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SENATE BILL 317

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO TAXATION; PROVIDING FOR A STATE INCOME TAX CREDIT
EQUAL TO A CERTAIN PERCENTAGE OF A FEDERAL INCOME TAX CREDIT
FOR EARNED INCOME FOR WHICH PERSONS WHO DO NOT CLAIM THE
LOW-INCOME COMPREHENSIVE TAX REBATE ARE ELIGIBLE; CREATING THE
WORKING FAMILIES TAX CREDIT; RECONCILING MULTIPLE AMENDMENTS TO
THE SAME SECTION OF LAW IN LAWS 2003.

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 by Laws 2003, Chapter 13,
Section 1 and by Laws 2003, Chapter 275, Section 1) 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

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1 income as defined in Section 62 of the Internal Revenue Code,
2 as that section may be amended or renumbered;

3 B. "base income":

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

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

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

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1 state or local bond; and

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

5 (a) such amount is transferred to
6 another qualified tuition program, as defined in Section 529 of
7 the Internal Revenue Code, not authorized in the Education
8 Trust Act; or

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

14 C. "compensation" means wages, salaries,
15 commissions and any other form of remuneration paid to
16 employees for personal services;

17 D. "department" means the taxation and revenue
18 department, the secretary or any employee of the department
19 exercising authority lawfully delegated to that employee by the
20 secretary;

21 E. "fiduciary" means a guardian, trustee, executor,
22 administrator, committee, conservator, receiver, individual or
23 corporation acting in any fiduciary capacity;

24 F. "filing status" means "married filing joint
25 returns", "married filing separate returns", "head of

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1 household", "surviving spouse" and "single", as those terms are
2 generally defined for federal tax purposes;

3 G. "fiscal year" means any accounting period of
4 twelve months ending on the last day of any month other than
5 December;

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

8 I. "individual" means a natural person, an estate,
9 a trust or a fiduciary acting for a natural person, trust or
10 estate;

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

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

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

- 23 (1) compensation;
24 (2) net profit from business;
25 (3) gains from dealings in property;

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

21 M. "modified gross income" excludes:

- 22 (1) payments for hospital, dental, medical or
- 23 drug expenses to or on behalf of the taxpayer;
- 24 (2) the value of room and board provided by
- 25 federal, state or local governments or by private individuals

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1 or agencies based upon financial need and not as a form of
2 compensation;

3 (3) payments pursuant to a federal, state or
4 local government program directly or indirectly to a third
5 party on behalf of the taxpayer when identified to a particular
6 use or invoice by the payer; or

7 (4) payments [~~pursuant to Sections 7-2-14,~~
8 ~~7-2-18, 7-2-18.1~~] for credits and rebates pursuant to the
9 Income Tax Act and made for a credit pursuant to Section 7-3-9
10 NMSA 1978;

11 N. "net income" means, for estates and trusts, base
12 income adjusted to exclude amounts that the state is prohibited
13 from taxing because of the laws or constitution of this state
14 or the United States and means, for taxpayers other than
15 estates or trusts, base income adjusted to exclude:

16 (1) an amount equal to the standard deduction
17 allowed the taxpayer for the taxpayer's taxable year by Section
18 63 of the Internal Revenue Code, as that section may be amended
19 or renumbered;

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

25 (3) an amount equal to the product of the

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1 exemption amount allowed for the taxpayer's taxable year by
2 Section 151 of the Internal Revenue Code, as that section may
3 be amended or renumbered, multiplied by the number of personal
4 exemptions allowed for federal income tax purposes;

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

7 (5) other amounts that the state is prohibited
8 from taxing because of the laws or constitution of this state
9 or the United States;

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

12 (a) net operating loss carryback
13 deductions to that year from taxable years beginning prior to
14 January 1, 1991 claimed and allowed, as provided by the
15 Internal Revenue Code; and

16 (b) net operating loss carryover
17 deductions to that year claimed and allowed; and

18 (7) for taxable years beginning on or after
19 January 1, 1991, an amount equal to the sum of any net
20 operating loss carryover deductions to that year claimed and
21 allowed, provided that the amount of any net operating loss
22 carryover from a taxable year beginning on or after January 1,
23 1991 may be excluded only as follows:

24 (a) in the case of a timely filed
25 return, in the taxable year immediately following the taxable

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1 year for which the return is filed; or

2 (b) in the case of amended returns or
3 original returns not timely filed, in the first taxable year
4 beginning after the date on which the return or amended return
5 establishing the net operating loss is filed; and

6 (c) in either case, if the net operating
7 loss carryover exceeds the amount of net income exclusive of
8 the net operating loss carryover for the taxable year to which
9 the exclusion first applies, in the next four succeeding
10 taxable years in turn until the net operating loss carryover is
11 exhausted; in no event shall a net operating loss carryover be
12 excluded in any taxable year after the fourth taxable year
13 beginning after the taxable year to which the exclusion first
14 applies;

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

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

25 Q. "nonresident" means every individual not a

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1 resident of this state;

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

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

21 T. "secretary" means the secretary of taxation and
22 revenue or the secretary's delegate;

23 U. "state" means any state of the United States,
24 the District of Columbia, the commonwealth of Puerto Rico, any
25 territory or possession of the United States or any political

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1 subdivision of a foreign country;

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

8 W. "surviving spouse" means "surviving spouse" as
9 generally defined for federal income tax purposes;

10 X. "taxable income" means net income less any lump-
11 sum amount;

12 Y. "taxable year" means the calendar year or fiscal
13 year upon the basis of which the net income is computed under
14 the Income Tax Act and includes, in the case of the return made
15 for a fractional part of a year under the provisions of the
16 Income Tax Act, the period for which the return is made; and

17 Z. "taxpayer" means any individual subject to the
18 tax imposed by the Income Tax Act."

19 Section 2. Section 7-2-14 NMSA 1978 (being Laws 1972,
20 Chapter 20, Section 2, as amended) is amended to read:

21 "7-2-14. LOW-INCOME COMPREHENSIVE TAX REBATE.--

22 A. Except as otherwise provided in Subsection B of
23 this section, any resident who files an individual New Mexico
24 income tax return and who is not a dependent of another
25 individual may claim a tax rebate, to be referred to as the

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1 "low-income comprehensive tax rebate" for a portion of state
2 and local taxes to which the resident has been subject during
3 the taxable year for which the return is filed. The tax rebate
4 may be claimed even though the resident has no income taxable
5 under the Income Tax Act. A husband and wife who file separate
6 returns for a taxable year in which they could have filed a
7 joint return may each claim only one-half of the tax rebate
8 that would have been allowed on a joint return.

9 B. No claim for the tax rebate provided in this
10 section shall be filed by a resident who was an inmate of a
11 public institution for more than six months during the taxable
12 year for which the tax rebate could be claimed or who was not
13 physically present in New Mexico for at least six months during
14 the taxable year for which the tax rebate could be claimed.

15 C. The tax rebate provided in this section shall
16 not be allowed for a taxpayer who has claimed a working
17 families tax credit for the taxable year.

18 [~~C.~~] D. For the purposes of this section, the total
19 number of exemptions for which a tax rebate may be claimed or
20 allowed is determined by adding the number of federal
21 exemptions allowable for federal income tax purposes for each
22 individual included in the return who is domiciled in New
23 Mexico plus two additional exemptions for each individual
24 domiciled in New Mexico included in the return who is sixty-
25 five years of age or older plus one additional exemption for

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1 each individual domiciled in New Mexico included in the return
 2 who, for federal income tax purposes, is blind plus one
 3 exemption for each minor child or stepchild of the resident who
 4 would be a dependent for federal income tax purposes if the
 5 public assistance contributing to the support of the child or
 6 stepchild was considered to have been contributed by the
 7 resident.

8 ~~[D-]~~ E. The tax rebate provided for in this section
 9 may be claimed in the amount shown in the following table:

10	Modified gross		And the total number					
11	income is:		of exemptions is:					
12		But Not						6 or
13	Over	Over	1	2	3	4	5	More
14	\$ 0	\$ 500	\$ 120	\$ 160	\$ 200	\$ 240	\$ 280	\$ 320
15	500	1,000	135	195	250	310	350	415
16	1,000	1,500	135	195	250	310	350	435
17	1,500	2,000	135	195	250	310	350	450
18	2,000	2,500	135	195	250	310	350	450
19	2,500	3,000	135	195	250	310	350	450
20	3,000	3,500	135	195	250	310	350	450
21	3,500	4,000	135	195	250	310	355	450
22	4,000	4,500	135	195	250	310	355	450
23	4,500	5,000	125	190	240	305	355	450
24	5,000	5,500	115	175	230	295	355	430
25	5,500	6,000	105	155	210	260	315	410

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1	6,000	7,000	90	130	170	220	275	370
2	7,000	8,000	80	115	145	180	225	295
3	8,000	9,000	70	105	135	170	195	240
4	9,000	10,000	65	95	115	145	175	205
5	10,000	11,000	60	80	100	130	155	185
6	11,000	12,000	55	70	90	110	135	160
7	12,000	13,000	50	65	85	100	115	140
8	13,000	14,000	50	65	85	100	115	140
9	14,000	15,000	45	60	75	90	105	120
10	15,000	16,000	40	55	70	85	95	110
11	16,000	17,000	35	50	65	80	85	105
12	17,000	18,000	30	45	60	70	80	95
13	18,000	19,000	25	35	50	60	70	80
14	19,000	20,000	20	30	40	50	60	65
15	20,000	21,000	15	25	30	40	50	55
16	21,000	22,000	10	20	25	35	40	45.

17 ~~[E.]~~ F. If a taxpayer's modified gross income is
18 zero, the taxpayer may claim a credit in the amount shown in
19 the first row of the table appropriate for the taxpayer's
20 number of exemptions.

21 ~~[F.]~~ G. The tax rebates provided for in this section
22 may be deducted from the taxpayer's New Mexico income tax
23 liability for the taxable year. If the tax rebates exceed the
24 taxpayer's income tax liability, the excess shall be refunded
25 to the taxpayer.

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1 [~~G.~~] H. For purposes of this section, "dependent"
2 means "dependent" as defined by Section 152 of the Internal
3 Revenue Code of 1986, as that section may be amended or
4 renumbered, but also includes any minor child or stepchild of
5 the resident who would be a dependent for federal income tax
6 purposes if the public assistance contributing to the support
7 of the child or stepchild was considered to have been
8 contributed by the resident."

9 Section 3. A new section of the Income Tax Act is
10 enacted to read:

11 "[NEW MATERIAL] WORKING FAMILIES TAX CREDIT.--

12 A. A person who files an individual New Mexico
13 income tax return and who is not a dependent of another
14 taxpayer may claim a credit in an amount equal to ten percent
15 of a federal income tax credit for which that person is
16 eligible pursuant to Section 32 of the Internal Revenue Code if
17 the person does not claim a rebate for the taxable year
18 pursuant to Section 7-2-14 NMSA 1978. The credit provided in
19 this section may be referred to as the "working families tax
20 credit".

21 B. A husband and wife who file separate returns for
22 a taxable year in which they could have filed a joint return
23 may claim only one-half of the credit that would have been
24 allowed on a joint return.

25 C. The working families tax credit may be deducted

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1 from the income tax liability of a person who claims the credit
2 and qualifies for the credit pursuant to this section. If the
3 credit exceeds the person's income tax liability for the
4 taxable year, the excess shall be refunded to the person."

5 Section 4. APPLICABILITY.--The provisions of this act
6 apply to taxable years beginning on or after January 1, 2007.