

HOUSE BILL 389

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO TAXATION; EXCLUDING DISTRIBUTIONS TO A NONRESIDENT  
INDIVIDUAL FROM NET INCOME OF AN ESTATE OR TRUST.

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

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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;

13 (3) includes, for all taxpayers, any other  
14 income of the taxpayer not included in adjusted gross income  
15 but upon which a federal tax is calculated pursuant to the  
16 Internal Revenue Code for income tax purposes, except amounts  
17 for which a calculation of tax is made pursuant to Section 55  
18 of the 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; and

21 (4) includes, for all taxpayers, an amount  
22 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior  
23 taxable year if:

24 (a) such amount is transferred to  
25 another qualified tuition program, as defined in Section 529 of

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1 the Internal Revenue Code, not authorized in the Education  
2 Trust Act; or

3 (b) a distribution or refund is made for  
4 any reason other than: 1) to pay for qualified higher  
5 education expenses, as defined pursuant to Section 529 of the  
6 Internal Revenue Code; or 2) upon the beneficiary's death,  
7 disability or receipt of a scholarship;

8 C. "compensation" means wages, salaries,  
9 commissions and any other form of remuneration paid to  
10 employees for personal services;

11 D. "department" means the taxation and revenue  
12 department, the secretary or any employee of the department  
13 exercising authority lawfully delegated to that employee by the  
14 secretary;

15 E. "fiduciary" means a guardian, trustee, executor,  
16 administrator, committee, conservator, receiver, individual or  
17 corporation acting in any fiduciary capacity;

18 F. "filing status" means "married filing joint  
19 returns", "married filing separate returns", "head of  
20 household", "surviving spouse" and "single", as those terms are  
21 generally defined for federal tax purposes;

22 G. "fiscal year" means any accounting period of  
23 twelve months ending on the last day of any month other than  
24 December;

25 H. "head of household" means "head of household" as

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1 generally defined for federal income tax purposes;

2 I. "individual" means a natural person, an estate,  
3 a trust or a fiduciary acting for a natural person, trust or  
4 estate;

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

7 K. "lump-sum amount" means for the purpose of  
8 determining liability for federal income tax, an amount that  
9 was not included in adjusted gross income but upon which the  
10 five-year-averaging or the ten-year-averaging method of tax  
11 computation provided in Section 402 of the Internal Revenue  
12 Code, as that section may be amended or renumbered, was  
13 applied;

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

- 17 (1) compensation;
- 18 (2) net profit from business;
- 19 (3) gains from dealings in property;
- 20 (4) interest;
- 21 (5) net rents;
- 22 (6) royalties;
- 23 (7) dividends;
- 24 (8) alimony and separate maintenance payments;
- 25 (9) annuities;

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- 1 (10) income from life insurance and endowment  
2 contracts;  
3 (11) pensions;  
4 (12) discharge of indebtedness;  
5 (13) distributive share of partnership income;  
6 (14) income in respect of a decedent;  
7 (15) income from an interest in an estate or a  
8 trust;  
9 (16) social security benefits;  
10 (17) unemployment compensation benefits;  
11 (18) workers' compensation benefits;  
12 (19) public assistance and welfare benefits;  
13 (20) cost-of-living allowances; and  
14 (21) gifts;

15 M. "modified gross income" excludes:

16 (1) payments for hospital, dental, medical or  
17 drug expenses to or on behalf of the taxpayer;

18 (2) the value of room and board provided by  
19 federal, state or local governments or by private individuals  
20 or agencies based upon financial need and not as a form of  
21 compensation;

22 (3) payments pursuant to a federal, state or  
23 local government program directly or indirectly to a third  
24 party on behalf of the taxpayer when identified to a particular  
25 use or invoice by the payer; or

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1 (4) payments for credits and rebates pursuant  
2 to the Income Tax Act and made for a credit pursuant to Section  
3 7-3-9 NMSA 1978;

4 N. "net income" means:

5 (1) for estates and trusts, base income  
6 adjusted to exclude:

7 (a) amounts that the state is prohibited  
8 from taxing because of the laws or constitution of this state  
9 or the United States; and

10 (b) amounts set aside for distribution  
11 to a nonresident individual under the terms of the governing  
12 instrument; and [~~means~~]

13 (2) for taxpayers other than estates or  
14 trusts, base income adjusted to exclude:

15 [~~(1)~~] (a) an amount equal to the  
16 standard deduction allowed the taxpayer for the taxpayer's  
17 taxable year by Section 63 of the Internal Revenue Code, as  
18 that section may be amended or renumbered;

19 [~~(2)~~] (b) an amount equal to the  
20 itemized deductions defined in Section 63 of the Internal  
21 Revenue Code, as that section may be amended or renumbered,  
22 allowed the taxpayer for the taxpayer's taxable year less the  
23 amount excluded pursuant to [~~Paragraph (1) of this subsection~~]  
24 Subparagraph (a) of this paragraph and less the amount of state  
25 and local income and sales taxes included in the taxpayer's

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1 itemized deductions;

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

7 [~~(4)~~] (d) income from obligations of the  
8 United States of America less expenses incurred to earn that  
9 income;

10 [~~(5)~~] (e) other amounts that the state  
11 is prohibited from taxing because of the laws or constitution  
12 of this state or the United States;

13 [~~(6)~~] (f) for taxable years that began  
14 prior to January 1, 1991, an amount equal to the sum of: [~~(a)~~]  
15 1) net operating loss carryback deductions to that year from  
16 taxable years beginning prior to January 1, 1991 claimed and  
17 allowed, as provided by the Internal Revenue Code; and [~~(b)~~] 2)  
18 net operating loss carryover deductions to that year claimed  
19 and allowed;

20 [~~(7)~~] (g) for taxable years beginning on  
21 or after January 1, 1991, an amount equal to the sum of any net  
22 operating loss carryover deductions to that year claimed and  
23 allowed, provided that the amount of any net operating loss  
24 carryover from a taxable year beginning on or after January 1,  
25 1991 may be excluded only as follows: [~~(a)~~] 1) in the case of

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1 a timely filed return, in the taxable year immediately  
2 following the taxable year for which the return is filed; or  
3 ~~[(b)]~~ 2) in the case of amended returns or original returns not  
4 timely filed, in the first taxable year beginning after the  
5 date on which the return or amended return establishing the net  
6 operating loss is filed; and ~~[(e)]~~ 3) in either case, if the  
7 net operating loss carryover exceeds the amount of net income  
8 exclusive of the net operating loss carryover for the taxable  
9 year to which the exclusion first applies, in the next four  
10 succeeding taxable years in turn until the net operating loss  
11 carryover is exhausted; in no event shall a net operating loss  
12 carryover be excluded in any taxable year after the fourth  
13 taxable year beginning after the taxable year to which the  
14 exclusion first applies; and

15 ~~[(g)]~~ (h) for taxable years beginning on  
16 or after January 1, 2011, an amount equal to the amount  
17 included in adjusted gross income that represents a refund of  
18 state and local income and sales taxes that were deducted for  
19 federal tax purposes in taxable years beginning on or after  
20 January 1, 2010;

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

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1 expenses;

2 P. "net operating loss carryover" means the amount,  
3 or any portion of the amount, of a net operating loss for any  
4 taxable year that, pursuant to [~~Paragraph (6) or (7)~~]  
5 Subparagraphs (f) and (g) of Paragraph (2) of Subsection N of  
6 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 or an  
18 individual who is physically present in this state for one  
19 hundred eighty-five days or more during the taxable year; but  
20 any individual, other than someone who was physically present  
21 in the state for one hundred eighty-five days or more during  
22 the taxable year, who, on or before the last day of the taxable  
23 year, changed the individual's place of abode to a place  
24 without this state with the bona fide intention of continuing  
25 actually to abide permanently without this state is not a

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1 resident for the purposes of the Income Tax Act for periods  
2 after that change of abode;

3 T. "secretary" means the secretary of taxation and  
4 revenue or the secretary's delegate;

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

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

15 W. "surviving spouse" means "surviving spouse" as  
16 generally defined for federal income tax purposes;

17 X. "taxable income" means net income less any lump-  
18 sum amount;

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

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

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SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2014.

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2014.