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HOUSE BILL 215

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO TAXATION; RESTORING PROGRESSIVITY TO THE RATES OF
INCOME TAX PAID PURSUANT TO THE INCOME TAX ACT; REQUIRING
COMBINED REPORTING OF CORPORATE INCOME TAX FOR MULTISTATE
CORPORATIONS; DECOUPLING STATE AND LOCAL TAX DEDUCTIONS FROM
FEDERAL TAX DEDUCTIONS; ADJUSTING THE CAPITAL GAINS TAX;
REPEALING A SECTION OF THE NMSA 1978 PERTAINING TO CONSOLIDATED
RETURNS.

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

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

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

A. "adjusted gross income" means adjusted gross
income as defined in Section 62 of the Internal Revenue Code

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1 ~~[as that section may be amended or renumbered]~~;

2 B. "base income":

3 (1) means, for estates and trusts, that part
4 of the estate's or trust's income defined as taxable income and
5 upon which the federal income tax is calculated in the Internal
6 Revenue Code for income tax purposes plus, for taxable years
7 beginning on or after January 1, 1991, the amount of the net
8 operating loss deduction allowed by Section 172(a) of the
9 Internal Revenue Code ~~[as that section may be amended or~~
10 ~~renumbered]~~ and taken by the taxpayer for that year;

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

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

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

4 (a) such amount is transferred to
5 another qualified tuition program, as defined in Section 529 of
6 the Internal Revenue Code, not authorized in the Education
7 Trust Act; or

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

13 C. "compensation" means wages, salaries,
14 commissions and any other form of remuneration paid to
15 employees for personal services;

16 D. "department" means the taxation and revenue
17 department, the secretary or any employee of the department
18 exercising authority lawfully delegated to that employee by the
19 secretary;

20 E. "fiduciary" means a guardian, trustee, executor,
21 administrator, committee, conservator, receiver, individual or
22 corporation acting in any fiduciary capacity;

23 F. "filing status" means "married filing joint
24 returns", "married filing separate returns", "head of
25 household", "surviving spouse" and "single", as those terms are

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1 generally defined for federal tax purposes;

2 G. "fiscal year" means any accounting period of
3 twelve months ending on the last day of any month other than
4 December;

5 H. "head of household" means "head of household" as
6 generally defined for federal income tax purposes;

7 I. "individual" means a natural person, an estate,
8 a trust or a fiduciary acting for a natural person, trust or
9 estate;

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

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

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

- 22 (1) compensation;
- 23 (2) net profit from business;
- 24 (3) gains from dealings in property;
- 25 (4) interest;

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

20 M. "modified gross income" excludes:

- 21 (1) payments for hospital, dental, medical or
- 22 drug expenses to or on behalf of the taxpayer;
- 23 (2) the value of room and board provided by
- 24 federal, state or local governments or by private individuals
- 25 or agencies based upon financial need and not as a form of

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1 compensation;

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

6 (4) payments for credits and rebates pursuant
7 to the Income Tax Act and made for a credit pursuant to Section
8 7-3-9 NMSA 1978;

9 N. "net income" means, for estates and trusts, base
10 income adjusted to exclude amounts that the state is prohibited
11 from taxing because of the laws or constitution of this state
12 or the United States and means, for taxpayers other than
13 estates or trusts, base income adjusted to exclude:

14 (1) an amount equal to the standard deduction
15 allowed the taxpayer for the taxpayer's taxable year by Section
16 63 of the Internal Revenue Code [~~as that section may be amended~~
17 ~~or renumbered~~];

18 (2) an amount equal to the itemized deductions
19 defined in Section 63 of the Internal Revenue Code [~~as that~~
20 ~~section may be amended or renumbered~~] allowed the taxpayer for
21 the taxpayer's taxable year less the amount of state and local
22 taxes included in the taxpayer's itemized deduction and less
23 the amount excluded pursuant to Paragraph (1) of this
24 subsection;

25 (3) an amount equal to the product of the

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1 exemption amount allowed for the taxpayer's taxable year by
2 Section 151 of the Internal Revenue Code, [~~as that section may~~
3 ~~be amended or renumbered~~] multiplied by the number of personal
4 exemptions allowed for federal income tax purposes;

5 (4) income from obligations of the United
6 States of America less expenses incurred to earn that income;

7 (5) other amounts that the state is prohibited
8 from taxing because of the laws or constitution of this state
9 or the United States;

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

12 (a) net operating loss carryback
13 deductions to that year from taxable years beginning prior to
14 January 1, 1991 claimed and allowed, as provided by the
15 Internal Revenue Code; and

16 (b) net operating loss carryover
17 deductions to that year claimed and allowed; and

18 (7) for taxable years beginning on or after
19 January 1, 1991, an amount equal to the sum of any net
20 operating loss carryover deductions to that year claimed and
21 allowed, provided that the amount of any net operating loss
22 carryover from a taxable year beginning on or after January 1,
23 1991 may be excluded only as follows:

24 (a) in the case of a timely filed
25 return, in the taxable year immediately following the taxable

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1 year for which the return is filed; or

2 (b) in the case of amended returns or
3 original returns not timely filed, in the first taxable year
4 beginning after the date on which the return or amended return
5 establishing the net operating loss is filed; and

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

15 O. "net operating loss" means any net operating
16 loss, as defined by Section 172(c) of the Internal Revenue Code
17 [~~as that section may be amended or renumbered~~] for a taxable
18 year as further increased by the income, if any, from
19 obligations of the United States for that year less related
20 expenses;

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

25 Q. "nonresident" means every individual not a

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1 resident of this state;

2 R. "person" means any individual, estate, trust,
3 receiver, cooperative association, club, corporation, company,
4 firm, partnership, limited liability company, joint venture,
5 syndicate or other association; "person" also means, to the
6 extent permitted by law, any federal, state or other
7 governmental unit or subdivision or agency, department or
8 instrumentality thereof;

9 S. "resident" means an individual who is domiciled
10 in this state during any part of the taxable year or an
11 individual who is physically present in this state for one
12 hundred eighty-five days or more during the taxable year; but
13 any individual, other than someone who was physically present
14 in the state for one hundred eighty-five days or more during
15 the taxable year, who, on or before the last day of the taxable
16 year, changed the individual's place of abode to a place
17 without this state with the bona fide intention of continuing
18 actually to abide permanently without this state is not a
19 resident for the purposes of the Income Tax Act for periods
20 after that change of abode;

21 T. "secretary" means the secretary of taxation and
22 revenue or the secretary's delegate;

23 U. "state" means any state of the United States,
24 the District of Columbia, the commonwealth of Puerto Rico, any
25 territory or possession of the United States or any political

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1 subdivision of a foreign country;

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

8 W. "surviving spouse" means "surviving spouse" as
9 generally defined for federal income tax purposes;

10 X. "taxable income" means net income less any lump-
11 sum amount;

12 Y. "taxable year" means the calendar year or fiscal
13 year upon the basis of which the net income is computed under
14 the Income Tax Act and includes, in the case of the return made
15 for a fractional part of a year under the provisions of the
16 Income Tax Act, the period for which the return is made; and

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

19 Section 2. Section 7-2-7 NMSA 1978 (being Laws 2005,
20 Chapter 104, Section 4) is amended to read:

21 "7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by
22 Section 7-2-3 NMSA 1978 shall be at the following rates for any
23 taxable year beginning on or after January 1, [~~2008~~] 2010:

24 A. For married individuals filing separate returns:

25 If the taxable income is: The tax shall be:

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1	Not over \$4,000	1.7% of taxable income
2	Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of
3		excess over \$ 4,000
4	Over \$ 8,000 but not over \$ 12,000	\$ 196 plus 4.7% of
5		excess over \$ 8,000
6	Over \$ 12,000 <u>but not over \$100,000</u>	\$ 384 plus 4.9% of
7		excess over \$ 12,000
8	<u>Over \$100,000 but not over \$250,000</u>	<u>\$ 4,696 plus 5.3% of</u>
9		<u>excess over \$100,000</u>
10	<u>Over \$250,000 but not over \$500,000</u>	<u>\$ 9,996 plus 6.0% of</u>
11		<u>excess over \$250,000</u>
12	<u>Over \$500,000</u>	<u>\$24,996 plus 6.9% of</u>
13		<u>excess over \$500,000.</u>

14 B. For heads of household, surviving spouses and
15 married individuals filing joint returns:

16	If the taxable income is:	The tax shall be:
17	Not over \$8,000	1.7% of taxable income
18	Over \$ 8,000 but not over \$ 16,000	\$ 136 plus 3.2% of
19		excess over \$ 8,000
20	Over \$ 16,000 but not over \$ 24,000	\$ 392 plus 4.7% of
21		excess over \$ 16,000
22	Over \$ 24,000 <u>but not over \$200,000</u>	\$ 768 plus 4.9% of
23		excess over \$ 24,000
24	<u>Over \$200,000 but not over \$500,000</u>	<u>\$ 9,392 plus 5.3% of</u>
25		<u>excess over \$200,000</u>

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1 Over \$500,000 but not over \$1,000,000 \$25,292 plus 6.0% of
2 excess over \$500,000
3 Over \$1,000,000 \$55,292 plus 6.9% of
4 excess over \$1,000,000.

5 C. For single individuals and for estates and
6 trusts:

7 If the taxable income is:	8 The tax shall be:
9 Not over \$5,500	1.7% of taxable income
10 Over \$ 5,500 but not over \$ 11,000	\$ 93.50 plus 3.2% of
	11 excess over \$ 5,500
12 Over \$ 11,000 but not over \$ 16,000	\$ 269.50 plus 4.7% of
	13 excess over \$ 11,000
14 Over \$ 16,000 <u>but not over \$133,000</u>	\$ 504.50 plus 4.9% of
	15 excess over \$ 16,000
16 <u>Over \$133,000 but not over \$333,000</u>	<u>\$6,237.50 plus 5.3% of</u>
	17 <u>excess over \$133,000</u>
18 <u>Over \$333,000 but not over \$667,000</u>	<u>\$16,837.50 plus 6.0% of</u>
	19 <u>excess over \$333,000</u>
20 <u>Over \$667,000</u>	<u>\$36,877.50 plus 6.9% of</u>
	21 <u>excess over \$667,000.</u>

22 D. The tax on the sum of any lump-sum amounts
23 included in net income is an amount equal to five multiplied by
24 the difference between:

25 (1) the amount of tax due on the taxpayer's
taxable income; and

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1 (2) the amount of tax that would be due on an
2 amount equal to the taxpayer's taxable income and twenty
3 percent of the taxpayer's lump-sum amounts included in net
4 income."

5 Section 3. Section 7-2-34 NMSA 1978 (being Laws 1999,
6 Chapter 205, Section 1, as amended) is amended to read:

7 "7-2-34. DEDUCTION--NET CAPITAL GAIN INCOME.--

8 A. Except as provided in Subsection C of this
9 section, a taxpayer:

10 (1) with taxable income equal to or less than
11 two hundred thousand dollars (\$200,000) may claim a deduction
12 from net income in an amount equal to the greater of:

13 [~~1~~] (a) the taxpayer's net capital
14 gain income for the taxable year for which the deduction is
15 being claimed, but not to exceed one thousand dollars (\$1,000);
16 or

17 [~~2~~] ~~the following percentage of the~~
18 ~~taxpayer's net capital gain income for the taxable year for~~
19 ~~which the deduction is being claimed:~~

20 (a) ~~for a taxable year beginning in~~
21 ~~2003, ten percent;~~

22 (b) ~~for a taxable year beginning in~~
23 ~~2004, twenty percent;~~

24 (c) ~~for a taxable year beginning in~~
25 ~~2005, thirty percent;~~

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1 ~~(d) for a taxable year beginning in~~
2 ~~2006, forty percent; and~~
3 ~~(e) for taxable years beginning on or~~
4 ~~after January 1, 2007]~~
5 (b) fifty percent of the taxpayer's net
6 capital gain income for the taxable year for which the
7 deduction is being claimed; and
8 (2) with taxable income greater than two
9 hundred thousand dollars (\$200,000) may claim a deduction from
10 net income in an amount equal to the taxpayer's net capital
11 gain income for the taxable year for which the deduction is
12 being claimed. The amount claimed shall not exceed one
13 thousand dollars (\$1,000).

14 B. A husband and wife who file separate returns for
15 a taxable year in which they could have filed a joint return
16 may each claim only one-half of the deduction provided by this
17 section that would have been allowed on the joint return.

18 C. A taxpayer may not claim the deduction provided
19 in Subsection A of this section if the taxpayer has claimed the
20 credit provided in Section 7-2D-8.1 NMSA 1978.

21 D. As used in this section, "net capital gain"
22 means "net capital gain" as defined in Section 1222 (11) of the
23 Internal Revenue Code."

24 Section 4. Section 7-2A-8.3 NMSA 1978 (being Laws 1983,
25 Chapter 213, Section 12, as amended by Laws 1993, Chapter 307,
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1 Section 4 and also by Laws 1993, Chapter 309, Section 2) is
2 amended to read:

3 "7-2A-8.3. COMBINED RETURNS.--

4 A. A unitary corporation that is subject to
5 taxation under the Corporate Income and Franchise Tax Act [~~and~~
6 ~~that has not previously filed a combined return pursuant to~~
7 ~~this section or a consolidated return pursuant to Section~~
8 ~~7-2A-8.4 NMSA 1978 may elect to~~] shall file a combined return
9 with other unitary corporations as though the entire combined
10 net income were that of one corporation. The return filed
11 under this method of reporting shall include the net income of
12 all the unitary corporations. Transactions among the unitary
13 corporations may be eliminated by applying the appropriate
14 rules for reporting income for a consolidated federal income
15 tax return. [~~Any corporation that has filed an income tax~~
16 ~~return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978~~
17 ~~shall not file pursuant to this section unless the secretary~~
18 ~~gives prior permission to file on a combined return basis.]~~

19 B. Once corporations have reported net income
20 through a combined return for any taxable year, they shall file
21 combined returns for subsequent taxable years, so long as they
22 remain unitary corporations, [~~unless the corporations elect to~~
23 ~~file pursuant to Section 7-2A-8.4 NMSA 1978 or~~] unless the
24 secretary grants prior permission for one or more of the
25 corporations to file individually.

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1 ~~[G. For taxable years beginning on or after January~~
2 ~~1, 1993, no unitary corporation once included in a combined~~
3 ~~return may elect, or be granted permission by the secretary,~~
4 ~~for any subsequent taxable year to separately account pursuant~~
5 ~~to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.]"~~

6 Section 5. TEMPORARY PROVISION.--For the 2010 taxable
7 year, a taxpayer is deemed to have complied with the provisions
8 of Section 7-2-12.2 NMSA 1978 if the taxpayer has made the
9 required annual payments of estimated taxes due for taxable
10 year 2010 based on the provisions of the version of Section
11 7-2-7 NMSA 1978 applicable on January 1, 2008 through December
12 31, 2009.

13 Section 6. REPEAL.--Section 7-2A-8.4 NMSA 1978 (being
14 Laws 1983, Chapter 213, Section 13, as amended by Laws 1993,
15 Chapter 307, Section 5 and by Laws 1993, Chapter 309, Section
16 3) is repealed.

17 Section 7. APPLICABILITY.--

18 A. The provisions of Sections 1 and 2 of this act
19 apply to taxable years beginning on or after January 1, 2010.

20 B. The provisions of Section 3 and 4 of this act
21 apply to taxable years beginning on or after January 1, 2011.

22 Section 8. EFFECTIVE DATE.--The effective date of the
23 provisions of Section 4 of this act is January 1, 2011.