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HOUSE BILL 48

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

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. For each taxable year ending prior to January 1,
2027, 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

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1 may be referred to as the "small business income tax
2 deduction".

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

6 (1) fifty percent of the first fifty thousand
7 dollars (\$50,000) in qualified small business income;

8 (2) forty percent of the second fifty thousand
9 dollars (\$50,000) in qualified small business income;

10 (3) thirty percent of the third fifty thousand
11 dollars (\$50,000) in qualified small business income;

12 (4) twenty percent of the fourth fifty
13 thousand dollars (\$50,000) in qualified small business income;

14 (5) ten percent of the fifth fifty thousand
15 dollars (\$50,000) in qualified small business income; and

16 (6) zero percent of qualified small business
17 income that exceeds two hundred fifty thousand dollars
18 (\$250,000).

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

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

25 (2) for heads of household, the taxpayer's

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1 base income is greater than three hundred thousand dollars
2 (\$300,000); and

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

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

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

13 F. A taxpayer allowed a deduction pursuant to this
14 section shall report the amount of the deduction to the
15 department in a manner required by the department.

16 G. The department shall compile an annual report on
17 the deduction provided by this section that shall include the
18 number of taxpayers that claimed the deduction, the aggregate
19 amount of deductions claimed and any other information
20 necessary to evaluate the effectiveness of the deduction. The
21 department shall compile and present the annual report to the
22 revenue stabilization and tax policy committee and the
23 legislative finance committee.

24 H. As used in this section:

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

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1 (a) an employee who works an average of
2 at least thirty-two hours per week for a minimum of twenty-six
3 weeks per year; or

4 (b) a combination of employees, each of
5 whom does not individually work an average of at least thirty-
6 two hours per week, but who collectively work an average of at
7 least thirty-two hours per week for a minimum of twenty-six
8 weeks per year;

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

11 (a) in at least five of the previous ten
12 taxable years, the taxpayer: 1) performs more than five
13 hundred hours conducting the business activity of the qualified
14 small business; 2) performs all, or nearly all, of the business
15 activity of the qualified small business; or 3) performs at
16 least one hundred hours in the business activity of the
17 qualified small business and no other person performs more
18 hours than the taxpayer conducting the business activities of
19 the qualified small business;

20 (b) the taxpayer performs the business
21 activity of the qualified small business that is a personal
22 service activity and the taxpayer directly participates in the
23 personal service activity in any of the three previous taxable
24 years; or

25 (c) based on all of the facts and

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1 circumstances, the taxpayer participates in the business
2 activity of the qualified small business on a regular,
3 continuous and substantial basis and performs at least one
4 hundred hours of work for the qualified small business in the
5 taxable year in which the taxpayer claims a small business
6 income tax deduction;

7 (3) "qualified small business" means a
8 business that:

9 (a) is a sole proprietorship or an
10 entity treated as a partnership or disregarded entity for
11 federal income tax purposes;

12 (b) has its principal place of business
13 in New Mexico;

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

18 (d) employs: 1) at least one full-time-
19 equivalent employee if the business's gross income for federal
20 income tax purposes is less than two hundred fifty thousand
21 dollars (\$250,000) for the taxable year in which the taxpayer
22 claimed a small business income tax deduction; 2) at least two
23 full-time-equivalent employees if the business's gross income
24 for federal income tax purposes is two hundred fifty thousand
25 dollars (\$250,000) or greater but less than five hundred

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

14 (4) "qualified small business income" means
15 any form of income, compensation or remuneration that is
16 included in the taxpayer's base income for the taxable year in
17 which the taxpayer claims a small business income tax deduction
18 and that the taxpayer derives from the taxpayer's material
19 participation in a qualified small business during the taxable
20 year."

21 **SECTION 2. APPLICABILITY.**--The provisions of this act
22 apply to taxable years beginning on or after January 1, 2017.