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SENATE BILL 3

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

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO TAXATION; AMENDING THE INCOME TAX ACT TO PROVIDE THAT CERTAIN AMOUNTS PAID AS STATE OR LOCAL TAX AND DEDUCTED FROM FEDERAL TAXABLE INCOME BE INCLUDED IN NEW MEXICO TAXABLE INCOME; DECLARING AN EMERGENCY.

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

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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:

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

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

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

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

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

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

24 G. "fiscal year" means any accounting period of
25 twelve months ending on the last day of any month other than

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1 December;

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

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

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

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

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

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

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

17 M. "modified gross income" excludes:

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

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1 party on behalf of the taxpayer when identified to a particular
2 use or invoice by the payer; or

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

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

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

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

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

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1 exemptions allowed for federal income tax purposes;

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

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

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

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

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

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

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

24 (b) in the case of amended returns or
25 original returns not timely filed, in the first taxable year

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1 beginning after the date on which the return or amended return
2 establishing the net operating loss is filed; and

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

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

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

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

24 R. "person" means any individual, estate, trust,
25 receiver, cooperative association, club, corporation, company,

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

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

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

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

24 V. "state or local bond" means a bond issued by a
25 state other than New Mexico or by a local government other than

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

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

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

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

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

16 Section 2. TEMPORARY PROVISION.--For taxable year 2009, a
17 taxpayer is deemed to have complied with the provisions of
18 Section 7-2-12.2 NMSA 1978 if the taxpayer has made the
19 required annual payments of estimated taxes due for taxable
20 year 2009 based on the provisions of the version of Section
21 7-2-7 NMSA 1978 applicable on January 1, 2008 through December
22 31, 2009.

23 Section 3. CONTINGENT APPLICABILITY.--

24 A. If this act is passed by at least a two-thirds'
25 vote of each house, the provisions of this act apply to gross

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1 receipts received beginning on or after January 1, 2010.

2 B. If this act is passed by both houses by less
3 than a two-thirds' vote of either house, the provisions of this
4 act apply to gross receipts received beginning on or after
5 February 1, 2010.

6 Section 4. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect immediately.

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