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HOUSE BILL 120

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

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO TAXATION; EXPANDING THE ALLOWANCE OF WITHHOLDING AMOUNTS FOR ESTIMATED TAX PURPOSES; AMENDING THE WITHHOLDING TAX ACT; PROVIDING A CREDIT AND REQUIRING ELECTRONIC FILING OF WITHHOLDING INFORMATION RETURNS BY CERTAIN EMPLOYERS AND PAYORS FOR VARIOUS AGENCIES; AMENDING THE OIL AND GAS PROCEEDS WITHHOLDING TAX ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-2-12.2 NMSA 1978 (being Laws 1996, Chapter 17, Section 1, as amended) is amended to read:

"7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--PENALTY.--

A. Except as otherwise provided in this section, ~~every~~ an individual who is required to file an income tax

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1 return under the Income Tax Act shall pay the required annual
2 payment in installments through either withholding or estimated
3 tax payments.

4 B. For the purposes of this section:

5 (1) "required annual payment" means the lesser
6 of:

7 (a) ninety percent of the tax shown on
8 the return of the taxable year or, if no return is filed,
9 ninety percent of the tax for the taxable year; or

10 (b) one hundred percent of the tax shown
11 on the return for the preceding taxable year if the preceding
12 taxable year was a taxable year of twelve months and the
13 taxpayer filed a New Mexico tax return for that preceding
14 taxable year; and

15 (2) "tax" means the tax imposed under Section
16 7-2-3 NMSA 1978 less any amount allowed for applicable credits
17 and rebates provided by the Income Tax Act.

18 C. There shall be four required installments for
19 each taxable year. If a taxpayer is not liable for estimated
20 tax payments on March 31, but becomes liable for estimated tax
21 at some point after March 31, ~~[he]~~ the taxpayer must make
22 estimated tax payments as follows:

23 (1) if the taxpayer becomes required to pay
24 estimated tax after March 31 and before June 1, fifty percent
25 of the required annual payment must be paid on or before June

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1 15, twenty-five percent on September 15 and twenty-five percent
2 on or before January 15 of the following taxable year;

3 (2) if the taxpayer becomes required to pay
4 estimated tax after May 31, but before September 1, the
5 taxpayer must pay seventy-five percent of the required annual
6 payment on or before September 15 and twenty-five percent on or
7 before January 15 of the following taxable year; and

8 (3) if the taxpayer becomes required to pay
9 estimated tax after August 31, the taxpayer must pay one
10 hundred percent of the required annual payment on or before
11 January 15 of the following taxable year.

12 D. Except as otherwise provided in this section,
13 for taxpayers reporting on a calendar year basis, estimated
14 payments of the required annual payment are due on or before
15 April 15, June 15 and September 15 of the taxable year and
16 January 15 of the following taxable year. For taxpayers
17 reporting on a fiscal year other than a calendar year, the due
18 dates for the installments are the fifteenth day of the fourth,
19 sixth and ninth months of the fiscal year and the fifteenth day
20 of the first month following the fiscal year.

21 E. A rancher or farmer who expects to receive at
22 least two-thirds of [~~his~~] the rancher's or farmer's gross
23 income for the taxable year from ranching or farming, or who
24 has received at least two-thirds of [~~his~~] the rancher's or
25 farmer's gross income for the previous taxable year from

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1 ranching or farming, may:

2 (1) pay the required annual payment for the
3 taxable year in one installment on or before January 15 of the
4 following taxable year; or

5 (2) on or before March 1 of the following
6 taxable year, file a return for the taxable year and pay in
7 full the amount computed on the return as payable.

8 [No] A penalty under Subsection G of this section shall
9 not be imposed unless the rancher or farmer underpays [~~his~~] the
10 tax by more than one-third. If a joint return is filed, a
11 rancher or farmer must consider [~~his or her~~] the rancher's or
12 farmer's spouse's gross income in determining whether at least
13 two-thirds of gross income is from ranching or farming.

14 F. For the purposes of this section, the amount of
15 tax deducted and withheld with respect to a taxpayer under the
16 Withholding Tax Act or the Oil and Gas Proceeds and Pass-
17 Through Entity Withholding Tax Act shall be deemed a payment of
18 estimated tax. An equal part of the amount of withheld tax
19 shall be deemed paid on each due date for the applicable
20 taxable year unless the taxpayer establishes the dates on which
21 all amounts were actually withheld. In that case, the amounts
22 withheld shall be deemed payments of estimated tax on the dates
23 on which the amounts were actually withheld. The taxpayer may
24 apply the provisions of this subsection separately to wage
25 withholding and any other amounts withheld under the

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1 Withholding Tax Act or the Oil and Gas Proceeds and Pass-
2 Through Entity Withholding Tax Act. Amounts of tax paid by
3 taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be
4 deemed a payment of estimated tax.

5 G. Except as otherwise provided in this section, in
6 the case of an underpayment of the required annual payment by a
7 taxpayer, there shall be added to the tax a penalty determined
8 by applying the rate specified in Subsection B of Section
9 7-1-67 NMSA 1978 to the amount of the underpayment for the
10 period of the underpayment, provided:

11 (1) the amount of the underpayment shall be
12 the excess of the amount of the required annual payment over
13 the amount, if any, paid on or before the due date for the
14 installment;

15 (2) the period of the underpayment runs from
16 the due date for the installment to whichever of the following
17 dates is earlier:

18 (a) the fifteenth day of the fourth
19 month following the close of the taxable year; or

20 (b) with respect to any portion of the
21 underpayment, the date on which the portion was paid; and

22 (3) a payment of estimated tax shall be
23 credited against unpaid or underpaid installments in the order
24 in which the installments are required to be paid.

25 H. No penalty shall be imposed under Subsection G

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1 of this section for any taxable year if:

2 (1) the difference between the following is
3 less than five hundred dollars (\$500):

4 (a) the tax shown on the return for the
5 taxable year or, when no return is filed, the tax for the
6 taxable year; and

7 (b) any amount withheld under the
8 provisions of the Withholding Tax Act or the Oil and Gas
9 Proceeds and Pass-Through Entity Withholding Tax Act for that
10 taxpayer for that taxable year;

11 (2) the [~~individual's~~] taxpayer's preceding
12 taxable year was a taxable year of twelve months, the
13 [~~individual~~] taxpayer did not have a tax liability for the
14 preceding taxable year and the [~~individual~~] taxpayer was a
15 resident of New Mexico for the entire taxable year;

16 (3) through either withholding or estimated
17 tax payments, the [~~individual~~] taxpayer paid the required
18 annual payment as defined in Subsection B of this section; or

19 (4) the secretary determines that the
20 underpayment was not due to fraud, negligence or disregard of
21 rules and regulations.

22 I. If on or before January 31 of the following
23 taxable year the taxpayer files a return for the taxable year
24 and pays in full the amount computed on the return as payable,
25 then [~~no~~] a penalty under Subsection G of this section shall

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1 not be imposed on an underpayment of the fourth required
2 installment for the taxable year.

3 J. This section applies to taxable years of less
4 than twelve months and to taxpayers reporting on a fiscal year
5 other than a calendar year in the manner determined by
6 regulation or instruction of the secretary.

7 K. Except as otherwise provided in Subsection L of
8 this section, this section applies to any estate or trust.

9 L. This section does not apply to any trust that is
10 subject to the tax imposed by Section 511 of the Internal
11 Revenue Code or that is a private foundation. For a taxable
12 year that ends before the date two years after the date of the
13 decedent's death, this section does not apply to:

14 (1) the estate of the decedent; or

15 (2) any trust all of which was treated under
16 Subpart E of Part I of Subchapter J of Chapter 1 of the
17 Internal Revenue Code as owned by the decedent and to which the
18 residue of the decedent's estate will pass under the decedent's
19 will or, if no will is admitted to probate, that is the trust
20 primarily responsible for paying debts, taxes and expenses of
21 administration.

22 M. The provisions of this section do not apply to
23 first-year residents."

24 Section 2. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,
25 Chapter 5, Section 1, as amended) is amended to read:

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1 "7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--
2 PENALTY--EXEMPTION.--

3 A. Every taxpayer shall pay estimated corporate
4 income tax to the state of New Mexico during its taxable year
5 if its tax after applicable credits is five thousand dollars
6 (\$5,000) or more in the current taxable year. A taxpayer to
7 which this section applies shall calculate estimated tax by one
8 of the following methods:

9 (1) estimating the amount of tax due, net of
10 any credits, for the current taxable year, provided that the
11 estimated amount is at least eighty percent of the amount
12 determined to be due for the taxable year;

13 (2) using as the estimate an amount equal to
14 one hundred percent of the tax due for the previous taxable
15 year, if the previous taxable year was a full twelve-month
16 year;

17 (3) using as the estimate an amount equal to
18 one hundred ten percent of the tax due for the taxable year
19 immediately preceding the previous taxable year, if the taxable
20 year immediately preceding the previous taxable year was a full
21 twelve-month year and the return for the previous taxable year
22 has not been filed and the extended due date for filing that
23 return has not occurred at the time the first installment is
24 due for the taxable year; or

25 (4) estimating the amount of tax due, net of

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1 any credits, for each fiscal quarter of the current taxable
2 year, provided that the estimated amount is at least eighty
3 percent of the amount determined to be due for that quarter.

4 B. If Subsection A of this section applies, the
5 amount of estimated tax shall be paid in installments as
6 provided in this subsection. Twenty-five percent of the
7 estimated tax calculated under Paragraph (1), (2) or (3) of
8 Subsection A of this section or one hundred percent of the
9 estimated tax calculated under Paragraph (4) of Subsection A of
10 this section is due on or before the following dates: the
11 fifteenth day of the fourth month of the taxable year, the
12 fifteenth day of the sixth month of the taxable year, the
13 fifteenth day of the ninth month of the taxable year and the
14 fifteenth day of the twelfth month of the taxable year.

15 Application of this subsection to a taxable year that is a
16 fractional part of a year shall be determined by regulation of
17 the secretary.

18 C. Every taxpayer to which Subsection A of this
19 section applies that fails to pay the estimated tax when due or
20 that makes estimated tax payments during the taxable year that
21 are less than the lesser of eighty percent of the income tax
22 imposed on the taxpayer under the Corporate Income and
23 Franchise Tax Act or the amount required by Paragraph (2), (3)
24 or (4) of Subsection A of this section shall be subject to the
25 interest and penalty provisions of Sections 7-1-67 and 7-1-69

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1 NMSA 1978 on the underpayment.

2 D. For purposes of this section, the amount of
3 underpayment shall be the excess of the amount of the
4 installment that would be required to be paid if the estimated
5 tax were equal to eighty percent of the tax shown on the return
6 for the taxable year or the amount required by Paragraph (2),
7 (3) or (4) of Subsection A of this section or, if no return was
8 filed, eighty percent of the tax for the taxable year for which
9 the estimated tax is due less the amount, if any, of the
10 installment paid on or before the last date prescribed for
11 payment.

12 E. For purposes of this section, the period of
13 underpayment shall run from the date the installment was
14 required to be paid to whichever of the following dates is
15 earlier:

16 (1) the fifteenth day of the third month
17 following the end of the taxable year; or

18 (2) with respect to any portion of the
19 underpayment, the date on which such portion is paid. For the
20 purposes of this paragraph, a payment of estimated tax on any
21 installment date shall be applied as a payment of any previous
22 underpayment only to the extent such payment exceeds the amount
23 of the installment determined under Subsection D of this
24 section due on such installment date.

25 F. For the purposes of this section, the amount of
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1 tax deducted and withheld with respect to a taxpayer under the
2 Withholding Tax Act or the Oil and Gas Proceeds and Pass-
3 Through Entity Withholding Tax Act shall be deemed a payment of
4 estimated tax. An equal amount of the amount of withheld tax
5 shall be deemed paid on each due date for the applicable
6 taxable year unless the taxpayer establishes the dates on which
7 all amounts were actually withheld, in which case the amounts
8 withheld shall be deemed payments of estimated tax on the dates
9 on which the amounts were actually withheld. The taxpayer may
10 apply the provisions of this subsection separately to amounts
11 withheld under the Withholding Tax Act or the Oil and Gas
12 Proceeds and Pass-Through Entity Withholding Tax Act. Amounts
13 of tax paid by taxpayers pursuant to Section 7-3A-3 NMSA 1978
14 shall not be deemed a payment of estimated tax."

15 Section 3. Section 7-3-2 NMSA 1978 (being Laws 1990,
16 Chapter 64, Section 1, as amended) is amended to read:

17 "7-3-2. DEFINITIONS.--As used in the Withholding Tax Act:

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

22 B. "employee" means either an individual domiciled
23 within the state who performs services either within or without
24 the state for an employer or, to the extent permitted by law,
25 an individual domiciled outside of the state who performs

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1 services within the state for an employer;

2 C. "employer" means a person or an officer, agent
3 or employee of that person having control of the payment of
4 wages, doing business in or deriving income from sources within
5 the state for whom an individual performs or performed any
6 service as the employee of that person, except that if the
7 person for whom the individual performs or performed the
8 services does not have control over the payment of the wages
9 for such services, "employer" means the person having control
10 of the payment of wages;

11 D. "Internal Revenue Code" means the Internal
12 Revenue Code of 1986, as amended;

13 ~~E. "owner" means a partner in a partnership not~~
14 ~~taxed as a corporation for federal income tax purposes for the~~
15 ~~taxable year, a shareholder of an S corporation or of a~~
16 ~~corporation other than an S corporation that is not taxed as a~~
17 ~~corporation for federal income tax purposes for the taxable~~
18 ~~year, a member of a limited liability company or any similar~~
19 ~~person holding an ownership interest in any pass-through~~
20 ~~entity;~~

21 ~~F. "pass-through entity" means any business~~
22 ~~association other than:~~

- 23 ~~(1) a sole proprietorship;~~
24 ~~(2) an estate or trust;~~
25 ~~(3) a corporation, limited liability company,~~

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1 ~~partnership or other entity not a sole proprietorship taxed as~~
2 ~~a corporation for federal income tax purposes for the taxable~~
3 ~~year; or~~

4 ~~(4) a partnership that is organized as an~~
5 ~~investment partnership in which the partners' income is derived~~
6 ~~solely from interest, dividends and sales of securities;]~~

7 E. "payee" mean an individual to whom a payor is
8 making a pension or annuity payment;

9 ~~[G.]~~ F. "payor" means [any] a person making payment
10 of a pension or annuity to an individual domiciled in New
11 Mexico;

12 ~~[H.]~~ G. "payroll period" means a period for which a
13 payment of wages is made to [the] an employee by [his] the
14 employee's employer;

15 ~~[I.]~~ H. "person" means [any] an individual, a club,
16 a company, a cooperative association, a corporation, an estate,
17 a firm, a joint venture, a partnership, a receiver, a
18 syndicate, a trust or other association, a limited liability
19 company, a limited liability partnership or a gas, water or
20 electric utility owned or operated by a county or municipality
21 and, to the extent permitted by law, [any] a federal, state or
22 other governmental unit or subdivision or an agency, a
23 department or an instrumentality thereof;

24 ~~[J.]~~ I. "wagerer" means any person who receives
25 winnings that are subject to withholding;

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1 ~~[K-]~~ J. "wages" means remuneration in cash or other
2 form for services performed by an employee for an employer;

3 ~~[L-]~~ K. "winnings that are subject to withholding"
4 means "winnings which are subject to withholding" as that term
5 is defined in Section 3402 of the Internal Revenue Code;

6 ~~[M-]~~ L. "withholdee" means:

7 (1) an individual domiciled in New Mexico
8 receiving a pension or annuity from which an amount of tax is
9 deducted and withheld pursuant to the Withholding Tax Act;

10 (2) an employee; and

11 (3) a wagerer; and

12 ~~[N-]~~ M. "withholder" means a payor, an employer or
13 any person required to deduct and withhold from winnings that
14 are subject to withholding."

15 Section 4. Section 7-3-5 NMSA 1978 (being Laws 1961,
16 Chapter 243, Section 5, as amended) is amended to read:

17 "7-3-5. WITHHOLDER LIABLE FOR AMOUNTS DEDUCTED AND
18 WITHHELD--EXCEPTIONS.--Every withholder [~~or pass-through~~
19 ~~entity~~] shall be liable for amounts required to be deducted and
20 withheld by the Withholding Tax Act regardless of whether the
21 amounts were in fact deducted and withheld, except that:

22 A. if the withholder [~~or pass-through entity~~] fails
23 to deduct and withhold the required amounts and if the tax
24 against which the required amounts would have been credited is
25 paid, the withholder shall not be liable for those amounts not

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1 deducted and withheld; or

2 B. if the withholder's ~~[or pass-through entity's]~~
3 failure to deduct and withhold the required amounts was due to
4 reasonable cause, the withholder ~~[or pass-through entity]~~ shall
5 not be liable for amounts not deducted and withheld."

6 Section 5. Section 7-3-6 NMSA 1978 (being Laws 1969,
7 Chapter 25, Section 1, as amended) is amended to read:

8 "7-3-6. DATE PAYMENT DUE.--~~[Except for amounts withheld~~
9 ~~pursuant to the provisions of Section 7-3-12 NMSA 1978]~~ Taxes
10 withheld under the provisions of the Withholding Tax Act must
11 be paid on or before the twenty-fifth day of the month
12 following the month when the taxes were required to be
13 withheld. ~~[Amounts withheld pursuant to Section 7-3-12 NMSA~~
14 ~~1978 must be paid on or before the due date of the return for~~
15 ~~the pass-through entity.]"~~

16 Section 6. Section 7-3-7 NMSA 1978 (being Laws 1961,
17 Chapter 243, Section 8, as amended) is amended to read:

18 "7-3-7. STATEMENTS OF WITHHOLDING.--

19 A. Except for employers required to file quarterly
20 withholding information returns pursuant to the Withholding Tax
21 Act or required to file a wage and contribution report to the
22 workforce solutions department pursuant to Section 51-1-12 NMSA
23 1978, every employer shall file an annual statement of
24 withholding for each employee. This statement shall be in a
25 form prescribed by the department and shall be filed with the

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1 department on or before the last day of February of the year
2 following that for which the statement is made. It shall
3 include the total compensation paid the employee and the total
4 amount of tax withheld for the calendar year or portion of a
5 calendar year if the employee has worked less than a full
6 calendar year.

7 B. Except for payors who file the quarterly
8 withholding information returns pursuant to the Withholding Tax
9 Act, every payor shall file an annual statement of withholding
10 for each individual from whom some portion of a pension or an
11 annuity has been deducted and withheld by that payor. This
12 statement shall be in a form prescribed by the department and
13 shall be filed with the department on or before the last day of
14 February of the year following that for which the statement is
15 made. It shall include the total amount of pension or annuity
16 paid to the individual and the amount of tax withheld for the
17 calendar year.

18 C. Every person required to deduct and withhold tax
19 from a payment of winnings that are subject to withholding
20 shall file an annual statement of withholding for each wagerer
21 from whom some portion of a payment of winnings has been
22 deducted and withheld by that person. [~~This~~] The statement
23 shall be in a form prescribed by the department and shall be
24 filed with the department on or before the last day of February
25 of the year following that for which the statement is made. It

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1 shall include the total amount of winnings paid to the
2 individual and the amount of tax withheld for the calendar
3 year. The department may also require any person who is
4 required to submit an information return to the internal
5 revenue service regarding the winnings of another person to
6 submit copies of the return to the department."

7 Section 7. A new section of the Withholding Tax Act is
8 enacted to read:

9 "[NEW MATERIAL] WITHHOLDING INFORMATION RETURN REQUIRED--
10 PENALTY.--

11 A. An employer that has more than fifty employees
12 and is not required to file an unemployment insurance tax form
13 with the workforce solutions department or a payor shall file
14 quarterly a withholding information return with the department
15 on or before the last day of the month following the close of
16 the calendar quarter.

17 B. The quarterly withholding information return
18 required by this section shall contain all information required
19 by the department, including:

20 (1) each employee's or payee's social security
21 number;

22 (2) each employee's or payee's name;

23 (3) each employee's or payee's gross wages,
24 pensions or annuity payments;

25 (4) each employee's or payee's state income

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1 tax withheld; and

2 (5) the workers' compensation fees due on
3 behalf of each employee or payee.

4 C. Each quarterly withholding information return
5 shall be filed with the department using a department-approved
6 electronic medium.

7 D. Any employer or payor required to file the
8 quarterly withholding information return who fails to do so by
9 the due date or to file the return in accordance with
10 Subsection C of this section is subject to a penalty in the
11 amount of fifty dollars (\$50.00)."

12 Section 8. Section 7-3A-1 NMSA 1978 (being Laws 2003,
13 Chapter 86, Section 4) is amended to read:

14 "7-3A-1. SHORT TITLE.--Chapter 7, Article 3A NMSA 1978
15 may be referred to as the "Oil and Gas Proceeds and Pass-
16 Through Entity Withholding Tax Act"."

17 Section 9. Section 7-3A-2 NMSA 1978 (being Laws 2003,
18 Chapter 86, Section 5) is amended to read:

19 "7-3A-2. DEFINITIONS.--As used in the Oil and Gas
20 Proceeds and Pass-Through Entity Withholding Tax Act:

21 A. "department" means the taxation and revenue
22 department, the secretary of taxation and revenue or any
23 employee of the department exercising authority lawfully
24 delegated to that employee by the secretary;

25 B. "Internal Revenue Code" means the Internal

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1 Revenue Code of 1986, as amended;

2 C. "net income" means, for any pass-through entity,
3 the income reported to an owner by the pass-through entity for
4 federal income tax purposes, including ordinary business income
5 or loss, net rental income or loss, guaranteed payments to a
6 partner of a partnership, dividends, royalties and capital gain
7 or loss, less associated deductions, plus interest earned on a
8 state or local bond, less interest earned on a bond issued by
9 the state of New Mexico or its political subdivisions, less
10 income from obligations of the United States less expenses
11 incurred to earn that income; in the case of a subchapter S
12 corporation, "net income" also includes income taxable to the
13 corporation for federal income tax purposes;

14 ~~[B-]~~ D. "oil and gas" means crude oil, natural gas,
15 liquid hydrocarbons or any combination thereof, or carbon
16 dioxide;

17 ~~[E-]~~ E. "oil and gas proceeds" means any amount
18 derived from oil and gas production from any well located in
19 New Mexico and payable as royalty interest, overriding royalty
20 interest, production payment interest, working interest or any
21 other obligation expressed as a right to a specified interest
22 in the cash proceeds received from the sale of oil and gas
23 production or in the cash value of that production, subject to
24 all taxes withheld therefrom pursuant to law; "oil and gas
25 proceeds" excludes "net profits interest" and other types of

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1 interest the extent of which cannot be determined with
2 reference to a specified share of the oil and gas production
3 and excludes any amounts deducted by the remitter from payments
4 to interest owners or paid by interest owners to the remitter
5 that are for expenses related to the production from the well
6 or cessation of production from the well for which the interest
7 owner is liable;

8 F. "owner" means a partner in a partnership not
9 taxed as a corporation for federal income tax purposes for the
10 taxable year, a shareholder of an S corporation or of a
11 corporation other than an S corporation that is not taxed as a
12 corporation for federal income tax purposes for the taxable
13 year, a member of a limited liability company or any similar
14 person holding an ownership interest in any pass-through
15 entity;

16 G. "partnership" means a combination of persons,
17 including a partnership, joint venture, common trust fund,
18 association, pool or working agreement, or any other
19 combination of persons that is treated as a partnership for
20 federal income tax purposes;

21 H. "pass-through entity" means any business
22 association other than:

23 (1) a sole proprietorship;

24 (2) an estate or trust that does not
25 distribute income to beneficiaries;

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1 (3) a corporation, limited liability company,
2 partnership or other entity not a sole proprietorship taxed as
3 a corporation for federal income tax purposes for the taxable
4 year;

5 (4) a partnership that is organized as an
6 investment partnership in which the partners' income is derived
7 solely from interest, dividends and sales of securities;

8 (5) a single member limited liability company
9 that is treated as a disregarded entity for federal income tax
10 purposes; or

11 (6) a publicly traded partnership as defined
12 in Subsection (b) of Section 7704 of the Internal Revenue Code;

13 ~~[D.]~~ I. "person" means an individual, club,
14 company, cooperative association, corporation, estate, firm,
15 joint venture, partnership, receiver, syndicate, trust or other
16 association, limited liability company, limited liability
17 partnership or gas, water or electric utility owned or operated
18 by a county or municipality and, to the extent permitted by
19 law, a federal, state or other governmental unit or subdivision
20 or an agency, a department or an instrumentality thereof;

21 ~~[E.]~~ J. "remittee" means a person that is entitled
22 to payment of oil and gas proceeds by a remitter; and

23 ~~[F.]~~ K. "remitter" means a person that pays oil and
24 gas proceeds to any remittee."

25 Section 10. Section 7-3A-3 NMSA 1978 (being Laws 2003,

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1 Chapter 86, Section 6) is amended to read:

2 "7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS AND NET
3 INCOME.--

4 A. Except as otherwise provided in this section, a
5 remitter shall deduct and withhold from each payment of oil and
6 gas proceeds being made to a remittee an amount equal to the
7 rate specified in Subsection ~~[E]~~ D of this section multiplied
8 by the ~~[gross]~~ amount prior to withholding that otherwise would
9 have been payable to the remittee.

10 B. Except as otherwise provided in this section, a
11 pass-through entity shall deduct and withhold from each owner's
12 share of net income for that quarter an amount equal to the
13 rate specified in Subsection D of this section multiplied by
14 the owner's share of that net income, reduced, but not below
15 zero, by the amount required to be withheld from the owner's
16 net income under Subsection A of this section.

17 ~~[B.]~~ C. The obligation to deduct and withhold from
18 payments or net income as provided in ~~[Subsection]~~ Subsections
19 A and B of this section does not apply to payments that are
20 made to:

21 (1) ~~[remittees with a New Mexico address as~~
22 ~~shown on internal revenue service form 1099-MISC or successor~~
23 ~~form]~~ an individual who is a resident of New Mexico;

24 (2) the United States, this state or any
25 agency, instrumentality or political subdivision of either;

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1 (3) any federally recognized Indian nation,
2 tribe or pueblo or any agency, instrumentality or political
3 subdivision thereof; or

4 (4) organizations that have been granted
5 exemption from the federal income tax by the United States
6 commissioner of internal revenue as organizations described in
7 Section 501(c)(3) of the ~~[United States]~~ Internal Revenue Code.
8 ~~[of 1986, as amended.]~~

9 ~~G.]~~ D. The rate of withholding ~~[is six and~~
10 ~~three-fourths percent for the period October 1, 2003 through~~
11 ~~December 31, 2004. Thereafter the rate shall be set by~~
12 ~~department regulation]~~ shall be set by a department directive;
13 provided that the rate may not exceed the higher of the maximum
14 bracket rate set by Section 7-2-7 NMSA 1978 for the taxable
15 year or the maximum bracket rate set by Section 7-2A-5 NMSA
16 1978 for the taxable year; and provided further that remitters
17 shall be given ninety days' notice of a change in the rate.

18 E. If a pass-through entity has been in existence
19 for at least one full taxable year prior to the current
20 calendar year, the pass-through entity may use one-fourth of
21 its total net income for the preceding full taxable year to
22 compute the amount required to be deducted and withheld each
23 quarter under Subsection B of this section.

24 F. If a remitter receives oil and gas proceeds from
25 which an amount has been deducted and withheld pursuant to the

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1 Oil and Gas Proceeds and Pass-Through Entity Withholding Tax
2 Act or a pass-through entity has deducted and withheld an
3 amount pursuant to the Oil and Gas Proceeds and Pass-Through
4 Entity Withholding Tax Act from the net income of an owner that
5 is also a pass-through entity, the remitter or payee
6 pass-through entity may take credit for that amount in
7 determining the amount the remitter or payee pass-through
8 entity must withhold and deduct pursuant to this section.

9 ~~[D-]~~ G. If the amount to be withheld from all
10 payments to a remittee in a calendar quarter has not exceeded
11 thirty dollars (\$30.00) and a payment to a remittee is less
12 than ten dollars (\$10.00), no withholding is required. If the
13 amount to be withheld from an owner's share of net income in
14 any calendar quarter is less than thirty dollars (\$30.00), no
15 withholding is required.

16 H. At the option of a pass-through entity, a pass-
17 through entity may agree with an owner that the owner pay the
18 amount that the pass-through entity would have been required to
19 withhold and remit to the department on behalf of the owner
20 pursuant to the Oil and Gas Proceeds and Pass-Through Entity
21 Withholding Tax Act. The payments by the owner shall be
22 remitted on the dates set forth in Section 7-3A-6 NMSA 1978 on
23 forms and in the manner required by the department."

24 Section 11. Section 7-3A-4 NMSA 1978 (being Laws 2003,
25 Chapter 86, Section 7) is amended to read:

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1 "7-3A-4. DEDUCTIONS CONSIDERED TAXES.--Amounts deducted
2 under the provisions of the Oil and Gas Proceeds and Pass-
3 Through Entity Withholding Tax Act are a collected tax. A
4 remittee who receives payment of oil and gas proceeds or an
5 owner with a share of net income does not have a right of
6 action against the remitter or pass-through entity for the
7 amount deducted and withheld from the oil and gas proceeds or
8 net income."

9 Section 12. Section 7-3A-5 NMSA 1978 (being Laws 2003,
10 Chapter 86, Section 8) is amended to read:

11 "7-3A-5. [~~REMITTER~~] REMITTERS AND PASS-THROUGH ENTITIES
12 LIABLE FOR AMOUNTS DEDUCTED AND WITHHELD--EXCEPTIONS.--

13 A. Every remitter or pass-through entity is liable
14 for:

15 (1) amounts required to be deducted and
16 withheld by the Oil and Gas Proceeds and Pass-Through Entity
17 Withholding Tax Act regardless of whether the amounts were in
18 fact deducted and withheld [~~except that~~]; and

19 (2) for the amounts that an owner has agreed
20 to remit pursuant to Subsection H of Section 7-3A-3 NMSA 1978.

21 B. A remitter or pass-through entity is not liable
22 for amounts required to be deducted and withheld by the Oil and
23 Gas Proceeds and Pass-Through Entity Withholding Tax Act but
24 not deducted or withheld if:

25 [A. if] (1) the remitter or pass-through

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1 entity fails to deduct and withhold the required amounts and if
2 the tax against which the required amounts would have been
3 credited is paid [~~the remitter shall not be liable for those~~
4 ~~amounts not deducted and withheld~~]; or

5 [B. ~~if~~] (2) the remitter's or pass-through
6 entity's failure to deduct and withhold the required amounts is
7 due to reasonable cause [~~such as reliance on addresses supplied~~
8 ~~by remittees, the remitter shall not be liable for amounts not~~
9 ~~deducted and withheld~~].

10 C. The making of a timely election for federal
11 income tax purposes that changes the net income of a
12 pass-through entity in a prior quarter is a reasonable cause
13 for failure to withhold and deduct the required amounts on the
14 change in net income due to the election."

15 Section 13. Section 7-3A-6 NMSA 1978 (being Laws 2003,
16 Chapter 86, Section 9) is amended to read:

17 "7-3A-6. DATE PAYMENT DUE--FORM.--

18 A. Amounts withheld under the provisions of the Oil
19 and Gas Proceeds and Pass-Through Entity Withholding Tax Act
20 are due on or before the twenty-fifth day of the month
21 following the end of the calendar quarter when the taxes were
22 required to be withheld.

23 B. The amount withheld shall be remitted on a form
24 and in a manner required by the department, provided that
25 amounts withheld and remitted from oil and gas proceeds are

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1 kept distinct from every other tax or withheld amount."

2 Section 14. Section 7-3A-7 NMSA 1978 (being Laws 2003,
3 Chapter 86, Section 10) is amended to read:

4 "7-3A-7. STATEMENTS OF WITHHOLDING.--

5 A. Every remitter shall:

6 (1) file an annual statement of withholding
7 for each remittee [~~This statement shall be~~] that:

8 (a) is in a form prescribed by the
9 department [~~and shall be~~];

10 (b) is filed with the department on or
11 before the last day of February of the year following that for
12 which the statement is made [~~It shall include~~]; and

13 (c) includes the total oil and gas
14 proceeds paid to the remittee and the total amount of tax
15 withheld for the calendar year [~~The department shall compile~~
16 ~~each year the annual statements received from the remitters and~~
17 ~~compare the compilation with the records of individuals,~~
18 ~~estates or trusts filing income tax returns.~~

19 B. ~~A~~]; and

20 (2) provide a copy of the annual statement of
21 withholding [~~shall be furnished~~] to the remittee [~~by the~~
22 ~~remitter~~] on or before February 15 of the year following the
23 year for which the statement is made.

24 B. Every pass-through entity doing business in New
25 Mexico shall:

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1 (1) file an annual information return with the
2 department that:

3 (a) is filed on or before the due date
4 of the entity's federal return for the taxable year;

5 (b) is signed by the business manager or
6 one of the owners of the pass-through entity; and

7 (c) contains all information required by
8 the department, including the pass-through entity's gross
9 income; the pass-through entity's net income; the amount of
10 each owner's share of the pass-through entity's net income; and
11 the name, address and tax identification number of each owner
12 entitled to a share of net income; and

13 (2) provide to each of its owners sufficient
14 information to enable the owner to comply with the provisions
15 of the Income Tax Act and the Corporate Income and Franchise
16 Tax Act with respect to the owner's share of net income.

17 C. The department shall compile each year the
18 annual statements of withholding received from the remitters
19 and the annual information returns received from pass-through
20 entities and compare the compilations with the records of
21 corporations, individuals, estates or trusts filing income tax
22 returns."

23 Section 15. Section 7-3A-8 NMSA 1978 (being Laws 2003,
24 Chapter 86, Section 11) is amended to read:

25 "7-3A-8. WITHHELD AMOUNTS CREDITED AGAINST INCOME

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1 TAX.--The entire amount of oil and gas proceeds and net income
2 upon which the tax was deducted and withheld or upon which
3 payments were made by owners in lieu of withholding shall be
4 included in the base income of the remittee for purposes of the
5 Income Tax Act and the Corporate Income and Franchise Tax Act.
6 The amount of tax deducted and withheld or payments made by
7 owners in lieu of withholding pursuant to the Oil and Gas
8 Proceeds and Pass-Through Entity Withholding Tax Act during the
9 taxable year shall be credited against any income tax or
10 corporate income tax due from the remittee or owner."

11 Section 16. Section 7-3A-9 NMSA 1978 (being Laws 2003,
12 Chapter 86, Section 12) is amended to read:

13 "7-3A-9. INTERPRETATION OF ACT--ADMINISTRATION AND
14 ENFORCEMENT OF ACT.--

15 A. The department shall interpret the provisions of
16 th*e Oil and Gas Proceeds and Pass-Through Entity Withholding
17 Tax Act.

18 B. The department shall administer and enforce the
19 Oil and Gas Proceeds and Pass-Through Entity Withholding Tax
20 Act, and the Tax Administration Act applies to the
21 administration and enforcement of the Oil and Gas Proceeds and
22 Pass-Through Entity Withholding Tax Act."

23 Section 17. REPEAL.--Section 7-3-12 NMSA 1978 (being Laws
24 1999, Chapter 17, Section 3, as amended) is repealed.

25 Section 18. APPLICABILITY.--The provisions of this act

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1 are applicable to taxable years beginning on or after January
2 1, 2011.

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