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SENATE BILL 4

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST EXTRAORDINARY SESSION, 2002

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO TAXATION; AMENDING THE INCOME TAX ACT TO PROVIDE A
DEDUCTION FOR NET CAPITAL GAIN ATTRIBUTABLE TO SALES OF
ASSETS, STOCK OR OTHER EQUITY OF A CLOSELY HELD TRADE OR
BUSINESS.

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

Section 1. A new section of the Income Tax Act, Section
7-2-36 NMSA 1978, is enacted to read:

"7-2-36. [NEW MATERIAL] DEDUCTION--NET CAPITAL GAIN
INCOME FROM SALE OF A CLOSELY HELD BUSINESS. --

A. Except as provided in Subsection B of this
section, a taxpayer may claim a deduction from net income in
an amount equal to the applicable percentage of the taxpayer's
net capital gain from the sale of a closely held trade or
business in the taxable year for which the deduction is being

1 claimed if and to the extent the net capital gain is included
2 in the taxpayer's base income. A husband and wife who file
3 separate returns for a taxable year in which they could have
4 filed a joint return may each claim only one half of the
5 deduction provided by this section that would have been
6 allowed on the joint return.

7 B. A taxpayer may not claim the deduction provided
8 in Subsection A of this section:

9 (1) if the taxpayer has claimed the credit
10 provided in Section 7-2D-8.1 NMSA 1978; or

11 (2) to the extent the taxpayer has claimed a
12 deduction for a net capital gain under Section 7-2-34 NMSA
13 1978.

14 C. As used in this section:

15 (1) "net capital gain from the sale of a
16 closely held trade or business" means "net capital gain" as
17 defined in Section 1222 (11) of the Internal Revenue Code to
18 the extent attributable to:

19 (a) the sale or exchange of
20 substantially all of the property used in a closely held trade
21 or business; or

22 (b) the sale or exchange of the
23 taxpayer's entire interest in the equity interests of a
24 closely held trade or business in a transaction in which
25 substantially all of the equity interests of the closely held

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1 trade or business are sold or exchanged;

2 (2) "closely held trade or business" means a
3 trade or business operated:

4 (a) as a sole proprietorship; or
5 (b) by a corporation, partnership,
6 limited partnership, limited liability company or other legal
7 entity, the equity interests of which are controlled by
8 seventy-five or fewer qualifying owners;

9 (3) "equity interest" means the equity
10 ownership of a legal entity, including:

11 (a) the capital stock of a corporation;
12 (b) the partnership interest of a
13 general or limited partner in a partnership; or

14 (c) the membership interest of a member
15 of a limited liability company;

16 (4) "controlled" means equity interests of at
17 least eighty percent of the total combined voting power of all
18 classes of equity interests entitled to vote and at least
19 eighty percent of all other classes of equity interests of the
20 entity;

21 (5) "qualifying owner" means:

22 (a) a natural person;
23 (b) an estate; or
24 (c) a qualifying trust;

25 (6) "qualifying trust" means:

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[bracketed material] = delete

1 (a) a trust, all of which is treated,
2 under Subpart E of Subchapter J of the Internal Revenue Code,
3 as owned by a natural person;

4 (b) a trust described in Subparagraph
5 (a) of this paragraph immediately before the death of the
6 deemed owner that continues in existence after the death, but
7 only for the two-year period beginning on the date of the
8 deemed owner's death;

9 (c) a trust with respect to equity
10 interests transferred to it pursuant to the terms of a will,
11 but only for the two-year period beginning on the day on which
12 the equity interests are transferred to it;

13 (d) a trust created under the Uniform
14 Transfers to Minors Act; or

15 (e) a trust created or organized for
16 the exclusive benefit of an individual or his beneficiaries
17 under Section 408 of the Internal Revenue Code; and

18 (7) "applicable percentage" means:

19 (a) for a sale of a closely held trade
20 or business occurring in a taxable year beginning in the 2002
21 calendar year, fifty percent;

22 (b) for a sale of a closely held trade
23 or business occurring in a taxable year beginning in the 2003
24 calendar year, seventy-five percent; and

25 (c) for a sale of a closely held trade

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1 or business occurring in a taxable year beginning after the
2 2003 calendar year, one hundred percent.

3 D. For purposes of Subparagraph (a) of Paragraph
4 (5) of Subsection C of this section, a husband and wife shall
5 be treated as one qualifying owner. "

6 Section 2. APPLICABILITY. --The provisions of this act
7 apply to taxable years beginning on or after January 1, 2002.

8 Section 3. DELAYED REPEAL. --Section 7-2-36 NMSA 1978 is
9 repealed on January 1, 2010.