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SENATE BILL 1156

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

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; CREATING THE WORKING FAMILIES TAX CREDIT TO PROVIDE AN INCOME TAX CREDIT FOR CERTAIN PERSONS EQUAL TO A PERCENTAGE OF A FEDERAL INCOME TAX CREDIT FOR EARNED INCOME; ACCELERATING THE IMPLEMENTATION OF INCOME TAX RATE REDUCTIONS; PROVIDING AN INCOME TAX EXEMPTION FOR ARMED FORCES INCOME; PROVIDING A PHASED-IN CREDIT FOR THE STATE PORTION OF GROSS RECEIPTS TAX FOR CERTAIN HOSPITALS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION ADJUSTMENT--TAX ADMINISTRATION SUSPENSE FUND--CREDIT FOR RECEIPTS OF

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1 HOSPITALS.--Distributions from the tax administration suspense
2 fund to the general fund of net receipts attributable to the
3 gross receipts tax shall be adjusted for the full cost of
4 credits issued pursuant to the Gross Receipts and Compensating
5 Tax Act for receipts of hospitals licensed by the department of
6 health."

7 Section 2. Section 7-2-2 NMSA 1978 (being Laws 1986,
8 Chapter 20, Section 26, as amended by Laws 2003, Chapter 13,
9 Section 1 and by Laws 2003, Chapter 275, Section 1) is amended
10 to read:

11 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
12 Act and unless the context requires otherwise:

13 A. "adjusted gross income" means adjusted gross
14 income as defined in Section 62 of the Internal Revenue Code,
15 as that section may be amended or renumbered;

16 B. "base income":

17 (1) means, for estates and trusts, that part
18 of the estate's or trust's income defined as taxable income and
19 upon which the federal income tax is calculated in the Internal
20 Revenue Code for income tax purposes plus, for taxable years
21 beginning on or after January 1, 1991, the amount of the net
22 operating loss deduction allowed by Section 172(a) of the
23 Internal Revenue Code, as that section may be amended or
24 renumbered, and taken by the taxpayer for that year;

25 (2) means, for taxpayers other than estates or

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1 trusts, that part of the taxpayer's income defined as adjusted
2 gross income plus, for taxable years beginning on or after
3 January 1, 1991, the amount of the net operating loss deduction
4 allowed by Section 172(a) of the Internal Revenue Code, as that
5 section may be amended or renumbered, and taken by the taxpayer
6 for that year;

7 (3) includes, for all taxpayers, any other
8 income of the taxpayer not included in adjusted gross income
9 but upon which a federal tax is calculated pursuant to the
10 Internal Revenue Code for income tax purposes, except amounts
11 for which a calculation of tax is made pursuant to Section 55
12 of the Internal Revenue Code, as that section may be amended or
13 renumbered; "base income" also includes interest received on a
14 state or local bond; and

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

18 (a) such amount is transferred to
19 another qualified tuition program, as defined in Section 529 of
20 the Internal Revenue Code, not authorized in the Education
21 Trust Act; or

22 (b) a distribution or refund is made for
23 any reason other than: 1) to pay for qualified higher
24 education expenses, as defined pursuant to Section 529 of the
25 Internal Revenue Code; or 2) upon the beneficiary's death,

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1 disability or receipt of a scholarship;

2 C. "compensation" means wages, salaries,
3 commissions and any other form of remuneration paid to
4 employees for personal services;

5 D. "department" means the taxation and revenue
6 department, the secretary or any employee of the department
7 exercising authority lawfully delegated to that employee by the
8 secretary;

9 E. "fiduciary" means a guardian, trustee, executor,
10 administrator, committee, conservator, receiver, individual or
11 corporation acting in any fiduciary capacity;

12 F. "filing status" means "married filing joint
13 returns", "married filing separate returns", "head of
14 household", "surviving spouse" and "single", as those terms are
15 generally defined for federal tax purposes;

16 G. "fiscal year" means any accounting period of
17 twelve months ending on the last day of any month other than
18 December;

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

21 I. "individual" means a natural person, an estate,
22 a trust or a fiduciary acting for a natural person, trust or
23 estate;

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

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1 K. "lump-sum amount" means for the purpose of
2 determining liability for federal income tax, an amount that
3 was not included in adjusted gross income but upon which the
4 five-year-averaging or the ten-year-averaging method of tax
5 computation provided in Section 402 of the Internal Revenue
6 Code, as that section may be amended or renumbered, was
7 applied;

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

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

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1 (15) income from an interest in an estate or a
2 trust;

3 (16) social security benefits;

4 (17) unemployment compensation benefits;

5 (18) workers' compensation benefits;

6 (19) public assistance and welfare benefits;

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

8 (21) gifts;

9 M. "modified gross income" excludes:

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

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

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

20 (4) payments [~~pursuant to Sections 7-2-14,~~
21 ~~7-2-18, 7-2-18.1~~] for credits and rebates pursuant to the
22 Income Tax Act and made for a credit pursuant to Section 7-3-9
23 NMSA 1978;

24 N. "net income" means, for estates and trusts, base
25 income adjusted to exclude amounts that the state is prohibited

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1 from taxing because of the laws or constitution of this state
2 or the United States and means, for taxpayers other than
3 estates or trusts, base income adjusted to exclude:

4 (1) an amount equal to the standard deduction
5 allowed the taxpayer for the taxpayer's taxable year by Section
6 63 of the Internal Revenue Code, as that section may be amended
7 or renumbered;

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

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

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

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

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

25 (a) net operating loss carryback

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1 deductions to that year from taxable years beginning prior to
2 January 1, 1991 claimed and allowed, as provided by the
3 Internal Revenue Code; and

4 (b) net operating loss carryover
5 deductions to that year claimed and allowed; and

6 (7) for taxable years beginning on or after
7 January 1, 1991, an amount equal to the sum of any net
8 operating loss carryover deductions to that year claimed and
9 allowed, provided that the amount of any net operating loss
10 carryover from a taxable year beginning on or after January 1,
11 1991 may be excluded only as follows:

12 (a) in the case of a timely filed
13 return, in the taxable year immediately following the taxable
14 year for which the return is filed; or

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

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

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1 beginning after the taxable year to which the exclusion first
2 applies;

3 O. "net operating loss" means any net operating
4 loss, as defined by Section 172(c) of the Internal Revenue
5 Code, as that section may be amended or renumbered, for a
6 taxable year as further increased by the income, if any, from
7 obligations of the United States for that year less related
8 expenses;

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

13 Q. "nonresident" means every individual not a
14 resident of this state;

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

22 S. "resident" means an individual who is domiciled
23 in this state during any part of the taxable year or an
24 individual who is physically present in this state for one
25 hundred eighty-five days or more during the taxable year; but

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1 any individual, other than someone who was physically present
2 in the state for one hundred eighty-five days or more during
3 the taxable year, who, on or before the last day of the taxable
4 year, changed [~~his~~] the individual's place of abode to a place
5 without this state with the bona fide intention of continuing
6 actually to abide permanently without this state is not a
7 resident for the purposes of the Income Tax Act for periods
8 after that change of abode;

9 T. "secretary" means the secretary of taxation and
10 revenue or the secretary's delegate;

11 U. "state" means any state of the United States,
12 the District of Columbia, the commonwealth of Puerto Rico, any
13 territory or possession of the United States or any political
14 subdivision of a foreign country;

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

21 W. "surviving spouse" means "surviving spouse" as
22 generally defined for federal income tax purposes;

23 X. "taxable income" means net income less any lump-
24 sum amount;

25 Y. "taxable year" means the calendar year or fiscal

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1 year upon the basis of which the net income is computed under
2 the Income Tax Act and includes, in the case of the return made
3 for a fractional part of a year under the provisions of the
4 Income Tax Act, the period for which the return is made; and

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

7 Section 3. Section 7-2-7 NMSA 1978 (being Laws 2005 (1st
8 S.S.), Chapter 3, Section 2) is repealed and a new Section
9 7-2-7 NMSA 1978 is enacted to read:

10 "7-2-7. [NEW MATERIAL] INDIVIDUAL INCOME TAX RATES.--The
11 tax imposed by Section 7-2-3 NMSA 1978 shall be at the
12 following rates for a taxable year beginning on or after
13 January 1, 2007:

14 A. For married individuals filing separate returns:

15 If the taxable income is:	The tax shall be:
16 Not over \$4,000	1.7% of taxable income
17 Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of
18	excess over \$ 4,000
19 Over \$ 8,000 but not over \$ 12,000	\$ 196 plus 4.7% of
20	excess over \$ 8,000
21 Over \$ 12,000	\$ 384 plus 4.9% of
22	excess over \$ 12,000.

23 B. For heads of household, surviving spouses and
24 married individuals filing joint returns:

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

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1 Not over \$8,000 1.7% of taxable income
2 Over \$ 8,000 but not over \$ 16,000 \$ 136 plus 3.2% of
3 excess over \$ 8,000
4 Over \$ 16,000 but not over \$ 24,000 \$ 392 plus 4.7% of
5 excess over \$ 16,000
6 Over \$ 24,000 \$ 768 plus 4.9% of
7 excess over \$ 24,000.

8 C. For single individuals and for estates and
9 trusts:

10 If the taxable income is: The tax shall be:
11 Not over \$5,500 1.7% of taxable income
12 Over \$ 5,500 but not over \$ 11,000 \$ 93.50 plus 3.2% of
13 excess over \$ 5,500
14 Over \$ 11,000 but not over \$ 16,000 \$ 269.50 plus 4.7% of
15 excess over \$ 11,000
16 Over \$ 16,000 \$ 504.50 plus 4.9% of
17 excess over \$ 16,000.

18 D. The tax on the sum of any lump-sum amounts
19 included in net income is an amount equal to five multiplied by
20 the difference between:

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

23 (2) the amount of tax that would be due on an
24 amount equal to the taxpayer's taxable income and twenty
25 percent of the taxpayer's lump-sum amounts included in net

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1 income."

2 Section 4. Section 7-2-14 NMSA 1978 (being Laws 1972,
3 Chapter 20, Section 2, as amended) is amended to read:

4 "7-2-14. LOW-INCOME COMPREHENSIVE TAX REBATE.--

5 A. Except as otherwise provided in Subsection B of
6 this section, any resident who files an individual New Mexico
7 income tax return and who is not a dependent of another
8 individual may claim a tax rebate, to be referred to as the
9 "low-income comprehensive tax rebate" for a portion of state
10 and local taxes to which the resident has been subject during
11 the taxable year for which the return is filed. The tax rebate
12 may be claimed even though the resident has no income taxable
13 under the Income Tax Act. A husband and wife who file separate
14 returns for a taxable year in which they could have filed a
15 joint return may each claim only one-half of the tax rebate
16 that would have been allowed on a joint return.

17 B. No claim for the tax rebate provided in this
18 section shall be filed by a resident who was an inmate of a
19 public institution for more than six months during the taxable
20 year for which the tax rebate could be claimed or who was not
21 physically present in New Mexico for at least six months during
22 the taxable year for which the tax rebate could be claimed.

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

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1 ~~[G-]~~ D. For the purposes of this section, the total
2 number of exemptions for which a tax rebate may be claimed or
3 allowed is determined by adding the number of federal
4 exemptions allowable for federal income tax purposes for each
5 individual included in the return who is domiciled in New
6 Mexico plus two additional exemptions for each individual
7 domiciled in New Mexico included in the return who is sixty-
8 five years of age or older plus one additional exemption for
9 each individual domiciled in New Mexico included in the return
10 who, for federal income tax purposes, is blind plus one
11 exemption for each minor child or stepchild of the resident who
12 would be a dependent for federal income tax purposes if the
13 public assistance contributing to the support of the child or
14 stepchild was considered to have been contributed by the
15 resident.

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

Modified gross		And the total number					
income is:		of exemptions is:					
	But Not						6 or
Over	Over	1	2	3	4	5	More
\$ 0	\$ 500	\$ 120	\$ 160	\$ 200	\$ 240	\$ 280	\$ 320
500	1,000	135	195	250	310	350	415
1,000	1,500	135	195	250	310	350	435
1,500	2,000	135	195	250	310	350	450

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1	2,000	2,500	135	195	250	310	350	450
2	2,500	3,000	135	195	250	310	350	450
3	3,000	3,500	135	195	250	310	350	450
4	3,500	4,000	135	195	250	310	355	450
5	4,000	4,500	135	195	250	310	355	450
6	4,500	5,000	125	190	240	305	355	450
7	5,000	5,500	115	175	230	295	355	430
8	5,500	6,000	105	155	210	260	315	410
9	6,000	7,000	90	130	170	220	275	370
10	7,000	8,000	80	115	145	180	225	295
11	8,000	9,000	70	105	135	170	195	240
12	9,000	10,000	65	95	115	145	175	205
13	10,000	11,000	60	80	100	130	155	185
14	11,000	12,000	55	70	90	110	135	160
15	12,000	13,000	50	65	85	100	115	140
16	13,000	14,000	50	65	85	100	115	140
17	14,000	15,000	45	60	75	90	105	120
18	15,000	16,000	40	55	70	85	95	110
19	16,000	17,000	35	50	65	80	85	105
20	17,000	18,000	30	45	60	70	80	95
21	18,000	19,000	25	35	50	60	70	80
22	19,000	20,000	20	30	40	50	60	65
23	20,000	21,000	15	25	30	40	50	55
24	21,000	22,000	10	20	25	35	40	45.

25 ~~[E.]~~ F. If a taxpayer's modified gross income is

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1 zero, the taxpayer may claim a credit in the amount shown in
2 the first row of the table appropriate for the taxpayer's
3 number of exemptions.

4 [~~F.~~] G. The tax rebates provided for in this section
5 may be deducted from the taxpayer's New Mexico income tax
6 liability for the taxable year. If the tax rebates exceed the
7 taxpayer's income tax liability, the excess shall be refunded
8 to the taxpayer.

9 [~~G.~~] H. For purposes of this section, "dependent"
10 means "dependent" as defined by Section 152 of the Internal
11 Revenue Code of 1986, as that section may be amended or
12 renumbered, but also includes any minor child or stepchild of
13 the resident who would be a dependent for federal income tax
14 purposes if the public assistance contributing to the support
15 of the child or stepchild was considered to have been
16 contributed by the resident."

17 Section 5. A new section of the Income Tax Act is
18 enacted to read:

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

20 A. A person who files an individual New Mexico
21 income tax return and who is not a dependent of another
22 taxpayer may claim a credit in an amount calculated pursuant to
23 Subsection B of this section. A person is eligible for a
24 credit pursuant to this section only if the person does not
25 claim a rebate for the taxable year pursuant to Section 7-2-14

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1 NMSA 1978. The credit provided in this section may be referred
2 to as the "working families tax credit".

3 B. The amount of credit for which a person is
4 eligible pursuant to this section shall be an amount equal to
5 the product of ten percent of the federal income tax credit for
6 the taxable year for which that person is eligible pursuant to
7 Section 32 of the Internal Revenue Code multiplied by a ratio,
8 the numerator of which is the person's earned income in New
9 Mexico for the taxable year and the denominator of which is the
10 person's total earned income for the taxable year. For the
11 purposes of this subsection, "earned income" means earned
12 income as defined in Section 32 of the Internal Revenue Code.

13 C. A husband and wife who file separate returns for
14 a taxable year in which they could have filed a joint return
15 may claim only one-half of the credit that would have been
16 allowed on a joint return.

17 D. The working families tax credit may be deducted
18 from the income tax liability of a person who claims the credit
19 and qualifies for the credit pursuant to this section. If the
20 credit exceeds the person's income tax liability for the
21 taxable year, the excess shall be refunded to the person."

22 Section 6. A new section of the Income Tax Act is
23 enacted to read:

24 "[NEW MATERIAL] EXEMPTION--ARMED FORCES INCOME.--Income
25 earned from service as an active duty member of the armed

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1 forces of the United States is exempt from taxation."

2 Section 7. A new section of the Gross Receipts and
3 Compensating Tax Act is enacted to read:

4 "[NEW MATERIAL] CREDIT--GROSS RECEIPTS TAX--RECEIPTS OF
5 CERTAIN HOSPITALS.--

6 A. A hospital licensed by the department of health
7 may claim a credit for each reporting period against the gross
8 receipts tax due for that reporting period as follows:

9 (1) for a hospital located in a municipality:

10 (a) on or after July 1, 2007 but before
11 July 1, 2008, in an amount equal to one and twenty-six
12 hundredths percent of the hospital's taxable gross receipts for
13 that reporting period after all applicable deductions have been
14 taken;

15 (b) on or after July 1, 2008 but before
16 July 1, 2009, in an amount equal to two and fifty-three
17 hundredths percent of the hospital's taxable gross receipts for
18 that reporting period after all applicable deductions have been
19 taken; and

20 (c) on or after July 1, 2009, in an
21 amount equal to three and seven hundred seventy-five
22 thousandths percent of the hospital's taxable gross receipts
23 for that reporting period after all applicable deductions have
24 been taken; and

25 (2) for a hospital located in the

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1 unincorporated area of a county:

2 (a) on or after July 1, 2007 but before
3 July 1, 2008, in an amount equal to one and sixty-five
4 hundredths percent of the hospital's taxable gross receipts for
5 that reporting period after all applicable deductions have been
6 taken;

7 (b) on or after July 1, 2008, but before
8 July 1, 2009, in an amount equal to three and thirty-five
9 hundredths percent of the hospital's taxable gross receipts for
10 that reporting period after all applicable deductions have been
11 taken; and

12 (c) on or after July 1, 2008, in an
13 amount equal to five percent of the hospital's taxable gross
14 receipts for that reporting period after all applicable
15 deductions have been taken.

16 B. For the purposes of this section, "hospital"
17 means a facility providing emergency or urgent care, inpatient
18 medical care and nursing care for acute illness, injury,
19 surgery or obstetrics and includes a facility licensed by the
20 department of health as a critical access hospital, general
21 hospital, long-term acute care hospital, psychiatric hospital,
22 rehabilitation hospital, limited services hospital and special
23 hospital."

24 Section 8. TEMPORARY PROVISION.--The repeal of Laws 2005
25 (1st S.S.), Chapter 3, Section 2 by Section 3 of this act does
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1 not affect the individual income tax rates imposed by that
2 section for any taxable year beginning in 2006.

3 Section 9. REPEAL.--Laws 2005, Chapter 104, Section 4 is
4 repealed.

5 Section 10. APPLICABILITY.--The provisions of Sections
6 2, 4, 5 and 6 of this act apply to taxable years beginning on
7 or after January 1, 2007. The provisions of Section 7 of this
8 act apply to reporting periods beginning on or after July 1,
9 2007.