

1 HOUSE BILL 146

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Patricia Roybal Caballero

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10 AN ACT

11 RELATING TO TAXATION; EXEMPTING SOCIAL SECURITY BENEFITS FROM
12 INCOME TAX.

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

15 SECTION 1. Section 7-2-2 NMSA 1978 (being Laws 1986,
16 Chapter 20, Section 26, as amended) is amended to read:

17 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
18 Act and unless the context requires otherwise:

19 A. "adjusted gross income" means adjusted gross
20 income as defined in Section 62 of the Internal Revenue Code
21 [~~as that section may be amended or renumbered~~];

22 B. "base income":

23 (1) means, for estates and trusts, that part
24 of the estate's or trust's income defined as taxable income and
25 upon which the federal income tax is calculated in the Internal

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1 Revenue Code for income tax purposes plus, for taxable years
2 beginning on or after January 1, 1991, the amount of the net
3 operating loss deduction allowed by Section 172(a) of the
4 Internal Revenue Code [~~as that section may be amended or~~
5 ~~renumbered~~] and taken by the taxpayer for that year;

6 (2) means, for taxpayers other than estates or
7 trusts, that part of the taxpayer's income defined as adjusted
8 gross income plus, for taxable years beginning on or after
9 January 1, 1991, the amount of the net operating loss deduction
10 allowed by Section 172(a) of the Internal Revenue Code [~~as that~~
11 ~~section may be amended or renumbered~~] and taken by the taxpayer
12 for that year;

13 (3) includes, for all taxpayers, any other
14 income of the taxpayer not included in adjusted gross income
15 but upon which a federal tax is calculated pursuant to the
16 Internal Revenue Code for income tax purposes, except amounts
17 for which a calculation of tax is made pursuant to Section 55
18 of the Internal Revenue Code [~~as that section may be amended or~~
19 ~~renumbered~~]; "base income" also includes interest received on a
20 state or local bond; and

21 (4) includes, for all taxpayers, an amount
22 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
23 taxable year if:

24 (a) such amount is transferred to
25 another qualified tuition program, as defined in Section 529 of

1 the Internal Revenue Code, not authorized in the Education
2 Trust Act; or

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

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

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

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

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

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

25 H. "head of household" means "head of household" as

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1 generally defined for federal income tax purposes;

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

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

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

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

- 17 (1) compensation;
- 18 (2) net profit from business;
- 19 (3) gains from dealings in property;
- 20 (4) interest;
- 21 (5) net rents;
- 22 (6) royalties;
- 23 (7) dividends;
- 24 (8) alimony and separate maintenance payments;
- 25 (9) annuities;

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

15 M. "modified gross income" excludes:

16 (1) payments for hospital, dental, medical or
17 drug expenses to or on behalf of the taxpayer;

18 (2) the value of room and board provided by
19 federal, state or local governments or by private individuals
20 or agencies based upon financial need and not as a form of
21 compensation;

22 (3) payments pursuant to a federal, state or
23 local government program directly or indirectly to a third
24 party on behalf of the taxpayer when identified to a particular
25 use or invoice by the payer; or

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

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

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

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

20 (3) an amount equal to the product of the
21 exemption amount allowed for the taxpayer's taxable year by
22 Section 151 of the Internal Revenue Code [~~as that section may~~
23 ~~be amended or renumbered~~] multiplied by the number of personal
24 exemptions allowed for federal income tax purposes;

25 (4) income from obligations of the United

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1 States of America less expenses incurred to earn that income;

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

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

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

11 (b) net operating loss carryover
12 deductions to that year claimed and allowed;

13 (7) for taxable years beginning on or after
14 January 1, 1991 and prior to January 1, 2013, an amount equal
15 to the sum of any net operating loss carryover deductions to
16 that year claimed and allowed, provided that the amount of any
17 net operating loss carryover from a taxable year beginning on
18 or after January 1, 1991 and prior to January 1, 2013 may be
19 excluded only as follows:

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

23 (b) in the case of amended returns or
24 original returns not timely filed, in the first taxable year
25 beginning after the date on which the return or amended return

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1 establishing the net operating loss is filed; and

2 (c) in either case, if the net operating
3 loss carryover exceeds the amount of net income exclusive of
4 the net operating loss carryover for the taxable year to which
5 the exclusion first applies, in the next four succeeding
6 taxable years in turn until the net operating loss carryover is
7 exhausted for any net operating loss carryover from a taxable
8 year prior to January 1, 2013; in no event shall a net
9 operating loss carryover from a taxable year beginning prior to
10 January 1, 2013 be excluded in any taxable year after the
11 fourth taxable year beginning after the taxable year to which
12 the exclusion first applies;

13 (8) for taxable years beginning on or after
14 January 1, 2013, an amount equal to the sum of any net
15 operating loss carryover deductions to that year claimed and
16 allowed; provided that the amount of any net operating loss
17 carryover may be excluded only as follows:

18 (a) in the case of a timely filed
19 return, in the taxable year immediately following the taxable
20 year for which the return is filed; or

21 (b) in the case of amended returns or
22 original returns not timely filed, in the first taxable year
23 beginning after the date on which the return or amended return
24 establishing the net operating loss is filed; and

25 (c) in either case, if the net operating

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1 loss carryover exceeds the amount of net income exclusive of
2 the net operating loss carryover for the taxable year to which
3 the exclusion first applies, in the next nineteen succeeding
4 taxable years in turn until the net operating loss carryover is
5 exhausted for any net operating loss carryover from a taxable
6 year beginning on or after January 1, 2013; in no event shall a
7 net operating loss carryover from a taxable year beginning: 1)
8 prior to January 1, 2013 be excluded in any taxable year after
9 the fourth taxable year beginning after the taxable year to
10 which the exclusion first applies; and 2) on or after January
11 1, 2013 be excluded in any taxable year after the nineteenth
12 taxable year beginning after the taxable year to which the
13 exclusion first applies; ~~and~~

14 (9) for taxable years beginning on or after
15 January 1, 2011, an amount equal to the amount included in
16 adjusted gross income that represents a refund of state and
17 local income and sales taxes that were deducted for federal tax
18 purposes in taxable years beginning on or after January 1,
19 2010; and

20 (10) for taxable years beginning on or after
21 January 1, 2016, an amount equal to the amount of social
22 security benefits included in adjusted gross income pursuant to
23 Section 86 of the Internal Revenue Code;

24 0. "net operating loss" means any net operating
25 loss, as defined by Section 172(c) of the Internal Revenue Code

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1 ~~[as that section may be amended or renumbered]~~ for a taxable
2 year as further increased by the income, if any, from
3 obligations of the United States for that year less related
4 expenses;

5 P. "net operating loss carryover" means the amount,
6 or any portion of the amount, of a net operating loss for any
7 taxable year that, pursuant to Paragraph (6), (7) or (8) of
8 Subsection N of this section, may be excluded from base income;

9 Q. "nonresident" means every individual not a
10 resident of this state;

11 R. "person" means any individual, estate, trust,
12 receiver, cooperative association, club, corporation, company,
13 firm, partnership, limited liability company, joint venture,
14 syndicate or other association; "person" also means, to the
15 extent permitted by law, any federal, state or other
16 governmental unit or subdivision or agency, department or
17 instrumentality thereof;

18 S. "resident" means an individual who is domiciled
19 in this state during any part of the taxable year or an
20 individual who is physically present in this state for one
21 hundred eighty-five days or more during the taxable year; but
22 any individual, other than someone who was physically present
23 in the state for one hundred eighty-five days or more during
24 the taxable year, who, on or before the last day of the taxable
25 year, changed the individual's place of abode to a place

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1 without this state with the bona fide intention of continuing
2 actually to abide permanently without this state is not a
3 resident for the purposes of the Income Tax Act for periods
4 after that change of abode;

5 T. "secretary" means the secretary of taxation and
6 revenue or the secretary's delegate;

7 U. "state" means any state of the United States,
8 the District of Columbia, the commonwealth of Puerto Rico, any
9 territory or possession of the United States or any political
10 subdivision of a foreign country;

11 V. "state or local bond" means a bond issued by a
12 state other than New Mexico or by a local government other than
13 one of New Mexico's political subdivisions, the interest from
14 which is excluded from income for federal income tax purposes
15 under Section 103 of the Internal Revenue Code [~~as that section~~
16 ~~may be amended or renumbered~~];

17 W. "surviving spouse" means "surviving spouse" as
18 generally defined for federal income tax purposes;

19 X. "taxable income" means net income less any lump-
20 sum amount;

21 Y. "taxable year" means the calendar year or fiscal
22 year upon the basis of which the net income is computed under
23 the Income Tax Act and includes, in the case of the return made
24 for a fractional part of a year under the provisions of the
25 Income Tax Act, the period for which the return is made; and

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