss deduction  
9 allowed by Section 172(a) of the Internal Revenue Code, as that  
10 section may be amended or renumbered, and claimed by the  
11 taxpayer for that year; "base income" also includes interest  
12 received on a state or local bond;

13 D. "corporation" means corporations, joint stock  
14 companies, real estate trusts organized and operated under the  
15 Real Estate Trust Act, financial corporations and banks, other  
16 business associations and, for corporate income tax purposes,  
17 partnerships and limited liability companies taxed as  
18 corporations under the Internal Revenue Code;

19 E. "department" means the taxation and revenue  
20 department, the secretary of taxation and revenue or any  
21 employee of the department exercising authority lawfully  
22 delegated to that employee by the secretary;

23 F. "financial corporation" means any savings or  
24 building and loan association or any incorporated savings and  
25 loan company, trust company, mortgage banking company, consumer

1 finance company or other financial corporation;

2 G. "fiscal year" means any accounting period of  
3 twelve months ending on the last day of any month other than  
4 December;

5 H. "Internal Revenue Code" means the United States  
6 Internal Revenue Code of 1986, as amended;

7 I. "net income" means base income adjusted to  
8 exclude:

9 (1) amounts that have been taxed as income  
10 under the Banking and Financial Corporations Tax Act;

11 (2) income from obligations of the United  
12 States less expenses incurred to earn that income;

13 (3) other amounts that the state is prohibited  
14 from taxing because of the laws or constitution of this state or  
15 the United States;

16 (4) for taxable years that began prior to  
17 January 1, 1991, an amount equal to the sum of:

18 (a) net operating loss carryback  
19 deductions to that year from taxable years beginning prior to  
20 January 1, 1991 claimed and allowed, as provided by the Internal  
21 Revenue Code; and

22 (b) net operating loss carryover  
23 deductions to that year claimed and allowed; and

24 (5) for taxable years beginning on or after  
25 January 1, 1991, an amount equal to the sum of any net operating

1 loss carryover deductions to that year claimed and allowed,  
2 provided that the amount of any net operating loss carryover  
3 from a taxable year beginning on or after January 1, 1991 may be  
4 excluded only as follows:

5 (a) in the case of a timely filed return,  
6 in the taxable year immediately following the taxable year for  
7 which the return is filed; or

8 (b) in the case of amended returns or  
9 original returns not timely filed, in the first taxable year  
10 beginning after the date on which the return or amended return  
11 establishing the net operating loss is filed; and

12 (c) in either case, if the net operating  
13 loss carryover exceeds the amount of net income exclusive of the  
14 net operating loss carryover for the taxable year to which the  
15 exclusion first applies, in the next four succeeding taxable  
16 years in turn until the net operating loss carryover is  
17 exhausted; in no event may a net operating loss carryover be  
18 excluded in any taxable year after the fourth taxable year  
19 beginning after the taxable year to which the exclusion first  
20 applies;

21 J. "net operating loss" means any net operating  
22 loss, as defined by Section 172(c) of the Internal Revenue Code,  
23 as that section may be amended or renumbered, for a taxable year  
24 as further increased by the income, if any, from obligations of  
25 the United States for that year less related expenses;

Underscored material = new  
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1           K. "net operating loss carryover" means the amount,  
2 or any portion of the amount, of a net operating loss for any  
3 taxable year that, pursuant to Paragraph (4) or (5) of  
4 Subsection I of this section, may be excluded from base income;

5           L. "person" means any individual, estate, trust,  
6 receiver, cooperative association, club, corporation, company,  
7 firm, partnership, limited liability company, joint venture,  
8 syndicate or other association; "person" also means, to the  
9 extent permitted by law, any federal, state or other  
10 governmental unit or subdivision or agency, department or  
11 instrumentality thereof;

12           M "secretary" means the secretary of taxation and  
13 revenue or the secretary's delegate;

14           N. "state" means any state of the United States, the  
15 District of Columbia, the commonwealth of Puerto Rico, any  
16 territory or possession of the United States or political  
17 subdivision thereof or any political subdivision of a foreign  
18 country;

19           O. "state or local bond" means a bond issued by a  
20 state other than New Mexico, [or] by a local government other  
21 than one of New Mexico's political subdivisions or by a tribal  
22 government other than an Indian nation, tribe or pueblo located  
23 in whole or in part in New Mexico, the interest from which is  
24 excluded from income for federal income tax purposes under  
25 Section 103 of the Internal Revenue Code, as that section may be

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Underscored material = new  
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1 amended or renumbered;

2 P. "taxable year" means the calendar year or fiscal  
3 year upon the basis of which the net income is computed under  
4 the Corporate Income and Franchise Tax Act and includes, in the  
5 case of the return made for a fractional part of a year under  
6 the provisions of that act, the period for which the return is  
7 made;

8 Q. "taxpayer" means any corporation subject to the  
9 taxes imposed by the Corporate Income and Franchise Tax Act; and

10 R. "unitary corporations" means two or more  
11 integrated corporations, other than any foreign corporation  
12 incorporated in a foreign country and not engaged in trade or  
13 business in the United States during the taxable year, that are  
14 owned in the amount of more than fifty percent and controlled by  
15 the same person and for which at least one of the following  
16 conditions exists:

17 (1) there is a unity of operations evidenced by  
18 central purchasing, advertising, accounting or other centralized  
19 services;

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

22 (3) the operations of the corporations are  
23 dependent upon or contribute property or services to one another  
24 individually or as a group. "

25 Section 3. EMERGENCY.--It is necessary for the public

1 peace, health and safety that this act take effect immediately.

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**State of New Mexico**  
**House of Representatives**

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**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

March 17, 1997

Mr. Speaker:

Your TAXATION AND REVENUE COMMITTEE, to whom has  
been referred

**HOUSE BILL 735**

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

1. On page 9, line 5, after "New Mexico" insert "or other  
than a council of several Indian nations, tribes or pueblos  
located within New Mexico".,

and thence referred to the APPROPRIATIONS AND FINANCE  
COMMITTEE.

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HTRC/HB 735

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Respectfully submitted,

\_\_\_\_\_  
Jerry W. Sandel, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Russell, Sandoval, Sandel

Absent: None

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Underscored material = new  
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**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 19, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred

HOUSE BILL 735, as amended

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

Respectfully submitted,

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Max Coll, Chairman

FORTY- THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 16 For 0 Against

Yes: 16

Excused: Watchman

Absent: None

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 20, 1997

Mr. President:

Your WAYS AND MEANS COMMITTEE, to whom has been  
referred

HOUSE BILL 735, as amended

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

Respectfully submitted,

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Carlos R. Cisneros, Chairman

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

No: 0

Excused: None

Absent: None

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Underscored material = new  
[bracketed material] = delete