

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 515

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO TAXATION; PROVIDING THAT INVESTMENT AMOUNTS  
TRANSFERRED IN CALENDAR YEAR 2009 FROM THE EDUCATION TRUST FUND  
TO ANOTHER SECTION 529 QUALIFIED TUITION PROGRAM SHALL NOT BE  
SUBJECT TO RECAPTURE PROVISIONS OF THE INCOME TAX ACT.

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) 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;

B. "base income":

(1) means, for estates and trusts, that part

.175636.2

underscored material = new  
[bracketed material] = delete

underscoring material = new  
[bracketed material] = delete

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

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

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

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

.175636.2

underscored material = new  
[bracketed material] = delete

1 (a) such amount is transferred, prior to  
2 January 1, 2009 or after December 31, 2009, to another  
3 qualified tuition program, as defined in Section 529 of the  
4 Internal Revenue Code, not authorized in the Education Trust  
5 Act; or

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

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

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

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

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

25 G. "fiscal year" means any accounting period of

.175636.2

underscored material = new  
[bracketed material] = delete

1 twelve months ending on the last day of any month other than  
2 December;

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

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

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

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

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

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

.175636.2

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

18 M. "modified gross income" excludes:

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

1 local government program directly or indirectly to a third  
2 party on behalf of the taxpayer when identified to a particular  
3 use or invoice by the payer; or

4 (4) payments for credits and rebates pursuant  
5 to the Income Tax Act and made for a credit pursuant to Section  
6 7-3-9 NMSA 1978;

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

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

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

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

.175636.2

underscored material = new  
[bracketed material] = delete

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

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

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

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

12 (b) net operating loss carryover  
13 deductions to that year claimed and allowed; and

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

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

23 (b) in the case of amended returns or  
24 original returns not timely filed, in the first taxable year  
25 beginning after the date on which the return or amended return

.175636.2

underscoring material = new  
[bracketed material] = delete

1 establishing the net operating loss is filed; and

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

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

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

21 Q. "nonresident" means every individual not a  
22 resident of this state;

23 R. "person" means any individual, estate, trust,  
24 receiver, cooperative association, club, corporation, company,  
25 firm, partnership, limited liability company, joint venture,

.175636.2



underscoring material = new  
[bracketed material] = delete

1 syndicate or other association; "person" also means, to the  
2 extent permitted by law, any federal, state or other  
3 governmental unit or subdivision or agency, department or  
4 instrumentality thereof;

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

17 T. "secretary" means the secretary of taxation and  
18 revenue or the secretary's delegate;

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

23 V. "state or local bond" means a bond issued by a  
24 state other than New Mexico or by a local government other than  
25 one of New Mexico's political subdivisions, the interest from

.175636.2

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

1 which is excluded from income for federal income tax purposes  
2 under Section 103 of the Internal Revenue Code, as that section  
3 may be amended or renumbered;

4 W. "surviving spouse" means "surviving spouse" as  
5 generally defined for federal income tax purposes;

6 X. "taxable income" means net income less any lump-  
7 sum amount;

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

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