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, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus:

(a) for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year; and

(b) for taxable years beginning on or after January 1, 2023, an amount equal to the amount of credit claimed and allowed for that year pursuant to Section 7-3A-10 NMSA 1978 with respect to the distributed net income of a pass-through entity;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus:

(a) for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may

be amended or renumbered, and taken by the taxpayer for that year; and

(b) for taxable years beginning on or after January 1, 2023, an amount equal to the amount of credit claimed and allowed for that year pursuant to Section 7-3A-10 NMSA 1978 with respect to the distributed net income of a pass-through entity;

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

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

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

(b) a distribution or refund is made for any reason other than: 1) to pay for federally allowable qualified higher education expenses, set out in Section 529 of the Internal Revenue Code, including other expenses allowed pursuant to that section as qualified expenses; or 2) upon the beneficiary's death, disability or receipt of a scholarship; and

(5) excludes, for a taxpayer who conducts a lawful business pursuant to the laws of the state, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by Section 280E of the Internal Revenue Code, as that section may be amended or renumbered;

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

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

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

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

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

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

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

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

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

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

(1) compensation;

(2) net profit from business;

(3) gains from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;

(9) annuities;

(10) income from life insurance and endowment contracts;

(11) pensions;

(12) discharge of indebtedness;

(13) distributive share of partnership income;

(14) income in respect of a decedent;

(15) income from an interest in an estate or a trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" excludes:

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

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

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

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

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

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the

Internal Revenue Code, as that section may be amended or renumbered;

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

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

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

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

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

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

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

which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning: 1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and 2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies; and

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1978 Comp., § 7-2-2, enacted by Laws 1986, ch. 20, § 26; 1987, ch. 277, § 1; 1988, ch. 41, § 1; 1990, ch. 49, § 1; 1991, ch. 9, § 24; 1993, ch. 307, § 1; 2003, ch. 13, § 1; 2003, ch. 275, § 1; 2007, ch. 45, § 7; 2010 (2nd S.S.), ch. 7, § 7; 2014, ch. 53, § 1; 2021 (1st S.S.), ch. 4, § 51; 2023, ch. 17, § 1; 2023, ch. 159, § 1.

ANNOTATIONS

Cross references. — For Sections 55, 62, 63, 103, 151, 172, and 402 of the Internal Revenue Code, *see* 26 U.S.C. §§ 55, 62, 63, 103, 151, 172, and 402 respectively.

2023 Multiple Amendments. — Laws 2023, ch. 17, § 1 and Laws 2023, ch. 159, § 1, both effective June 16, 2023, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2023, ch. 159, § 1 as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2023, ch. 17, § 1 and Laws 2023, ch. 159, § 1 are described below. To view the session laws in their entirety, *see* the 2023 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2023, ch. 17, § 1, revised the definition of "base income", and Laws 2023, ch. 159, § 1, revised the definitions of "base income" and "net income".

Laws 2023, ch. 159, § 1, effective June 16, 2023, revised the definitions of "base income" and "net income"; in Subsection B, added Subparagraph B(1)(b) and Subparagraph B(2)(b); and in Subsection N, deleted former Paragraphs N(6) and N(7) and redesignated former Paragraphs N(8) and N(9) as Paragraphs N(6) and N(7), respectively.

Laws 2023, ch. 17, § 1, effective June 16, 2023, revised the definition of "base income"; and in Subsection B, Subparagraph B(4)(b), after "pay for", added "federally allowable", after "qualified higher education expenses", deleted "as defined pursuant to" and added "set out in", and added "including other expenses allowed pursuant to that section as qualified expenses".

Applicability. — Laws 2023, ch. 159, § 5 provided that the provisions of Laws 2023, ch. 159 apply to taxable years beginning on or after January 1, 2023.

The 2021 (1st S.S.) amendment, effective June 29, 2021, excluded from the definition of "base income", as used in the Income Tax Act, an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed by Section 280E of the Internal Revenue Code for certain taxpayers; and in Subsection B, added Paragraph B(5).

The 2014 amendment, effective May 21, 2014, excluded net operating loss carryover from net income for twenty years; in Subsection N, in Paragraph (7), after the first and second instances of "January 1, 1991", added "and prior to January 1, 2013"; in Subsection N, in Paragraph (7), in Subparagraph (c), after "carryover is exhausted", added "for any net operating loss carryover from a taxable year prior to January 1, 2013", after "operating loss carryover", added "from a taxable year beginning prior to January 1, 2013"; in Subsection N, added Paragraph (8), including Subparagraphs (a) through (c); and in Subsection P, after "Paragraph (6), (7)", added "or (8)".

Applicability. — Laws 2014, ch. 53, § 3 provided that the provisions of Laws 2014, ch. 53, §§ 1 and 2 applies to taxable years beginning on or after January 1, 2013.

The 2010 (2nd S.S.) amendment, effective July 1, 2010, in Subsection N(2), after "Paragraph (1) of this subsection", added the remainder of the sentence; and added Paragraph (8) of Subsection N.

Temporary provisions. — Laws 2010, ch. 7, § 12 provided that for the 2010 taxable year, a taxpayer is deemed to have complied with the provisions of Section 7-2-12.2 NMSA 1978 if the taxpayer has made the required annual payments of estimated taxes due for taxable year 2010 based on the definition of net income in Section 7-2-2 NMSA 1978 applicable prior to January 1, 2010.

The 2007 amendment, effective June 15, 2007, in Paragraph (4) of Subsection M, changed "pursuant to Sections 7-2-14, 7-2-18, 7-2-18.1" to "for credits and rebates pursuant to the Income Tax Act" and added "made for a credit pursuant to Section 7-3-9 NMSA 1978".

The 2003 amendment, effective June 20, 2003, added Paragraph B(4); in Subsection K, deleted "an amount that" near the beginning, inserted "an amount that" following "federal income tax"; deleted "derived" near the end of Subsection L and in Paragraphs L(2) and (3); substituted "excludes" for "does not include" in Subsection M; deleted "whether made" following "or drug expenses" in Paragraph M(1); deleted "made" near the beginning of Paragraphs M(3) and (4); deleted "7-2-14.1" in Paragraph M(4); in Subsection S, substituted "or an individual who is physically present in this state for one hundred eighty-five days or more during the taxable year; but any individual, other than someone who was physically present in the state for one hundred eighty-five days or more during the taxable year," for "but any individual" preceding "who, on or", inserted "for periods after that change of abode" at the end.

The 1993 amendment, effective June 18, 1993, added the language beginning "in no event" at the end of Subparagraph (7)(c) of Subsection N and inserted "limited liability company" in Subsection R.

The 1991 amendment, effective June 14, 1991, rewrote Subsection B; deleted "or 'division'" following "'department'" in

Subsection D; in Subsection M, substituted "or" for "and" at the end of Paragraph (3) and deleted reference to 7-2-15 NMSA 1978 in Paragraph (4); rewrote Subsection N; added present Subsections O, P and V; redesignated former Subsections O to S and T to W as present Subsections Q to U and W to Z, respectively; in present Subsection T, deleted "or 'director'" following "'secretary'"; and made a minor stylistic change in Subsection K.

The 1990 amendment, effective May 16, 1990, deleted former Subsection E which defined "director" as "the secretary of taxation and revenue or the secretary's delegate"; redesignated former Subsections F to K as present Subsections E to J; substituted "a trust or a fiduciary" for "trust or fiduciary" in present Subsection I; inserted "of 1986" after "Code" in present Subsection J; added present Subsection K; in Subsection L; inserted "of the taxpayer and, if any, the taxpayer's spouse and dependents" and substituted "workers' " for "workmen's" in Paragraph (18); in Paragraph (1) of Subsection N, inserted "the greater of the basic standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, or an amount equal to"; inserted the subparagraph designation "(a)"; redesignated former Paragraphs (2) to (4) of Subsection N as present Subparagraphs (b) to (d) of Paragraph (1) and deleted "an amount equal to" at the beginning of each of the redesignated subparagraphs; in Subsection N, redesignated former Paragraphs (5) to (7) as present Paragraphs (2) to (4), substituted "Paragraph (1) of this subsection" for "Paragraph (1), (2), (3) or (4) of this subsection" in present Paragraph (2), rewrote present Paragraph (3) which read "an amount equal to two thousand dollars ($2,000) multiplied by the number of personal exemptions allowed for federal income tax purposes"; inserted "or 'director' " in Subsection R; and added present Subsection U and redesignated former Subsections U and V as present Subsections V and W.

"Income". — Taxpayers' wages and salaries from employment constituted "income" for purposes of determining their tax liability.

Holt v. N.M. Dep't of Taxation & Revenue, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.

"Resident" defined. — New Mexico "resident" is an individual domiciled in New Mexico at any time during the taxable year who does not intentionally change his domicile by the end of the year. *Murphy v. Taxation & Revenue Dep't*, 1980-NMSC-012, 94 N.M. 54, 607 P.2d 592.

Basis of residence. — Definition of "resident" is based on both person's domicile and his intent. *Murphy v. Taxation & Revenue Dep't*, 1980-NMSC-012, 94 N.M. 54, 607 P.2d 592.

State tax statutes may constitutionally refer to federal definitions. — A state has the power to gauge its income tax by reference to the income on which the taxpayer is required to pay a tax to the United States, and the constitutionality of state statutes which refer to the Internal Revenue Code definitions have been upheld. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Election to treat unrealized gain as federal income makes it state income. — When multistate corporate taxpayer elected to treat the cutting of certain timber as a sale or exchange, eligible for taxation at capital gains rates, even though the timber had not actually been sold, it was held that since its federal income tax was calculated by use of this gain, the gain was includable in its base income for New Mexico income tax purposes. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Gain may be included in apportionable income of multistate corporation. — New Mexico was not taxing on out-of-state activity where it included gain from the cutting of timber treated by the taxpayer as a sale or exchange for federal tax purposes in the apportionable business income of the corporation. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 546 P.2d 70.

Law reviews. — For symposium, "Tax Implications of the Equal Rights Amendment," see 3 N.M.L. Rev. 69 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 483 to 511.
Construction and application of state corporate income tax statutes allowing net operating loss deductions, 33 A.L.R.5th 509.
85 C.J.S. Taxation §§ 1715 to 1719.