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SENATE BILL 482

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

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO TAXATION; PROVIDING TAX CREDITS FOR LOW-INCOME NEW MEXICANS; CREATING THE STATE EARNED INCOME 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 income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

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1 B. "base income":

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

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

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

25 (4) includes, for all taxpayers, an amount

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1 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
2 taxable year if:

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

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

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

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

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

22 F. "filing status" means "married filing joint
23 returns", "married filing separate returns", "head of
24 household", "surviving spouse" and "single", as those terms are
25 generally defined for federal tax purposes;

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

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

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

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

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

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

- 21 (1) compensation;
22 (2) net profit from business;
23 (3) gains from dealings in property;
24 (4) interest;
25 (5) net rents;

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

19 M. "modified gross income" excludes:

- 20 (1) payments for hospital, dental, medical or
- 21 drug expenses to or on behalf of the taxpayer;
- 22 (2) the value of room and board provided by
- 23 federal, state or local governments or by private individuals
- 24 or agencies based upon financial need and not as a form of
- 25 compensation;

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

5 (4) payments [~~pursuant to Sections 7-2-14,~~
6 ~~7-2-18, 7-2-18.1~~] for credits and rebates pursuant to the
7 Income Tax Act and made for a credit pursuant to Section 7-3-9
8 NMSA 1978;

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

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

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

23 (3) an amount equal to the product of the
24 exemption amount allowed for the taxpayer's taxable year by
25 Section 151 of the Internal Revenue Code, as that section may

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1 be amended or renumbered, multiplied by the number of personal
2 exemptions allowed for federal income tax purposes;

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

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

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

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

14 (b) net operating loss carryover
15 deductions to that year claimed and allowed; and

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

22 (a) in the case of a timely filed
23 return, in the taxable year immediately following the taxable
24 year for which the return is filed; or

25 (b) in the case of amended returns or

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1 original returns not timely filed, in the first taxable year
2 beginning after the date on which the return or amended return
3 establishing the net operating loss is filed; and

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

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

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

23 Q. "nonresident" means every individual not a
24 resident of this state;

25 R. "person" means any individual, estate, trust,

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

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

19 T. "secretary" means the secretary of taxation and
20 revenue or the secretary's delegate;

21 U. "state" means any state of the United States,
22 the District of Columbia, the commonwealth of Puerto Rico, any
23 territory or possession of the United States or any political
24 subdivision of a foreign country;

25 V. "state or local bond" means a bond issued by a

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

6 W. "surviving spouse" means "surviving spouse" as
7 generally defined for federal income tax purposes;

8 X. "taxable income" means net income less any lump-
9 sum amount;

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

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

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

19 "7-2-14. LOW-INCOME COMPREHENSIVE TAX REBATE.--

20 A. Except as otherwise provided in Subsection B of
21 this section, any resident who files an individual New Mexico
22 income tax return and who is not a dependent of another
23 individual may claim a tax rebate, to be referred to as the
24 "low-income comprehensive tax rebate", for a portion of state
25 and local taxes to which the resident has been subject during

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

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

13 C. The tax rebate provided in this section shall be
14 allowed even if a taxpayer has claimed a state earned income
15 tax credit for the taxable year.

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

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1 exemption for each minor child or stepchild of the resident who
 2 would be a dependent for federal income tax purposes if the
 3 public assistance contributing to the support of the child or
 4 stepchild was considered to have been contributed by the
 5 resident.

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

8	Modified gross		And the total number					
9	income is:		of exemptions is:					
10		But Not						6 or
11	Over	Over	1	2	3	4	5	More
12	\$ 0	\$ 500	\$ 120	\$ 160	\$ 200	\$ 240	\$ 280	\$ 320
13	500	1,000	135	195	250	310	350	415
14	1,000	1,500	135	195	250	310	350	435
15	1,500	2,000	135	195	250	310	350	450
16	2,000	2,500	135	195	250	310	350	450
17	2,500	3,000	135	195	250	310	350	450
18	3,000	3,500	135	195	250	310	350	450
19	3,500	4,000	135	195	250	310	355	450
20	4,000	4,500	135	195	250	310	355	450
21	4,500	5,000	125	190	240	305	355	450
22	5,000	5,500	115	175	230	295	355	430
23	5,500	6,000	105	155	210	260	315	410
24	6,000	7,000	90	130	170	220	275	370
25	7,000	8,000	80	115	145	180	225	295

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

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

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

24 ~~[G.]~~ H. For purposes of this section, "dependent"
25 means "dependent" as defined by Section 152 of the Internal

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1 Revenue Code of 1986, as that section may be amended or
2 renumbered, but also includes any minor child or stepchild of
3 the resident who would be a dependent for federal income tax
4 purposes if the public assistance contributing to the support
5 of the child or stepchild was considered to have been
6 contributed by the resident."

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

9 "[NEW MATERIAL] STATE EARNED INCOME TAX CREDIT.--

10 A. A person who files an individual New Mexico
11 income tax return and who is not a dependent of another
12 taxpayer may claim a credit in an amount equal to ten percent
13 of a federal income tax credit for which that person is
14 eligible pursuant to Section 32 of the Internal Revenue Code.
15 The credit provided in this section may be referred to as the
16 "state earned income tax credit".

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

21 C. The state earned income tax credit may be
22 deducted from the income tax liability of a person who claims
23 the credit and qualifies for the credit pursuant to this
24 section. If the credit exceeds the person's income tax
25 liability for the taxable year, the excess shall be refunded to

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the person."

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