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SENATE BILL 988

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

INTRODUCED BY

CARLOS R. CISNEROS

AN ACT

AMENDING SECTION 7-2-2 NMSA 1978 (BEING LAWS 1986, CHAPTER 20, SECTION 26, AS AMENDED) TO EXCLUDE SOCIAL SECURITY BENEFITS FROM NET INCOME OF A TAXPAYER FOR STATE INCOME TAX PURPOSES.

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

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

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

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

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

25 D. "department" means the taxation and revenue

1 department, the secretary of taxation and revenue or any  
2 employee of the department exercising authority lawfully  
3 delegated to that employee by the secretary;

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

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

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

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

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

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

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

1 section may be amended or renumbered, was applied;

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

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

- 1 (19) public assistance and welfare benefits;
- 2 (20) cost-of-living allowances; and
- 3 (21) gifts;

4 M "modified gross income" does not include:

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

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

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

15 (4) payments made pursuant to Sections  
16 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

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

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

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

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

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

13 (5) the amount of social security benefits  
14 included in the taxpayer's base income;

15 [~~(5)~~] (6) other amounts that the state is prohibited  
16 from taxing because of the laws or constitution of this state or  
17 the United States;

18 [~~(6)~~] (7) for taxable years that began prior to  
19 January 1, 1991, an amount equal to the sum of:

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

24 (b) net operating loss carryover  
25 deductions to that year claimed and allowed; and

1                    [~~(7)~~] (8) for taxable years beginning on or  
2 after January 1, 1991, an amount equal to the sum of any net  
3 operating loss carryover deductions to that year claimed and  
4 allowed, provided that the amount of any net operating loss  
5 carryover from a taxable year beginning on or after January 1,  
6 1991 may be excluded only as follows:

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

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

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

23                   0. "net operating loss" means any net operating  
24 loss, as defined by Section 172(c) of the Internal Revenue Code,  
25 as that section may be amended or renumbered, for a taxable year

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1 as further increased by the income, if any, from obligations of  
2 the United States for that year less related expenses;

3 P. "net operating loss carryover" means the amount,  
4 or any portion of the amount, of a net operating loss for any  
5 taxable year that, pursuant to Paragraph (6) or (7) of  
6 Subsection N of this section, may be excluded from base income;

7 Q. "nonresident" means every individual not a  
8 resident of this state;

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

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

23 T. "secretary" means the secretary of taxation and  
24 revenue or the secretary's delegate;

25 U. "state" means any state of the United States, the



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1 District of Columbia, the commonwealth of Puerto Rico, any  
2 territory or possession of the United States or any political  
3 subdivision of a foreign country;

4 V. "state or local bond" means a bond issued by a  
5 state other than New Mexico or by a local government other than  
6 one of New Mexico's political subdivisions, the interest from  
7 which is excluded from income for federal income tax purposes  
8 under Section 103 of the Internal Revenue Code, as that section  
9 may be amended or renumbered;

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

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

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

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

21 Section 2. APPLICABILITY. --The provisions of this act  
22 shall apply to taxable years beginning on and after January 1,  
23 1997.

1 FORTY-THIRD LEGISLATURE  
2 FIRST SESSION, 1997  
3  
4

5 March 7, 1997  
6

7 Mr. President:  
8

9 Your WAYS AND MEANS COMMITTEE, to whom has been  
10 referred  
11

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14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, and thence referred to the  
16 FINANCE COMMITTEE.  
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18 Respectfully submitted,  
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22 \_\_\_\_\_  
23 Carlos R. Cisneros, Chairman  
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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

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Date \_\_\_\_\_

The roll call vote was 8 For 0 Against  
Yes: 8  
No: 0  
Excused: Jennings  
Absent: None

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