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FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/12
 SPONSOR Jennings LAST UPDATED 02/08/12 HB _____
 SHORT TITLE Oil & Gas Proceeds & Entity Withholding Forms SB 212/aSFC
 ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
Insignificant	Insignificant	Insignificant		

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$0.0	\$0.0	\$0.0		

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with Senate Bill 169

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Joint analysis with Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Senate Finance Committee Amendment

The Senate Finance Committee amendment to Senate Bill 212 makes the following changes to the bill.

Section 7-3A-2 NMSA 1978 is amended to simplify the definition of net income by aligning it with the Corporate Income and Franchise Tax Act for owners taxed as corporations, and with the Income Tax Act for all other owners.

References to distributed income are corrected to read allocable income, so that deductions and withholdings are not applicable to distributed income.

The exemption from deduction and withholding explicitly does not apply to payments of allocable net income if that income is from an unrelated business.

The threshold for withholding is changed from \$30 per quarter to \$100 per year.

Amounts withheld pursuant to the amended statute would be due on the required date for the federal tax return for the pass-through entity.

The annual statement of withholding for a remittee is required to be filed with the TRD in electronic form.

Synopsis of Original Bill

Senate Bill 212 would amend the Oil and Gas Proceeds and Pass-Through Entity Withholding Act. This Act requires withholding tax be paid by firms making payments to out-of-state residents. Provisions of the Act apply to oil and gas producers who remit income to others and also to pass-through entities (PTEs), which are business entities that are not taxed as corporations but pass their income through to their owners.

- To distinguish in-state from out-of-state residents, an oil and gas payment remitter could rely on the address shown on the 1099-MISC or similar form, which are the federal income tax information reports used to report the oil and gas payments for federal income tax purposes.
- For PTE's, the bill clarifies that withholding applies to "distributed" net income, i.e. amounts actually paid out as distinct for example from unrealized gains and losses.
- Amounts withheld by a PTE are due at the end of the calendar year rather than on a quarterly basis as under present law.
- Every remitter would be required to file their annual statement of withholding in electronic format, and include a form 1099-MISC or similar form.

- The Tax Department would develop and adopt rules regarding filing of these required forms if the remitter is not able to file them in an electronic format.
- Remitters would be required to file an electronic report of remittees who have certified that the remittee is responsible for the remittee’s own reporting and payment of tax due.
- The bill clarifies that the provisions of the Act do not apply to insurance companies. This provision is just clean-up because statutes in the Insurance Code already pre-empt this taxation.

The effective date of the bill is not specified, therefore becoming effective 90 days following adjournment (May 16, 2012). The provisions would be applicable to taxable years beginning on or after January 1, 2012.

FISCAL IMPLICATIONS

The TRD explains the likely effect of the proposed legislation as follows.

The withholding requirement for oil and gas operators has been in place for several years, and generates between \$30 and \$40 million in payments annually. Provisions of this bill should not have a significant impact on these revenues because they merely clarify the reporting format to document these payments. Provisions of the Act applying to PTEs have only been in effect for one year. Although there has not been a significant amount collected in that year, this may be due to the fact that no penalties for non-payment applied to the program during the first year. When the current PTE requirements were adopted in 2010, it was estimated that they would increase revenues due to improved compliance from out-of-state residents. Although it is too early to say whether that compliance is likely to result under present law, the provisions of this bill should not reduce the law’s potential for compliance gains. The change from a quarterly to an annual payment requirement will not affect the total amount due, only the timing of its payment. Thus, on net the bill should not significantly impact revenues.

The TRD further states that based on input received from taxpayers during the past year, the proposal should help to address a number of serious problems in present law that create compliance and administration burdens. Thus, the measure can be seen as “taxpayer friendly,” but it should not materially undermine state revenue collection efforts.

SIGNIFICANT ISSUES

The TRD claims the changes from these amendments are generally designed to streamline compliance and administration of the Act.

ADMINISTRATIVE IMPLICATIONS

Form changes, processing procedures and systems changes will be needed for TRD to implement this, but many of these changes are required under present law. In general, the bill will help in the administration of the statute.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 169 addresses some of the same sections of statute, with conflicting amendments to Section 7-3A-3.

TECHNICAL ISSUES

The TRD notes that on page 7, line 20, the word “available” may cause confusion as to whether the electronic reports actually have to be filed. The language would be clearer without this word. On page 4, section F, lines 8 through 11, sets the minimum amount to be withheld based on a quarterly period. This language should be modified to an annual basis to be consistent with the other provisions of the bill.

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