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SENATE BILL 43

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

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO TAXATION; REDUCING INCOME TAX RATES; CHANGING  
CERTAIN FILING REQUIREMENTS; AMENDING SECTIONS OF THE NMSA  
1978.

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

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

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

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  
21 or renumbered; "base income" also includes interest received  
22 on a state or local bond;

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

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

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

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

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

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

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

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

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

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1 computation provided in Section 402 of the Internal Revenue  
2 Code, as that section may be amended or renumbered, was  
3 applied;

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

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

1 trust;

2 (16) social security benefits;

3 (17) unemployment compensation benefits;

4 (18) workers' compensation benefits;

5 (19) public assistance and welfare benefits;

6 (20) cost-of-living allowances; and

7 (21) gifts;

8 M "modified gross income" does not include:

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

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

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

19 (4) payments made pursuant to Sections  
20 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

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

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

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

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

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

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

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

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

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1 (b) net operating loss carryover  
2 deductions to that year claimed and allowed; and

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

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

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

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

25 0. "net operating loss" means any net operating

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1 loss, as defined by Section 172(c) of the Internal Revenue  
2 Code, as that section may be amended or renumbered, for a  
3 taxable year as further increased by the income, if any, from  
4 obligations of the United States for that year less related  
5 expenses;

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

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

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

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



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1 purposes of the Income Tax Act;

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

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

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

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

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

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

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

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

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

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

10                    A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
<del>[Not over \$4,000</del>	<del>1.7% of taxable income</del>
<del>Over \$ 4,000 but not over \$ 8,000</del>	<del>\$ 68.00 plus 3.2% of excess over \$ 4,000</del>
<del>Over \$ 8,000 but not over \$ 12,000</del>	<del>\$ 196 plus 4.7% of excess over \$ 8,000</del>
<del>Over \$ 12,000 but not over \$ 20,000</del>	<del>\$ 384 plus 6.0% of excess over \$ 12,000</del>
<del>Over \$ 20,000 but not over \$ 32,000</del>	<del>\$ 864 plus 7.1% of excess over \$ 20,000</del>
<del>Over \$ 32,000 but not over \$ 50,000</del>	<del>\$ 1,716 plus 7.9% of excess over \$ 32,000</del>
<del>Over \$ 50,000</del>	<del>\$ 3,138 plus 8.2% of excess over \$ 50,000]</del>
<u>Not over \$3,000</u>	<u>\$ 0</u>

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1 Over \$ 3,000 but not over \$ 4,000 2.0% of excess over  
2 \$3,000  
3 Over \$ 4,000 but not over \$ 8,000 \$ 20.00 plus 3.0% of  
4 excess over \$4,000  
5 Over \$ 8,000 but not over \$ 12,000 \$ 140 plus 4.5% of  
6 excess over \$8,000  
7 Over \$ 12,000 but not over \$ 20,000 \$ 320 plus 6.0% of  
8 excess over \$12,000  
9 Over \$ 20,000 but not over \$ 50,000 \$ 800 plus 7.0% of  
10 excess over \$20,000  
11 Over \$ 50,000 \$2,900 plus 7.9% of  
12 excess over \$50,000.

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

15 If the taxable income is: The tax shall be:

16 [~~Not over \$8,000~~ 1.7% of taxable income  
17 ~~Over \$ 8,000 but not over \$ 16,000~~ \$ 136 plus 3.2% of  
18 ~~excess over \$ 8,000~~  
19 ~~Over \$ 16,000 but not over \$ 24,000~~ \$ 392 plus 4.7% of  
20 ~~excess over \$ 16,000~~  
21 ~~Over \$ 24,000 but not over \$ 40,000~~ \$ 768 plus 6.0% of  
22 ~~excess over \$ 24,000~~  
23 ~~Over \$ 40,000 but not over \$ 64,000~~ \$ 1,728 plus 7.1% of  
24 ~~excess over \$ 40,000~~  
25 ~~Over \$ 64,000 but not over \$100,000~~ \$ 3,432 plus 7.9% of

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1		<del>excess over \$ 64,000</del>
2	<del>Over \$100,000</del>	<del>\$ 6,276 plus 8.2% of</del>
3		<del>excess over \$100,000]</del>
4	<u>Not over \$6,000</u>	<u>\$ 0</u>
5	<u>Over \$ 6,000 but not over \$ 8,000</u>	<u>2.0% of excess over</u>
6		<u>\$6,000</u>
7	<u>Over \$ 8,000 but not over \$ 16,000</u>	<u>\$ 40.00 plus 3.0% of</u>
8		<u>excess over \$8,000</u>
9	<u>Over \$ 16,000 but not over \$ 24,000</u>	<u>\$ 280 plus 4.5% of</u>
10		<u>excess over \$16,000</u>
11	<u>Over \$ 24,000 but not over \$ 40,000</u>	<u>\$ 640 plus 6.0% of</u>
12		<u>excess over \$24,000</u>
13	<u>Over \$ 40,000 but not over \$100,000</u>	<u>\$1,600 plus 7.0% of</u>
14		<u>excess over \$40,000</u>
15	<u>Over \$100,000</u>	<u>\$5,800 plus 7.9% of</u>
16		<u>excess over \$100,000.</u>

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

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

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1		<del>excess over \$ 16,000</del>
2	<del>Over \$ 26,000 but not over \$ 42,000</del>	<del>\$1,104.50 plus 7.1% of</del>
3		<del>excess over \$ 26,000</del>
4	<del>Over \$ 42,000 but not over \$ 65,000</del>	<del>\$2,240.50 plus 7.9% of</del>
5		<del>excess over \$ 42,000</del>
6	<del>Over \$ 65,000</del>	<del>\$4,057.50 plus 8.2% of</del>
7		<del>excess over \$ 65,000]</del>
8	<u>Not over \$3,000</u>	<u>\$ 0</u>
9	<u>Over \$ 3,000 but not over \$ 5,500</u>	<u>2.0% of excess over</u>
10		<u>\$3,000</u>
11	<u>Over \$ 5,500 but not over \$ 11,000</u>	<u>\$ 50.00 plus 3.0% of</u>
12		<u>excess over \$5,500</u>
13	<u>Over \$ 11,000 but not over \$ 16,000</u>	<u>\$ 215 plus 4.5% of</u>
14		<u>excess over \$11,000</u>
15	<u>Over \$ 16,000 but not over \$ 26,000</u>	<u>\$ 440 plus 6.0% of</u>
16		<u>excess over \$16,000</u>
17	<u>Over \$ 26,000 but not over \$ 65,000</u>	<u>\$1,040 plus 7.0% of</u>
18		<u>excess over \$26,000</u>
19	<u>Over \$ 65,000</u>	<u>\$3,770 plus 7.9% of</u>
20		<u>excess over \$65,000.</u>

D. For heads of household filing returns:

If the taxable income is: The tax shall be:

23	<del>[Not over \$7,000</del>	<del>1.7% of taxable income</del>
24	<del>Over \$ 7,000 but not over \$ 14,000</del>	<del>\$ 119 plus 3.2% of</del>
25		<del>excess over \$ 7,000</del>

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1	<del>Over \$ 14,000 but not over \$ 20,000</del>	<del>\$ 343 plus 4.7% of</del>
2		<del>excess over \$ 14,000</del>
3	<del>Over \$ 20,000 but not over \$ 33,000</del>	<del>\$ 625 plus 6.0% of</del>
4		<del>excess over \$ 20,000</del>
5	<del>Over \$ 33,000 but not over \$ 53,000</del>	<del>\$1,405 plus 7.1% of</del>
6		<del>excess over \$ 33,000</del>
7	<del>Over \$ 53,000 but not over \$ 83,000</del>	<del>\$2,825 plus 7.9% of</del>
8		<del>excess over \$ 53,000</del>
9	<del>Over \$ 83,000</del>	<del>\$5,195 plus 8.2% of</del>
10		<del>excess over \$ 83,000]</del>
11	<u>Not over \$5,000</u>	<u>\$ 0</u>
12	<u>Over \$ 5,000 but not over \$ 7,000</u>	<u>2.0% of excess over</u>
13		<u>\$5,000</u>
14	<u>Over \$ 7,000 but not over \$ 14,000</u>	<u>\$ 40.00 plus 3.0% of</u>
15		<u>excess over \$7,000</u>
16	<u>Over \$ 14,000 but not over \$ 20,000</u>	<u>\$ 250 plus 4.5% of</u>
17		<u>excess over \$14,000</u>
18	<u>Over \$ 20,000 but not over \$ 33,000</u>	<u>\$ 520 plus 6.0% of</u>
19		<u>excess over \$20,000</u>
20	<u>Over \$ 33,000 but not over \$ 83,000</u>	<u>\$1,300 plus 7.0% of</u>
21		<u>excess over \$33,000</u>
22	<u>Over \$ 83,000</u>	<u>\$4,800 plus 7.9% of</u>
23		<u>excess over \$83,000.</u>

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

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

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

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

10 "7-2-12. TAXPAYER RETURNS--PAYMENT OF TAX. --

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

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

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

24 B. Unless otherwise required under the Income  
25 Tax Act or prescription of the secretary, in completing a

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

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

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