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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:

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

A. Before January 1, 2025, 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, water rights located in New Mexico and any other income allocated or apportioned to New Mexico, set aside for future distribution to a nonresident individual beneficiary as provided in the estate's or trust's governing instrument.

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

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

- (1) the extent to which income of an estate

1 or trust is set aside for future distribution to a  
2 nonresident individual beneficiary, if all or part of the  
3 estate's or trust's federal taxable income, regardless of  
4 whether it is added to the estate or trust corpus for estate  
5 or trust accounting purposes, is distributable in future  
6 taxable years to or for the benefit of a named individual  
7 beneficiary or a first-named class of individual  
8 beneficiaries and if, on the last day of the estate's or  
9 trust's taxable year, one or more named individual  
10 beneficiaries or one or more members of the first-named class  
11 of individual beneficiaries is living, then the portion of  
12 the federal taxable income considered set aside for future  
13 distribution to:

14 (a) a named individual beneficiary is  
15 determined by: 1) ascertaining the share or shares of each  
16 named individual beneficiary as if the estate or trust had  
17 terminated on the last day of the taxable year and then  
18 ascertaining the portion of that income realized by the  
19 estate or trust during the taxable year while the beneficiary  
20 was a nonresident; and 2) presuming that the beneficiary was  
21 living and residing in the state in which the putative  
22 parents resided during the taxable year; and

23 (b) a first-named class of individual  
24 beneficiaries is determined by: 1) ascertaining the members  
25 of the class and the share of each member as if the estate or

1 trust had terminated on the last day of the taxable year and  
2 then ascertaining the portion of that income of each share  
3 realized by the estate or trust while the member was a  
4 nonresident; and 2) presuming that the member was living and  
5 residing with the person the relationship to whom defines  
6 membership in the class;

7 (2) the share of income of each beneficiary  
8 of an estate or trust in the federal taxable income, it is  
9 presumed that the discretion of a person over the  
10 distribution of that income, regardless of whether the person  
11 acts in a fiduciary capacity or is subject to a standard, has  
12 not been exercised, unless that discretion is irrevocably  
13 exercised as of the last day of the taxable year; and

14 (3) the time federal taxable income is  
15 realized:

16 (a) interest income is considered  
17 realized when payable;

18 (b) dividend income is considered  
19 realized on the day the dividend is payable;

20 (c) gains and losses from the sale or  
21 exchange of property are considered realized or deductible,  
22 as appropriate, on the settlement date of the sale or the  
23 effective date of the exchange; and

24 (d) commissions on income or principal  
25 are deemed deductible on the date charged.

