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HOUSE BILL 83

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO TAXATION; ALLOWING A DEDUCTION FROM NET INCOME FOR
INCOME SET ASIDE FOR FUTURE DISTRIBUTION FROM AN ESTATE OR
TRUST TO A NONRESIDENT INDIVIDUAL.

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]~~ DEDUCTION--INCOME SET ASIDE FOR FUTURE
DISTRIBUTION FROM AN ESTATE OR TRUST TO A NONRESIDENT
INDIVIDUAL.--

A. Before January 1, 2024, a taxpayer that is an
estate or trust may claim a deduction from net income in the
amount equal to income, excluding income derived from real
property located in New Mexico, mineral, oil and gas interests
located in New Mexico and water rights located in New Mexico,

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1 set aside for future distribution to a nonresident individual
2 beneficiary as provided in the estate's or trust's governing
3 instrument.

4 B. The purpose of the deduction allowed by this
5 section is to increase estate and trust business in New Mexico.

6 C. Concerning the deduction allowed by this
7 section, in determining:

8 (1) the extent to which income of an estate or
9 trust is set aside for future distribution to a nonresident
10 individual beneficiary, if all or part of the estate's or
11 trust's federal taxable income, regardless of whether it is
12 added to the estate or trust corpus for estate or trust
13 accounting purposes, is distributable in future taxable years
14 to or for the benefit of a named individual beneficiary or a
15 first-named class of individual beneficiaries and if, on the
16 last day of the estate's or trust's taxable year, one or more
17 named individual beneficiaries or one or more members of the
18 first-named class of individual beneficiaries is living, then
19 the portion of the federal taxable income considered set aside
20 for future distribution to:

21 (a) a named individual beneficiary is
22 determined by: 1) ascertaining the share or shares of each
23 named individual beneficiary as if the estate or trust had
24 terminated on the last day of the taxable year and then
25 ascertaining the portion of that income realized by the estate

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1 or trust during the taxable year while the beneficiary was a
2 nonresident; and 2) presuming that the beneficiary was living
3 and residing in the state in which the putative parents resided
4 during the taxable year; and

5 (b) a first-named class of individual
6 beneficiaries is determined by: 1) ascertaining the members of
7 the class and the share of each member as if the estate or
8 trust had terminated on the last day of the taxable year and
9 then ascertaining the portion of that income of each share
10 realized by the estate or trust while the member was a
11 nonresident; and 2) presuming that the member was living and
12 residing with the person the relationship to whom defines
13 membership in the class;

14 (2) the share of income of each beneficiary of
15 an estate or trust in the federal taxable income, it is
16 presumed that the discretion of a person over the distribution
17 of that income, regardless of whether the person acts in a
18 fiduciary capacity or is subject to a standard, has not been
19 exercised, unless that discretion is irrevocably exercised as
20 of the last day of the taxable year; and

21 (3) the time federal taxable income is
22 realized:

23 (a) interest income is considered
24 realized when payable;

25 (b) dividend income is considered

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1 realized on the day the dividend is payable;

2 (c) gains and losses from the sale or
3 exchange of property are considered realized or deductible, as
4 appropriate, on the settlement date of the sale or the
5 effective date of the exchange; and

6 (d) commissions on income or principal
7 are deemed deductible on the date charged.

8 D. A taxpayer allowed a deduction in accordance
9 with this section shall report the amount of the deduction
10 separately and as required by the department.

11 E. Beginning in 2019, the department shall compile
12 an annual report on the deduction allowed by this section that
13 includes the number of taxpayers that claimed the deduction,
14 the aggregate amount of deductions claimed and other
15 information necessary to evaluate the deduction's
16 effectiveness. The department shall present the report to the
17 revenue stabilization and tax policy committee and the
18 legislative finance committee with an analysis of the
19 effectiveness and cost of the deduction and whether the
20 deduction is fulfilling its purpose."

21 SECTION 2. APPLICABILITY.--The provisions of this act
22 apply to taxable years beginning on or after January 1, 2018.