

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 279

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4 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**  
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10 AN ACT

11 RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
12 ALLOWING TAXPAYERS TO CLAIM INCOME TAX DEDUCTIONS AND  
13 EXEMPTIONS FOR TAXABLE YEAR 2018 THAT WOULD HAVE BEEN ALLOWED  
14 IF NOT FOR PASSAGE OF FEDERAL TAX REFORM.  
15

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

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

19 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax  
20 Act and unless the context requires otherwise:

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

24 B. "base income":

25 (1) means, for estates and trusts, that part

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underscored material = new  
[bracketed material] = delete

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

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

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

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

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1 (a) such amount is transferred to  
 2 another qualified tuition program, as defined in Section 529 of  
 3 the Internal Revenue Code, not authorized in the Education  
 4 Trust Act; or

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

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

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

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

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

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

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1 December;

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

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

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

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

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

- 19 (1) compensation;  
20 (2) net profit from business;  
21 (3) gains from dealings in property;  
22 (4) interest;  
23 (5) net rents;  
24 (6) royalties;  
25 (7) dividends;

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

17 M. "modified gross income" excludes:

- 18 (1) payments for hospital, dental, medical or
- 19 drug expenses to or on behalf of the taxpayer;
- 20 (2) the value of room and board provided by
- 21 federal, state or local governments or by private individuals
- 22 or agencies based upon financial need and not as a form of
- 23 compensation;
- 24 (3) payments pursuant to a federal, state or
- 25 local government program directly or indirectly to a third

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1 party on behalf of the taxpayer when identified to a particular  
2 use or invoice by the payer; or

3 (4) payments for credits and rebates pursuant  
4 to the Income Tax Act and made for a credit pursuant to Section  
5 7-3-9 NMSA 1978;

6 N. "net income" means, for estates and trusts, base  
7 income adjusted to exclude amounts that the state is prohibited  
8 from taxing because of the laws or constitution of this state  
9 or the United States and means, for taxpayers other than  
10 estates or trusts, base income adjusted to exclude:

11 (1) an amount equal to the standard deduction  
12 allowed the taxpayer for the taxpayer's taxable year by Section  
13 63 of the Internal Revenue Code, as that section may be amended  
14 or renumbered; except, for the taxable year beginning January  
15 1, 2018, an amount equal to the standard deduction allowed the  
16 taxpayer by that version of Section 63 of the Internal Revenue  
17 Code that applied to the taxable year beginning January 1,  
18 2017;

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

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1 beginning January 1, 2018, an amount equal to the itemized  
2 deductions defined in that version of Section 63 of the  
3 Internal Revenue Code that applied to the taxable year  
4 beginning January 1, 2017, that would have been allowed the  
5 taxpayer had that version of Section 63 still been in effect,  
6 less the amount excluded pursuant to Paragraph (1) of this  
7 subsection and less the amount of state and local income and  
8 sales taxes included in the taxpayer's itemized deductions;

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; except, for  
14 the taxable year beginning January 1, 2018, an amount equal to  
15 the product of the exemption amount allowed for the taxable  
16 year beginning January 1, 2018, by that version of Section 151  
17 of the Internal Revenue Code that was in effect for the taxable  
18 year beginning January 1, 2017, multiplied by the number of  
19 personal exemptions that would have been allowed for federal  
20 income tax purposes had that version of Section 151 still been  
21 in effect;

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

24 (5) other amounts that the state is prohibited  
25 from taxing because of the laws or constitution of this state

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1 or the United States;

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

4 (a) net operating loss carryback  
5 deductions to that year from taxable years beginning prior to  
6 January 1, 1991 claimed and allowed, as provided by the  
7 Internal Revenue Code; and

8 (b) net operating loss carryover  
9 deductions to that year claimed and allowed;

10 (7) for taxable years beginning on or after  
11 January 1, 1991 and prior to January 1, 2013, an amount equal  
12 to the sum of any net operating loss carryover deductions to  
13 that year claimed and allowed, provided that the amount of any  
14 net operating loss carryover from a taxable year beginning on  
15 or after January 1, 1991 and prior to January 1, 2013 may be  
16 excluded only as follows:

17 (a) in the case of a timely filed  
18 return, in the taxable year immediately following the taxable  
19 year for which the return is filed; or

20 (b) in the case of amended returns or  
21 original returns not timely filed, in the first taxable year  
22 beginning after the date on which the return or amended return  
23 establishing the net operating loss is filed; and

24 (c) in either case, if the net operating  
25 loss carryover exceeds the amount of net income exclusive of

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1 the net operating loss carryover for the taxable year to which  
2 the exclusion first applies, in the next four succeeding  
3 taxable years in turn until the net operating loss carryover is  
4 exhausted for any net operating loss carryover from a taxable  
5 year prior to January 1, 2013; in no event shall a net  
6 operating loss carryover from a taxable year beginning prior to  
7 January 1, 2013 be excluded in any taxable year after the  
8 fourth taxable year beginning after the taxable year to which  
9 the exclusion first applies;

10 (8) for taxable years beginning on or after  
11 January 1, 2013, an amount equal to the sum of any net  
12 operating loss carryover deductions to that year claimed and  
13 allowed; provided that the amount of any net operating loss  
14 carryover may be excluded only as follows:

15 (a) in the case of a timely filed  
16 return, in the taxable year immediately following the taxable  
17 year for which the return is filed; or

18 (b) in the case of amended returns or  
19 original returns not timely filed, in the first taxable year  
20 beginning after the date on which the return or amended return  
21 establishing the net operating loss is filed; and

22 (c) in either case, if the net operating  
23 loss carryover exceeds the amount of net income exclusive of  
24 the net operating loss carryover for the taxable year to which  
25 the exclusion first applies, in the next nineteen succeeding

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1 taxable years in turn until the net operating loss carryover is  
2 exhausted for any net operating loss carryover from a taxable  
3 year beginning on or after January 1, 2013; in no event shall a  
4 net operating loss carryover from a taxable year beginning: 1)  
5 prior to January 1, 2013 be excluded in any taxable year after  
6 the fourth taxable year beginning after the taxable year to  
7 which the exclusion first applies; and 2) on or after January  
8 1, 2013 be excluded in any taxable year after the nineteenth  
9 taxable year beginning after the taxable year to which the  
10 exclusion first applies; and

11 (9) for taxable years beginning on or after  
12 January 1, 2011, an amount equal to the amount included in  
13 adjusted gross income that represents a refund of state and  
14 local income and sales taxes that were deducted for federal tax  
15 purposes in taxable years beginning on or after January 1,  
16 2010;

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

23 P. "net operating loss carryover" means the amount,  
24 or any portion of the amount, of a net operating loss for any  
25 taxable year that, pursuant to Paragraph (6), (7) or (8) of

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1 Subsection N of this section, may be excluded from base income;

2 Q. "nonresident" means every individual not a  
3 resident of this state;

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

11 S. "resident" means an individual who is domiciled  
12 in this state during any part of the taxable year or an  
13 individual who is physically present in this state for one  
14 hundred eighty-five days or more during the taxable year; but  
15 any individual, other than someone who was physically present  
16 in the state for one hundred eighty-five days or more during  
17 the taxable year, who, on or before the last day of the taxable  
18 year, changed the individual's place of abode to a place  
19 without this state with the bona fide intention of continuing  
20 actually to abide permanently without this state is not a  
21 resident for the purposes of the Income Tax Act for periods  
22 after that change of abode;

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,

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1 the 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."