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HOUSE BILL 76

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

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO TAXATION; PROVIDING FOR A DEDUCTION FROM NET INCOME OF AN ESTATE OR TRUST IN THE AMOUNT OF PERMANENT DISTRIBUTIONS 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--PERMANENT DISTRIBUTIONS TO A NONRESIDENT INDIVIDUAL FROM NET INCOME OF AN ESTATE OR TRUST.--

A. Prior to January 1, 2023, 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, that is set aside for future distribution to a nonresident

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1 individual beneficiary under the terms of the governing  
2 instrument of the estate or trust.

3 B. The purpose of the deduction provided by this  
4 section is to help expand the trust and estate business in New  
5 Mexico.

6 C. A determination as to whether and to what extent  
7 income is set aside for future distribution to a nonresident  
8 individual beneficiary shall be made as follows:

9 (1) if all or part of the federal taxable  
10 income of the estate or trust is distributable in future  
11 taxable years, whether or not added to estate or trust corpus  
12 for estate or trust accounting purposes, to or for the benefit  
13 of a named individual beneficiary or a first-named class of  
14 individual beneficiaries and if, on the last day of the taxable  
15 year of the estate or trust, one or more named individual  
16 beneficiaries or one or more members of the first-named class  
17 of individual beneficiaries is living, the portion of the  
18 federal taxable income of the estate or trust considered set  
19 aside for future distribution to a nonresident individual  
20 beneficiary shall be determined as follows:

21 (a) in the case of a named individual  
22 beneficiary, by first determining 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 determining the portion of such income realized by the estate

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1 or trust during the taxable year while the beneficiary was a  
2 nonresident; and

3 (b) in the case of a first-named class  
4 of beneficiaries, by first determining who the members of the  
5 class would be and the share of each member if the estate or  
6 trust had terminated on the last day of the taxable year and  
7 then determining the portion of income of each such share  
8 realized by the estate or trust while the member was a  
9 nonresident; and

10 (2) if all or part of the federal taxable  
11 income of the estate or trust is distributable in future  
12 taxable years, whether or not added to estate or trust corpus  
13 for estate or trust accounting purposes, to or for the benefit  
14 of a named individual beneficiary or a first-named class of  
15 individual beneficiaries and if, on the last day of the taxable  
16 year of the estate or trust, one or more named individual  
17 beneficiaries or one or more members of the first-named class  
18 of individual beneficiaries is living, the portion of the  
19 federal taxable income of the estate or trust considered set  
20 aside for future distribution to a nonresident individual  
21 beneficiary shall be determined in the manner provided in  
22 Paragraph (1) of this subsection, except that it will be  
23 presumed that:

24 (a) in the case of a named individual  
25 beneficiary, the beneficiary was living and residing in the

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1 state where the putative parents resided during the taxable  
2 year; and

3 (b) in the case of the first-named class  
4 of beneficiaries, any member of the class was living and  
5 residing with the person the relationship to whom determines or  
6 defines the membership in the class.

7 D. In determining the share of each beneficiary of  
8 an estate or trust in the federal taxable income pursuant to  
9 Subsection C of this section, the discretion of any person over  
10 the distribution of such income, whether or not acting in a  
11 fiduciary capacity and whether or not subject to a standard,  
12 shall be presumed not to have been exercised unless such  
13 discretion was irrevocably exercised as of the last day of the  
14 taxable year.

15 E. In determining when federal taxable income was  
16 realized pursuant to Subsection C of this section, the  
17 following rules shall apply for determining the deduction  
18 provided by this section:

19 (1) interest income shall be considered  
20 realized when payable;

21 (2) dividend income shall be considered  
22 realized on the day the dividend is payable;

23 (3) gains and losses from the sale or exchange  
24 of property shall be considered realized or deductible, as the  
25 case may be, on the settlement date of the sale or the

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1 effective date of the exchange; and

2 (4) commissions on income or principal shall  
3 be deemed deductible on the date charged.

4 F. A taxpayer allowed a deduction pursuant to this  
5 section shall report the amount of the deduction separately in  
6 a manner required by the department.

7 G. The department shall compile an annual report on  
8 the deduction provided by this section, which shall include the  
9 number of taxpayers that claimed the deduction, the aggregate  
10 amount of deductions claimed and any other information  
11 necessary to evaluate the effectiveness of the deduction. The  
12 department shall compile and present the annual reports to the  
13 revenue stabilization and tax policy committee and the  
14 legislative finance committee with an analysis of the  
15 effectiveness and cost of the deduction and whether the  
16 deduction is performing the purpose for which it was created."

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