

FIFTIETH LEGISLATURE
SECOND SESSION, 2012

SB 212/a

February 7, 2012

Mr. President:

Your **FINANCE COMMITTEE**, to whom has been referred

SENATE BILL 212

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, between lines 15 and 16, insert a new Section 1 as follows:

"SECTION 1. Section 7-3A-2 NMSA 1978 (being Laws 2003, Chapter 86, Section 5, as amended) is amended to read:

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

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

B. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

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

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(1) in the case of an owner that is taxed as a corporation for federal income tax purposes, "net income" as defined in the Corporate Income and Franchise Tax Act; and

(2) for all other owners, "net income" as defined in the Income Tax Act;

D. "oil and gas" means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide;

E. "oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production, subject to all taxes withheld therefrom pursuant to law; "oil and gas proceeds" excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable;

F. "owner" means a partner in a partnership not taxed as a corporation for federal income tax purposes for the taxable year, a shareholder of an S corporation or of a corporation other than an S corporation that is not taxed as a corporation for federal income tax purposes for the taxable year, a member of a limited liability company or any similar person holding an ownership interest in any pass-through entity. "Owner" also means a performing artist to whom payments are due from a personal services business;

G. "partnership" means a combination of persons, including a partnership, joint venture, common trust fund, association, pool or working agreement, or any other combination of persons that is

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treated as a partnership for federal income tax purposes;

H. "pass-through entity" means a personal services business or any other business association other than:

(1) a sole proprietorship;

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

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

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

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

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

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

J. "personal services business" means a business organization that receives payments for the services of a performing artist for purposes of the film production tax credit;

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K. "remittee" means a person that is entitled to payment of oil and gas proceeds by a remitter; and

L. "remitter" means a person that pays oil and gas proceeds to any remittee."".

2. Renumber succeeding sections accordingly.

3. On page 2, line 3, strike "distributed" and insert in lieu thereof "allocable".

4. On page 2, line 5, strike "distributed" and insert in lieu thereof "allocable".

5. On page 2, line 7, strike "distributed" and insert in lieu thereof "allocable share of".

6. On page 2, line 10, strike "distributed" and insert in lieu thereof "allocable".

7. On page 3, line 4, after the period, insert:

"However, the obligation to deduct and withhold from payments of allocable net income to organizations identified in this paragraph applies if that income constitutes unrelated business income.".

8. On page 3, line 25, strike "distributed" and insert in lieu thereof "allocable share of".

9. On page 4, line 9, after "owner's", insert "allocable" and strike "distributed".

10. On page 4, line 10, strike "quarter", insert in lieu thereof "year" and on lines 10 and 11, strike "thirty dollars (\$30.00)" and insert in lieu thereof "one hundred dollars (\$100)".

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11. On page 4, line 25, after "owner's", insert "allocable" and strike "distributed".

12. On page 5, line 3, after "remittee", insert "or owner".

13. On page 5, line 12, strike the first occurrence of "a", insert in lieu thereof "an allocable" and strike "distributed".

14. On page 5, line 15, after "or", insert "an allocable share of".

15. On page 7, line 7, after "the", strike the remainder of the line, strike lines 8 and 9 in their entirety and insert in lieu thereof "due date of the federal tax return required for the pass-through entity."

16. On page 7, line 20, strike "available".

17. On page 9, line 5, after "owner's", insert "allocable" and strike "distributed".

18. On page 9, line 7, strike "a", insert in lieu thereof "an allocable" and strike "distributed".

19. On page 9, line 11, after "owner's", insert "allocable" and strike "distributed".

20. On page 9, line 22, strike "distributed" and insert in lieu thereof "an allocable share of".

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Respectfully submitted,

John Arthur Smith, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against
Yes: 9
No: 0
Excused: Adair, Papen
Absent: None

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