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HOUSE BILL 184

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Sarah Maestas Barnes

AN ACT

RELATING TO TAXATION; CREATING A SMALL BUSINESS INCOME TAX
DEDUCTION FOR BUSINESSES WITH CERTAIN BASE INCOMES AND THAT
EMPLOY AT LEAST ONE FULL-TIME-EQUIVALENT EMPLOYEE.

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

SECTION 1. A new section of the Income Tax Act is enacted
to read:

"~~[NEW MATERIAL]~~ SMALL BUSINESS INCOME TAX DEDUCTION.--

A. A taxpayer who is not a dependent of another
individual, who materially participates in the business
activity of a qualified small business and who earns qualified
small business income in a taxable year may claim a deduction
from net income for the qualified small business income the
taxpayer earned in that taxable year. The tax deduction
provided by this section may be referred to as the "small

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1 business income tax deduction".

2 B. Subject to the limitations in Subsections C and
3 D of this section, the amount of small business income tax
4 deduction that may be claimed in a taxable year shall equal:

5 (1) fifty percent of an amount up to and
6 including fifty thousand dollars (\$50,000) in qualified small
7 business income;

8 (2) forty percent of an amount greater than
9 fifty thousand dollars (\$50,000) up to and including one
10 hundred thousand dollars (\$100,000) in qualified small business
11 income;

12 (3) thirty percent of an amount greater than
13 one hundred thousand dollars (\$100,000) up to and including one
14 hundred fifty thousand dollars (\$150,000) in qualified small
15 business income;

16 (4) twenty percent of an amount greater than
17 one hundred fifty thousand dollars (\$150,000) up to and
18 including two hundred thousand dollars (\$200,000) in qualified
19 small business income;

20 (5) ten percent of an amount greater than two
21 hundred thousand dollars (\$200,000) up to and including two
22 hundred fifty thousand dollars (\$250,000) in qualified small
23 business income; and

24 (6) zero percent of qualified small business
25 income that exceeds two hundred fifty thousand dollars

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1 (\$250,000).

2 C. A taxpayer shall not be eligible to claim a
3 small business income tax deduction if:

4 (1) for married individuals filing separate
5 returns, single individuals and estates and trusts, the
6 taxpayer's base income is greater than two hundred fifty
7 thousand dollars (\$250,000);

8 (2) for heads of household, the taxpayer's
9 base income is greater than three hundred thousand dollars
10 (\$300,000); and

11 (3) for surviving spouses and married
12 individuals filing joint returns, the taxpayer's base income is
13 greater than three hundred fifty thousand dollars (\$350,000).

14 D. The small business income tax deduction shall
15 not reduce a taxpayer's income tax liability to less than zero
16 for the taxable year in which the deduction is claimed.

17 E. Married individuals filing separate returns for
18 a taxable year for which they could have filed a joint return
19 may each claim only one-half of the small business income tax
20 deduction that would have been claimed on a joint return.

21 F. A taxpayer allowed a deduction pursuant to this
22 section shall report the amount of the deduction to the
23 department in a manner required by the department.

24 G. The department shall compile an annual report on
25 the deduction provided by this section that shall include the

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1 number of taxpayers that claimed the deduction, the aggregate
2 amount of deductions claimed and any other information
3 necessary to evaluate the effectiveness of the deduction. The
4 department shall compile and present the annual report to the
5 revenue stabilization and tax policy committee and the
6 legislative finance committee.

7 H. As used in this section:

8 (1) "full-time-equivalent employee" means:

9 (a) an employee who works an average of
10 at least thirty-two hours per week; or

11 (b) a combination of employees, each of
12 whom does not individually work an average of at least
13 thirty-two hours per week, but who collectively work an average
14 of at least thirty-two hours per week;

15 (2) "material participation" means the
16 taxpayer is an equity owner of a qualified small business and:

17 (a) in at least five of the previous ten
18 taxable years, the taxpayer: 1) performs more than five
19 hundred hours conducting the business activity of the qualified
20 small business; 2) performs all, or nearly all, of the business
21 activity of the qualified small business; or 3) performs at
22 least one hundred hours in the business activity of the
23 qualified small business and no other person performs more
24 hours than the taxpayer conducting the business activities of
25 the qualified small business;

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1 (b) the taxpayer performs the business
2 activity of the qualified small business that is a personal
3 service activity and the taxpayer directly participates in the
4 personal service activity in any of the three previous taxable
5 years; or

6 (c) based on all the facts and
7 circumstances, the taxpayer participates in the business
8 activity of the qualified small business on a regular,
9 continuous and substantial basis and performs at least one
10 hundred hours of work for the qualified small business in the
11 taxable year in which the taxpayer claims a small business
12 income tax deduction;

13 (3) "qualified small business" means a
14 business that:

15 (a) is a sole proprietorship or an
16 entity treated as a partnership or disregarded entity for
17 federal income tax purposes;

18 (b) has its principal place of business
19 in New Mexico;

20 (c) has gross income for federal income
21 tax purposes of one million dollars (\$1,000,000) or less for
22 the taxable year in which the taxpayer claims a small business
23 income tax deduction; and

24 (d) employs: 1) at least one full-time-
25 equivalent employee if the business's gross income for federal

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1 income tax purposes is less than two hundred fifty thousand
2 dollars (\$250,000) for the taxable year in which the taxpayer
3 claimed a small business income tax deduction; 2) at least two
4 full-time-equivalent employees if the business's gross income
5 for federal income tax purposes is two hundred fifty thousand
6 dollars (\$250,000) or greater but less than five hundred
7 thousand dollars (\$500,000) for the taxable year in which the
8 taxpayer claimed a small business income tax deduction; 3) at
9 least three full-time-equivalent employees if the business's
10 gross income for federal income tax purposes is five hundred
11 thousand dollars (\$500,000) or greater but less than seven
12 hundred fifty thousand dollars (\$750,000) for the taxable year
13 in which the taxpayer claimed a small business income tax
14 deduction; or 4) at least four full-time-equivalent employees
15 if the business's gross income for federal income tax purposes
16 is greater than seven hundred fifty thousand dollars (\$750,000)
17 but less than one million dollars (\$1,000,000) for the taxable
18 year in which the taxpayer claimed a small business income tax
19 deduction; and

20 (4) "qualified small business income" means
21 any form of income, compensation or remuneration that is
22 included in the taxpayer's base income for the taxable year in
23 which the taxpayer claims a small business income tax deduction
24 and that the taxpayer derives from the taxpayer's material
25 participation in a qualified small business during the taxable

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year."

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2016.