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SENATE BILL 124

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Sue Wilson

AN ACT

RELATING TO TAXATION; REDUCING INCOME TAX RATES AND CHANGING
CERTAIN FILING REQUIREMENTS.

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

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

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

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

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

25 D. "department" means the taxation and revenue

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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,
5 executor, administrator, committee, conservator, receiver,
6 individual or 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
10 are 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"
15 as generally defined for federal income tax purposes;

16 I. "individual" means a natural person, an estate,
17 a 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
23 not included in adjusted gross income but upon which the five-
24 year-averaging or the ten-year-averaging method of tax
25 computation provided in Section 402 of the Internal Revenue

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1 Code, as that section may be amended or renumbered, was
2 applied;

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

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

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- 1 (16) social security benefits;
- 2 (17) unemployment compensation benefits;
- 3 (18) workers' compensation benefits;
- 4 (19) public assistance and welfare benefits;
- 5 (20) cost-of-living allowances; and
- 6 (21) gifts;

7 M "modified gross income" does not include:

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

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

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

18 (4) payments made pursuant to Sections
19 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

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

- 25 (1) an amount equal to the standard deduction

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1 allowed the taxpayer for the taxpayer's taxable year by
2 Section 63 of the Internal Revenue Code, as that section may
3 be amended or renumbered;

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

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

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

16 (5) other amounts that the state is
17 prohibited from taxing because of the laws or constitution of
18 this state or the United States;

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

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

25 (b) net operating loss carryover

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1 deductions to that year claimed and allowed; and

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

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

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

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

24 0. "net operating loss" means any net operating
25 loss, as defined by Section 172(c) of the Internal Revenue

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1 Code, as that section may be amended or renumbered, for a
2 taxable year as further increased by the income, if any, from
3 obligations of the United States for that year less related
4 expenses;

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

10 Q. "nonresident" means every individual not a
11 resident of this state;

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

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

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1 T. "secretary" means the secretary of taxation and
2 revenue or the secretary's delegate;

3 U. "state" means any state of the United States,
4 the District of Columbia, the commonwealth of Puerto Rico, any
5 territory or possession of the United States or any political
6 subdivision of a foreign country;

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

13 W. "surviving spouse" means "surviving spouse" as
14 generally defined for federal income tax purposes;

15 X. "taxable income" means net income less any
16 lump-sum amount;

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

23 Z. "taxpayer" means any individual subject to the
24 tax imposed by the Income Tax Act; and

25 AA. "zero bracket amount" means the maximum amount

1 of taxable income in the first bracket of the tax rate table
2 for a filing status, for which bracket the amount of tax due
3 is zero. "

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

6 "7-2-7. INDIVIDUAL INCOME TAX RATES. --The tax imposed by
7 Section 7-2-3 NMSA 1978 shall be at the following rates for
8 any taxable year beginning on or after January 1, [1998] 2001:

9 A. For married individuals filing separate returns:

10	If the taxable income is:	The tax shall be:
11	[Not over \$4,000	1.7% of taxable income
12	Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of
13		excess over \$ 4,000
14	Over \$ 8,000 but not over \$ 12,000	\$ 196 plus 4.7% of
15		excess over \$ 8,000
16	Over \$ 12,000 but not over \$ 20,000	\$ 384 plus 6.0% of
17		excess over \$ 12,000
18	Over \$ 20,000 but not over \$ 32,000	\$ 864 plus 7.1% of
19		excess over \$ 20,000
20	Over \$ 32,000 but not over \$ 50,000	\$ 1,716 plus 7.9% of
21		excess over \$ 32,000
22	Over \$ 50,000	\$ 3,138 plus 8.2% of
23		excess over \$ 50,000]
24	<u>Not over \$2,500</u>	<u>\$ 0</u>
25	<u>Over \$ 2,500 but not over \$ 5,000</u>	<u>2.0% of excess over</u>

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1		<u>\$2,500</u>
2	<u>Over \$ 5,000 but not over \$ 8,000</u>	<u>\$ 50.00 plus 3.0% of</u>
3		<u>excess over \$5,000</u>
4	<u>Over \$ 8,000 but not over \$ 12,000</u>	<u>\$ 140 plus 4.5% of</u>
5		<u>excess over \$8,000</u>
6	<u>Over \$ 12,000 but not over \$ 20,000</u>	<u>\$ 320 plus 6.0% of</u>
7		<u>excess over \$12,000</u>
8	<u>Over \$ 20,000 but not over \$ 50,000</u>	<u>\$ 800 plus 7.1% of</u>
9		<u>excess over \$20,000</u>
10	<u>Over \$ 50,000</u>	<u>\$ 2,930 plus 7.7% of</u>
11		<u>excess over \$50,000.</u>

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

14	If the taxable income is:	The tax shall be:
15	[Not over \$8,000	1.7% of taxable income
16	Over \$ 8,000 but not over \$ 16,000	\$ 136 plus 3.2% of
17		excess over \$ 8,000
18	Over \$ 16,000 but not over \$ 24,000	\$ 392 plus 4.7% of
19		excess over \$ 16,000
20	Over \$ 24,000 but not over \$ 40,000	\$ 768 plus 6.0% of
21		excess over \$ 24,000
22	Over \$ 40,000 but not over \$ 64,000	\$ 1,728 plus 7.1% of
23		excess over \$ 40,000
24	Over \$ 64,000 but not over \$100,000	\$ 3,432 plus 7.9% of
25		excess over \$ 64,000

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1	Over \$100,000	\$ 6,276 plus 8.2% of
2		excess over \$100,000]
3	<u>Not over \$5,000</u>	<u>\$ 0</u>
4	<u>Over \$ 5,000 but not over \$ 10,000</u>	<u>2.0% of excess over</u>
5		<u>\$5,000</u>
6	<u>Over \$ 10,000 but not over \$ 16,000</u>	<u>\$ 100 plus 3.0% of</u>
7		<u>excess over \$10,000</u>
8	<u>Over \$ 16,000 but not over \$ 24,000</u>	<u>\$ 280 plus 4.5% of</u>
9		<u>excess over \$16,000</u>
10	<u>Over \$ 24,000 but not over \$ 40,000</u>	<u>\$ 640 plus 6.0% of</u>
11		<u>excess over \$24,000</u>
12	<u>Over \$ 40,000 but not over \$100,000</u>	<u>\$1,600 plus 7.1% of</u>
13		<u>excess over \$40,000</u>
14	<u>Over \$100,000</u>	<u>\$5,860 plus 7.7% of</u>
15		<u>excess over \$100,000.</u>

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

18	If the taxable income is:	The tax shall be:
19	[Not over \$5,500	1.7% of taxable income
20	Over \$ 5,500 but not over \$ 11,000	\$ 93.50 plus 3.2% of
21		excess over \$ 5,500
22	Over \$ 11,000 but not over \$ 16,000	\$ 269.50 plus 4.7% of
23		excess over \$ 11,000
24	Over \$ 16,000 but not over \$ 26,000	\$ 504.50 plus 6.0% of
25		excess over \$ 16,000

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1	Over \$ 26,000 but not over \$ 42,000	\$1,104.50 plus 7.1% of
2		excess over \$ 26,000
3	Over \$ 42,000 but not over \$ 65,000	\$2,240.50 plus 7.9% of
4		excess over \$ 42,000
5	Over \$ 65,000	\$4,057.50 plus 8.2% of
6		excess over \$ 65,000]
7	<u>Not over \$2,500</u>	<u>\$ 0</u>
8	<u>Over \$ 2,500 but not over \$ 6,000</u>	<u>2.0% of excess over</u>
9		<u>\$2,500</u>
10	<u>Over \$ 6,000 but not over \$ 11,000</u>	<u>\$ 70.00 plus 3.0% of</u>
11		<u>excess over \$6,000</u>
12	<u>Over \$ 11,000 but not over \$ 16,000</u>	<u>\$ 220 plus 4.5% of</u>
13		<u>excess over \$11,000</u>
14	<u>Over \$ 16,000 but not over \$ 26,000</u>	<u>\$ 445 plus 6.0% of</u>
15		<u>excess over \$16,000</u>
16	<u>Over \$ 26,000 but not over \$ 65,000</u>	<u>\$1,045 plus 7.1% of</u>
17		<u>excess over \$26,000</u>
18	<u>Over \$ 65,000</u>	<u>\$3,814 plus 7.7% of</u>
19		<u>excess over \$65,000.</u>

D. For heads of household filing returns:

If the taxable income is: The tax shall be:

21	[Not over \$7,000	1.7% of taxable income
22		
23	Over \$ 7,000 but not over \$ 14,000	\$ 119 plus 3.2% of
24		excess over \$ 7,000
25	Over \$ 14,000 but not over \$ 20,000	\$ 343 plus 4.7% of

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1		excess over \$ 14,000
2	Over \$ 20,000 but not over \$ 33,000	\$ 625 plus 6.0% of
3		excess over \$ 20,000
4	Over \$ 33,000 but not over \$ 53,000	\$1,405 plus 7.1% of
5		excess over \$ 33,000
6	Over \$ 53,000 but not over \$ 83,000	\$2,825 plus 7.9% of
7		excess over \$ 53,000
8	Over \$83,000	\$5,195 plus 8.2% of
9		excess over \$ 83,000]
10	<u>Not over \$4,000</u>	<u>\$ 0</u>
11	<u>Over \$ 4,000 but not over \$ 9,000</u>	<u>2.0% of excess over</u>
12		<u>\$4,000</u>
13	<u>Over \$ 9,000 but not over \$ 14,000</u>	<u>\$ 100 plus 3.0% of</u>
14		<u>excess over \$9,000</u>
15	<u>Over \$ 14,000 but not over \$ 20,000</u>	<u>\$ 250 plus 4.5% of</u>
16		<u>excess over \$14,000</u>
17	<u>Over \$ 20,000 but not over \$ 33,000</u>	<u>\$ 520 plus 6.0% of</u>
18		<u>excess over \$20,000</u>
19	<u>Over \$ 33,000 but not over \$ 83,000</u>	<u>\$1,300 plus 7.1% of</u>
20		<u>excess over \$33,000</u>
21	<u>Over \$ 83,000</u>	<u>\$4,850 plus 7.7% of</u>
22		<u>excess over \$83,000.</u>

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

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

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

7 Section 3. Section 7-2-12 NMSA 1978 (being Laws 1965,
8 Chapter 202, Section 10, as amended) is amended to read:

9 "7-2-12. TAXPAYER RETURNS--PAYMENT OF TAX. --

10 A. Every resident of this state and every
11 individual deriving income from any business transaction,
12 property or employment within this state and not exempt from
13 tax under the Income Tax Act [who] shall file a complete tax
14 return with the department in form and content as prescribed
15 by the secretary if the individual:

16 (1) is required by the laws of the United
17 States to file a federal income tax return [~~shall file a~~
18 ~~complete tax return with the department in form and content~~
19 ~~as prescribed by the secretary] or files a federal income
20 tax return; and~~

21 (2) the taxpayer's taxable income exceeds
22 the zero bracket amount for the taxpayer's filing status.

23 B. Unless otherwise required under the Income
24 Tax Act or prescription of the secretary, in completing a
25 return for a taxable year, the taxpayer shall declare the

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1 same filing status and number of personal exemptions as the
2 taxpayer declared for federal income tax purposes for that
3 same taxable year or, if the taxpayer was not required to
4 file a federal income tax return for the taxable year, the
5 filing status and number of personal exemptions that would
6 have been required or allowed for that taxpayer by the
7 Internal Revenue Code and regulations thereunder for the
8 taxable year.

9 C. The return required and the tax imposed on
10 individuals under the Income Tax Act are due and payment is
11 required on or before the fifteenth day of the fourth month
12 following the end of the taxable year. "

13 Section 4. APPLICABILITY. -- The provisions of this act
14 are applicable to taxable years beginning on or after
15 January 1, 2001.