

1 HOUSE BILL 406

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

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10 AN ACT

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

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

16 SECTION 1. A new section of the Income Tax Act is enacted
17 to read:

18 "[NEW MATERIAL] DEDUCTION--PERMANENT DISTRIBUTIONS TO A
19 NONRESIDENT INDIVIDUAL FROM NET INCOME OF AN ESTATE OR TRUST.--

20 A. Prior to January 1, 2021, a taxpayer that is an
21 estate or trust may claim a deduction from net income in the
22 amount equal to income, excluding income derived from real
23 property located in New Mexico, mineral, oil and gas interests
24 located in New Mexico and water rights located in New Mexico,
25 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 assist in the expansion of the trust and estate
5 business in New 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 more members of the first-named class of
18 individual beneficiaries is living, the portion of the federal
19 taxable income of the estate or trust considered set aside for
20 future distribution to a nonresident individual beneficiary
21 shall be determined in the manner provided in Paragraph (1) of
22 this subsection, except that it will be presumed that:

23 (a) in the case of a named individual
24 beneficiary, the beneficiary was living and residing in the
25 state where the putative parents resided during the taxable

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1 year; and

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

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

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

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

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

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

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

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

6 G. The department shall compile an annual report on
7 the deduction provided by this section that shall include the
8 number of taxpayers that claimed the deduction, the aggregate
9 amount of deductions claimed and any other information
10 necessary to evaluate the effectiveness of the deduction.
11 Beginning in 2018, the department shall compile and present the
12 annual reports to the revenue stabilization and tax policy
13 committee and the legislative finance committee with an
14 analysis of the effectiveness and cost of the deduction and
15 whether the deduction is performing the purpose for which it
16 was created."

17 SECTION 2. APPLICABILITY.--The provisions of this act
18 apply to taxable years beginning on or after January 1, 2016.