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HOUSE BILL 285

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

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO TAXATION; AMENDING PROVISIONS OF CHAPTER 7 NMSA
1978 AFFECTING TAX ADMINISTRATION, INCOME TAXES, GROSS RECEIPTS
TAXES AND EXCISE TAXES.

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

Section 1. Section 7-1-6.26 NMSA 1978 (being Laws 1987,
Chapter 347, Section 11, as amended) is amended to read:

"7-1-6.26. COUNTY GOVERNMENT ROAD FUND--DISTRIBUTION.--

A. For the purposes of this section, "distributable
amount" means the amount in the county government road fund as
of the last day of any month for which a distribution is
required to be made pursuant to this section in excess of the
balance in that fund as of the last day of the preceding month
after reduction for any required distributions for the
preceding month.

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1 B. The secretary of [~~highway and~~] transportation
2 shall determine and certify on or before [~~July 1, 1987 and on~~
3 ~~or before~~] July 1 of each [~~subsequent~~] year the total miles of
4 public roads maintained by each county pursuant to Section
5 66-6-23 NMSA 1978. For the purposes of this subsection, if the
6 certified mileage of public roads maintained by a county is
7 less than four hundred miles, the state treasurer shall
8 increase the number of miles of public roads maintained by that
9 county by fifty percent and revise the total miles of public
10 roads maintained by all counties accordingly. Except as
11 provided otherwise in Subsection D of this section, each county
12 shall receive an amount equal to its proportionate share of
13 miles of public roads maintained, as the number of miles for
14 the county may have been revised pursuant to this subsection,
15 to the total miles of public roads maintained by all counties,
16 as that total may have been revised pursuant to this
17 subsection, times fifty percent of the distributable amount in
18 the county government road fund.

19 C. Except as provided otherwise in Subsection D of
20 this section, each county shall receive a share of fifty
21 percent of the distributable amount in the county government
22 road fund as determined in this subsection. The amount for
23 each county shall be the greater of:

24 (1) twenty-one cents (\$.21) multiplied by the
25 county's population as shown by the most recent federal

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1 decennial census; or

2 (2) the proportionate share that the taxable
3 gallons of gasoline reported for that county for the preceding
4 fiscal year bear to the total taxable gallons of gasoline for
5 all counties in the preceding fiscal year, as determined by the
6 department, multiplied by fifty percent of the distributable
7 amount in the county government road fund.

8 If the sum of the amounts to be distributed pursuant to
9 Paragraphs (1) and (2) of this subsection exceeds fifty percent
10 of the distributable amount in the county government road fund,
11 the excess shall be eliminated by multiplying the amount
12 determined in Paragraphs (1) and (2) of this subsection for
13 each county by a fraction, the numerator of which is fifty
14 percent of the distributable amount in the county government
15 road fund, and the denominator of which is the sum of amounts
16 determined for all counties in Paragraphs (1) and (2) of this
17 subsection.

18 D. If the distribution for a class A county or for
19 an H class county determined pursuant to Subsections B and C of
20 this section exceeds an amount equal to one-twelfth of the
21 product of the total taxable gallons of gasoline reported for
22 the county for the preceding fiscal year times one cent (\$.01),
23 the distribution for that county shall be reduced to an amount
24 equal to one-twelfth of the product of the total taxable
25 gallons of gasoline reported for the county for the preceding

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1 fiscal year times one cent (\$.01). Any amount of the reduction
2 shall be shared among the counties whose distribution has not
3 been reduced pursuant to this subsection in the ratio of the
4 amounts computed in Subsections B and C of this section.

5 E. If a county has not made the required mileage
6 certification pursuant to Section 67-3-28.3 NMSA 1978 [~~by May~~
7 ~~1, 1988, and~~] by April 1 of every year [~~thereafter~~], of the
8 year for which distribution is being made, the secretary of
9 [~~highway and~~] transportation shall estimate the mileage
10 maintained by those counties for the purpose of making
11 distribution to all counties, and the amount calculated to be
12 distributed each month to those counties not certifying mileage
13 shall be reduced by one-third each month for that fiscal year
14 and that amount not distributed to those counties shall be
15 distributed equally to all counties that have certified
16 mileages.

17 F. Distributions made to counties pursuant to this
18 section shall be deposited in the county road fund to be used
19 for the construction, reconstruction, resurfacing or other
20 improvement or maintenance of the public roads and bridges in
21 the county, including right-of-way and materials acquisition.
22 Money distributed pursuant to this section may be used by the
23 county to provide matching funds for projects subject to
24 cooperative agreements entered into with the [~~state highway~~
25 ~~and~~] department of transportation [~~department~~] pursuant to

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1 Section 67-3-28 NMSA 1978."

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

4 "7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED
5 TAX--PENALTY.--

6 A. Except as otherwise provided in this section,
7 [~~every~~] an individual who is required to file an income tax
8 return under the Income Tax Act shall pay the required annual
9 payment in installments through either withholding or estimated
10 tax payments.

11 B. For the purposes of this section:

12 (1) "required annual payment" means the lesser
13 of:

14 (a) ninety percent of the tax shown on
15 the return of the taxable year or, if no return is filed,
16 ninety percent of the tax for the taxable year; or

17 (b) one hundred percent of the tax shown
18 on the return for the preceding taxable year if the preceding
19 taxable year was a taxable year of twelve months and the
20 taxpayer filed a New Mexico tax return for that preceding
21 taxable year; and

22 (2) "tax" means the tax imposed under Section
23 7-2-3 NMSA 1978 less any amount allowed for applicable credits
24 and rebates provided by the Income Tax Act.

25 C. There shall be four required installments for

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1 each taxable year. If a taxpayer is not liable for estimated
2 tax payments on March 31, but becomes liable for estimated tax
3 at some point after March 31, ~~he~~ the taxpayer must make
4 estimated tax payments as follows:

5 (1) if the taxpayer becomes required to pay
6 estimated tax after March 31 and before June 1, fifty percent
7 of the required annual payment must be paid on or before June
8 15, twenty-five percent on September 15 and twenty-five percent
9 on or before January 15 of the following taxable year;

10 (2) if the taxpayer becomes required to pay
11 estimated tax after May 31, but before September 1, the
12 taxpayer must pay seventy-five percent of the required annual
13 payment on or before September 15 and twenty-five percent on or
14 before January 15 of the following taxable year; and

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

19 D. Except as otherwise provided in this section,
20 for taxpayers reporting on a calendar year basis, estimated
21 payments of the required annual payment are due on or before
22 April 15, June 15 and September 15 of the taxable year and
23 January 15 of the following taxable year. For taxpayers
24 reporting on a fiscal year other than a calendar year, the due
25 dates for the installments are the fifteenth day of the fourth,

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1 sixth and ninth months of the fiscal year and the fifteenth day
2 of the first month following the fiscal year.

3 E. A rancher or farmer who expects to receive at
4 least two-thirds of [~~his~~] the rancher's or farmer's gross
5 income for the taxable year from ranching or farming, or who
6 has received at least two-thirds of [~~his~~] the rancher's or
7 farmer's gross income for the previous taxable year from
8 ranching or farming, may:

9 (1) pay the required annual payment for the
10 taxable year in one installment on or before January 15 of the
11 following taxable year; or

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

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

21 F. For the purposes of this section, the amount of
22 tax deducted and withheld with respect to a taxpayer under the
23 Withholding Tax Act or the Oil and Gas Proceeds Withholding Tax
24 Act shall be deemed a payment of estimated tax. An equal part
25 of the amount of withheld tax shall be deemed paid on each due

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1 date for the applicable taxable year unless the taxpayer
2 establishes the dates on which all amounts were actually
3 withheld. In that case, the amounts withheld shall be deemed
4 payments of estimated tax on the dates on which the amounts
5 were actually withheld. The taxpayer may apply the provisions
6 of this subsection separately to wage withholding and any other
7 amounts withheld under the Withholding Tax Act or the Oil and
8 Gas Proceeds Withholding Tax Act.

9 G. Except as otherwise provided in this section, in
10 the case of an underpayment of the required annual payment by a
11 taxpayer, there shall be added to the tax a penalty determined
12 by applying the rate specified in Subsection B of Section
13 7-1-67 NMSA 1978 to the amount of the underpayment for the
14 period of the underpayment, provided:

15 (1) the amount of the underpayment shall be
16 the excess of the amount of the required annual payment over
17 the amount, if any, paid on or before the due date for the
18 installment;

19 (2) the period of the underpayment runs from
20 the due date for the installment to whichever of the following
21 dates is earlier:

22 (a) the fifteenth day of the fourth
23 month following the close of the taxable year; or

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

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

4 H. No penalty shall be imposed under Subsection G
5 of this section for any taxable year if:

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

8 (a) the tax shown on the return for the
9 taxable year or, when no return is filed, the tax for the
10 taxable year; and

11 (b) any amount withheld under the
12 provisions of the Withholding Tax Act or the Oil and Gas
13 Proceeds Withholding Tax Act for that taxpayer for that taxable
14 year;

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

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

23 (4) the secretary determines that the
24 underpayment was not due to fraud, negligence or disregard of
25 rules and regulations.

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1 I. If on or before January 31 of the following
2 taxable year the taxpayer files a return for the taxable year
3 and pays in full the amount computed on the return as payable,
4 then ~~no~~ a penalty under Subsection G of this section shall
5 not be imposed on an underpayment of the fourth required
6 installment for the taxable year.

7 J. This section applies to taxable years of less
8 than twelve months and to taxpayers reporting on a fiscal year
9 other than a calendar year in the manner determined by
10 regulation or instruction of the secretary.

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

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

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

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

3 Section 3. Section 7-9-92 NMSA 1978 (being Laws 2004,
4 Chapter 116, Section 5) is amended to read:

5 "7-9-92. DEDUCTION--GROSS RECEIPTS--SALE OF FOOD AT
6 RETAIL FOOD STORE.--

7 A. Receipts from the sale of food at a retail food
8 store that are not exempt from gross receipts taxation and are
9 not deductible pursuant to another provision of the Gross
10 Receipts and Compensating Tax Act may be deducted from gross
11 receipts. The deduction provided by this section shall be
12 separately stated by the taxpayer.

13 B. For the purposes of this section:

14 (1) "food" means any food or food product for
15 home consumption that meets the definition of food in 7 USCA
16 2012[~~(g)~~](k)(1) for purposes of the federal [~~food stamp~~]
17 supplemental nutrition assistance program; and

18 (2) "retail food store" means an establishment
19 that sells food for home preparation and consumption and that
20 meets the definition of retail food store in 7 USCA
21 2012[~~(k)~~](p)(1) for purposes of the federal [~~food stamp~~]
22 supplemental nutrition assistance program, whether or not the
23 establishment participates in the [~~food stamp~~] supplemental
24 nutrition assistance program."

25 Section 4. Section 7-12-9.3 NMSA 1978 (being Laws 2006,
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1 Chapter 91, Section 9) is amended to read:

2 "7-12-9.3. MANUFACTURER'S OR IMPORTER'S LICENSE.--

3 A. A person shall not manufacture cigarettes in New
4 Mexico unless licensed by the department.

5 B. A person licensed to manufacture cigarettes in
6 New Mexico is authorized to:

7 (1) manufacture, produce and package
8 cigarettes;

9 (2) receive imported cigarettes;

10 (3) sell unstamped cigarettes to a
11 distributor, another manufacturer or an export warehouse
12 proprietor; and

13 (4) sell unstamped cigarettes outside of New
14 Mexico."

15 Section 5. Section 7-13-3.5 NMSA 1978 (being Laws 1997,
16 Chapter 192, Section 3) is amended to read:

17 "7-13-3.5. BOND REQUIRED OF TAXPAYERS.--

18 A. Except as provided in Subsection H of this
19 section, every taxpayer shall file with the department a bond
20 on a form approved by the attorney general with a surety
21 company authorized by the [~~state corporation~~] public regulation
22 commission to transact business in this state as a surety and
23 upon which bond the taxpayer is the principal obligor and the
24 state the obligee. The bond shall be conditioned upon the
25 prompt filing of true reports and the payment by the taxpayer

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1 to the department of all taxes levied by the Gasoline Tax Act,
2 together with all applicable penalties and interest thereon.

3 B. In lieu of the bond, the taxpayer may elect to
4 file with the department cash or bonds of the United States or
5 New Mexico or of any political subdivision of the state.

6 C. The total amount of the bond, cash or securities
7 required of any taxpayer shall be fixed by the department and
8 may be increased or reduced by the department at any time,
9 subject to the limitations provided in this section.

10 D. In fixing the total amount of the bond, cash or
11 securities required of any taxpayer required to post bond, the
12 department shall require an equivalent in total amount to at
13 least two times the amount of the department's estimate of the
14 taxpayer's monthly gasoline tax, determined in such manner as
15 the secretary may deem proper; provided, however, the total
16 amount of bond, cash or securities required of a taxpayer shall
17 never be less than one thousand dollars (\$1,000).

18 E. In the event the department decides that the
19 amount of the existing bond, cash or securities is insufficient
20 to insure payment to this state of the amount of the gasoline
21 tax and any penalties and interest for which the taxpayer is or
22 may at any time become liable, [~~then~~] the taxpayer, upon
23 written demand of the department mailed to the last known
24 address of the taxpayer as shown on the records of the
25 department, shall file an additional bond, cash or securities

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1 in the manner, form and amount determined by the department to
2 be necessary to secure at all times the payment by the taxpayer
3 of all taxes, penalties and interest due under the Gasoline Tax
4 Act.

5 F. A surety on a bond furnished by a taxpayer as
6 required by this section shall be released and discharged from
7 all liability accruing on the bond after the expiration of
8 ninety days from the date upon which the surety files with the
9 department a written request to be released and discharged;
10 provided, however, that such request shall not operate to
11 release or discharge the surety from any liability already
12 accrued or that shall accrue before the expiration of the
13 ninety-day period, unless a new bond is filed during the
14 ninety-day period, in which case the previous bond may be
15 canceled as of the effective date of the new bond. On receipt
16 of notice of such request, the department promptly shall notify
17 the taxpayer who furnished the bond that the taxpayer, on or
18 before the expiration of the ninety-day period, shall file with
19 the department a new bond with a surety satisfactory to the
20 department in the amount and form required in this section.

21 G. The taxpayer required to file bond with or
22 provide cash or securities to the department in accordance with
23 this section and who is required by another state law to file
24 another bond with or provide cash or securities to the
25 department may elect to file a combined bond or provide cash or

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1 securities applicable to the provisions of both this section
2 and the other law, with the approval of the secretary. The
3 amount of the combined bond, cash or securities shall be
4 determined by the department and the form of the combined bond
5 shall be approved by the attorney general.

6 H. ~~[Every taxpayer who, for the twenty-four month~~
7 ~~period immediately preceding July 1, 1994, has not been a~~
8 ~~delinquent taxpayer pursuant to the Gasoline Tax Act is exempt~~
9 ~~from the requirement pursuant to this section to file a bond.]~~

10 A taxpayer required to file a bond pursuant to the provisions
11 of this section who, for a twenty-four consecutive month period
12 ending after July 1, 1994, has not been a delinquent taxpayer
13 pursuant to the Gasoline Tax Act may request to be exempt from
14 the requirement to file a bond beginning with the first day of
15 the first month following the end of the twenty-four month
16 period. If a taxpayer exempted pursuant to this subsection
17 subsequently becomes a delinquent taxpayer under the Gasoline
18 Tax Act, the department may terminate the exemption and require
19 the filing of a bond in accordance with this section. If the
20 department terminates the exemption, the termination shall not
21 be effective any earlier than ten days after the date the
22 department notifies the taxpayer in writing of the
23 termination."

24 Section 6. Section 7-14-6 NMSA 1978 (being Laws 1988,
25 Chapter 73, Section 16, as amended) is amended to read:

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1 "7-14-6. EXEMPTIONS FROM TAX.--

2 A. A person who acquires a vehicle out of state
3 thirty or more days before establishing a domicile in this
4 state is exempt from the tax if the vehicle was acquired for
5 personal use.

6 B. A person applying for a certificate of title for
7 a vehicle registered in another state is exempt from the tax if
8 the person has previously registered and titled the vehicle in
9 New Mexico and has owned the vehicle continuously since that
10 time.

11 C. A vehicle with a certificate of title owned by
12 this state or any political subdivision is exempt from the tax.

13 D. A person is exempt from the tax if the person
14 has a disability at the time the person purchases a vehicle and
15 can prove to the motor vehicle division of the department or
16 its agent that modifications have been made to the vehicle that
17 are:

18 (1) due to that person's disability; and

19 (2) necessary to enable that person to drive
20 that vehicle or be transported in that vehicle.

21 E. A person is exempt from the tax if the person is
22 a bona fide resident of New Mexico who served in the armed
23 forces of the United States and who suffered, while serving in
24 the armed forces or from a service-connected cause, the loss or
25 complete and total loss of use of:

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1 (1) one or both legs at or above the ankle; or

2 (2) one or both arms at or above the wrist.

3 F. A person who acquires a vehicle for subsequent
4 lease shall be exempt from the tax if:

5 (1) the person does not use the vehicle in any
6 manner other than holding it for lease or sale or leasing or
7 selling it in the ordinary course of business;

8 (2) the lease is for a term of more than six
9 months;

10 (3) the receipts from the subsequent lease are
11 subject to the gross receipts tax; and

12 (4) the vehicle does not have a gross vehicle
13 weight of over twenty-six thousand pounds.

14 [~~G. From July 1, 2004 through June 30, 2009,~~
15 ~~vehicles that are gasoline-electric hybrid vehicles with a~~
16 ~~United States environmental protection agency fuel economy~~
17 ~~rating of at least twenty-seven and one-half miles per gallon~~
18 ~~are eligible for a one-time exemption from the tax at the time~~
19 ~~of the issuance of the original certificate of title for the~~
20 ~~vehicle.]"~~