

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 163

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO TAXATION; ALLOWING A DEDUCTION FROM NET INCOME FOR  
INCOME SET ASIDE FOR FUTURE DISTRIBUTION FROM AN ESTATE OR  
TRUST TO A NONRESIDENT INDIVIDUAL.

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

SECTION 1. A new section of the Income Tax Act is enacted  
to read:

"~~[NEW MATERIAL]~~ DEDUCTION--INCOME SET ASIDE FOR FUTURE  
DISTRIBUTION FROM AN ESTATE OR TRUST TO A NONRESIDENT  
INDIVIDUAL.--

A. Before January 1, 2025, a taxpayer that is an  
estate or trust may claim a deduction from net income in the  
amount equal to income, excluding income derived from real  
property located in New Mexico, mineral, oil and gas interests  
located in New Mexico, water rights located in New Mexico and

underscoring material = new  
~~[bracketed material] = delete~~

underscoring material = new  
~~[bracketed material] = delete~~

1 any other income allocated or apportioned to New Mexico, set  
2 aside for future distribution to a nonresident individual  
3 beneficiary as provided in the estate's or trust's governing  
4 instrument.

5 B. The purpose of the deduction allowed by this  
6 section is to increase estate and trust business in New Mexico.

7 C. Concerning the deduction allowed by this  
8 section, in determining:

9 (1) the extent to which income of an estate or  
10 trust is set aside for future distribution to a nonresident  
11 individual beneficiary, if all or part of the estate's or  
12 trust's federal taxable income, regardless of whether it is  
13 added to the estate or trust corpus for estate or trust  
14 accounting purposes, is distributable in future taxable years  
15 to or for the benefit of a named individual beneficiary or a  
16 first-named class of individual beneficiaries and if, on the  
17 last day of the estate's or trust's taxable year, one or more  
18 named individual beneficiaries or one or more members of the  
19 first-named class of individual beneficiaries is living, then  
20 the portion of the federal taxable income considered set aside  
21 for future distribution to:

22 (a) a named individual beneficiary is  
23 determined by: 1) ascertaining the share or shares of each  
24 named individual beneficiary as if the estate or trust had  
25 terminated on the last day of the taxable year and then

.211019.1

underscoring material = new  
~~[bracketed material] = delete~~

1     ascertaining the portion of that income realized by the estate  
2     or trust during the taxable year while the beneficiary was a  
3     nonresident; and 2) presuming that the beneficiary was living  
4     and residing in the state in which the putative parents resided  
5     during the taxable year; and

6                     (b) a first-named class of individual  
7     beneficiaries is determined by: 1) ascertaining the members of  
8     the class and the share of each member as if the estate or  
9     trust had terminated on the last day of the taxable year and  
10    then ascertaining the portion of that income of each share  
11    realized by the estate or trust while the member was a  
12    nonresident; and 2) presuming that the member was living and  
13    residing with the person the relationship to whom defines  
14    membership in the class;

15                    (2) the share of income of each beneficiary of  
16    an estate or trust in the federal taxable income, it is  
17    presumed that the discretion of a person over the distribution  
18    of that income, regardless of whether the person acts in a  
19    fiduciary capacity or is subject to a standard, has not been  
20    exercised, unless that discretion is irrevocably exercised as  
21    of the last day of the taxable year; and

22                    (3) the time federal taxable income is  
23    realized:

24                    (a) interest income is considered  
25    realized when payable;

.211019.1

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(b) dividend income is considered realized on the day the dividend is payable;

(c) gains and losses from the sale or exchange of property are considered realized or deductible, as appropriate, on the settlement date of the sale or the effective date of the exchange; and

(d) commissions on income or principal are deemed deductible on the date charged.

D. A taxpayer allowed a deduction in accordance with this section shall report the amount of the deduction separately and as required by the department.

E. Beginning in 2020, the department shall compile an annual report on the deduction allowed by this section that includes the number of taxpayers that claimed the deduction, the aggregate amount of deductions claimed and other information necessary to evaluate the deduction's effectiveness. The department shall present the report to the revenue stabilization and tax policy committee and the legislative finance committee with an analysis of the effectiveness and cost of the deduction and whether the deduction is fulfilling its purpose."

**SECTION 2. APPLICABILITY.**--The provisions of this act apply to taxable years beginning on or after January 1, 2019.