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SENATE BILL 411

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO TAXATION; PROVIDING AN INCOME TAX DEDUCTION FOR NET
CAPITAL GAIN INCOME FROM THE SALE 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 is enacted
to read:

"~~[NEW MATERIAL]~~ DEDUCTION--NET CAPITAL GAIN INCOME FROM
SALE OF A CLOSELY HELD TRADE OR 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 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 claimed if and to the extent the
net capital gain is included in the taxpayer's base income. A

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

1 husband and wife who file separate returns for a taxable year
2 in which they could have filed a joint return may each claim
3 only one-half of the deduction provided in this section that
4 would have been allowed on the joint return.

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

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

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

12 C. As used in this section:

13 (1) "closely held trade or business" means a
14 trade or business operated:

15 (a) as a sole proprietorship; or

16 (b) by a corporation, partnership,
17 limited partnership, limited liability company or other legal
18 entity, the equity interests of which are controlled by
19 seventy-five or fewer qualifying owners;

20 (2) "controlled" means holding equity
21 interests in at least eighty percent of the total combined
22 voting power of all classes of equity interests entitled to
23 vote and at least eighty percent of all other classes of equity
24 interests of the entity;

25 (3) "equity interest" means the equity

1 ownership of a legal entity, including:

2 (a) the capital stock of a corporation;

3 (b) the partnership interest of a
4 general or limited partner in a partnership; or

5 (c) the membership interest of a member
6 of a limited liability company;

7 (4) "net capital gain from the sale of a
8 closely held trade or business" means "net capital gain" as
9 defined in Section 1222 (11) of the federal Internal Revenue
10 Code to the extent attributable to:

11 (a) the sale or exchange of
12 substantially all of the property used in a closely held trade
13 or business; or

14 (b) the sale or exchange of the
15 taxpayer's entire interest in the equity interests of a closely
16 held trade or business, in a transaction in which substantially
17 all of the equity interests of the closely held trade or
18 business are sold or exchanged;

19 (5) "qualifying owner" means:

20 (a) a natural person;

21 (b) an estate; or

22 (c) a qualifying trust; and

23 (6) "qualifying trust" means:

24 (a) a trust, all of which is treated
25 under Subpart E of Subchapter J of the Internal Revenue Code,

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[bracketed material] = delete

1 as owned by an individual;

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

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

11 (d) a trust created under the Uniform
12 Transfers to Minors Act; or

13 (e) a trust created or organized for the
14 exclusive benefit of an individual or his beneficiaries under
15 Section 408 of the Internal Revenue Code.

16 D. For purposes of Subparagraph (a) of Paragraph
17 (6) of Subsection C of this section, a husband and wife shall
18 be treated as one qualifying owner."

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