

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO TAXATION; CLARIFYING PROVISIONS IN THE OIL AND
GAS PROCEEDS AND PASS-THROUGH ENTITY WITHHOLDING TAX ACT;
EXCEPTING INSURANCE COMPANIES FROM WITHHOLDING PROVISIONS.

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

"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:

(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

1 dioxide;

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

18 F. "owner" means a partner in a partnership not
19 taxed as a corporation for federal income tax purposes for
20 the taxable year, a shareholder of an S corporation or of a
21 corporation other than an S corporation that is not taxed as
22 a corporation for federal income tax purposes for the taxable
23 year, a member of a limited liability company or any similar
24 person holding an ownership interest in any pass-through
25 entity. "Owner" also means a performing artist to whom

1 payments are due from a personal services business;

2 G. "partnership" means a combination of persons,
3 including a partnership, joint venture, common trust fund,
4 association, pool or working agreement, or any other
5 combination of persons that is treated as a partnership for
6 federal income tax purposes;

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

9 (1) a sole proprietorship;

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

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

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

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

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

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

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

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

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

18 SECTION 2. Section 7-3A-3 NMSA 1978 (being Laws 2003,
19 Chapter 86, Section 6, as amended) is amended to read:

20 "7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS AND NET
21 INCOME.--

22 A. Except as otherwise provided in this section, a
23 remitter shall deduct and withhold from each payment of oil
24 and gas proceeds being made to a remittee for each quarter an
25 amount equal to the rate specified in Subsection D of this

1 section multiplied by the amount prior to withholding that
2 otherwise would have been payable to the remittee.

3 B. Except as otherwise provided in this section, a
4 pass-through entity shall deduct and withhold from each
5 owner's allocable share of net income for that calendar year
6 an amount equal to the rate specified in Subsection D of this
7 section multiplied by the owner's allocable share of that net
8 income, reduced, but not below zero, by the amount required
9 to be withheld from the owner's allocable share of net income
10 under Subsection A of this section.

11 C. The obligation to deduct and withhold from
12 payments or allocable net income as provided in Subsections A
13 and B of this section does not apply to payments that are
14 made to:

15 (1) a corporation whose principal place of
16 business is in New Mexico or an individual who is a resident
17 of New Mexico;

18 (2) remittees with a New Mexico address as
19 shown on internal revenue service form 1099-Misc or a
20 successor form or on a *pro forma* 1099-Misc or a successor
21 form for those entities that do not receive an internal
22 revenue service form 1099-Misc;

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

25 (4) any federally recognized Indian nation,

1 tribe or pueblo or any agency, instrumentality or political
2 subdivision thereof; or

3 (5) organizations that have been granted
4 exemption from the federal income tax by the United States
5 commissioner of internal revenue as organizations described
6 in Section 501(c)(3) of the Internal Revenue Code. However,
7 the obligation to deduct and withhold from payments of
8 allocable net income to organizations identified in this
9 paragraph applies if that income constitutes unrelated
10 business income.

11 D. Except as provided in Subsection H of this
12 section, the rate of withholding shall be set by a department
13 directive; provided that the rate may not exceed the higher
14 of the maximum bracket rate set by Section 7-2-7 NMSA 1978
15 for the taxable year or the maximum bracket rate set by
16 Section 7-2A-5 NMSA 1978 for the taxable year; and provided
17 further that remitters shall be given ninety days' notice of
18 a change in the rate.

19 E. If a remitter receives oil and gas proceeds
20 from which an amount has been deducted and withheld pursuant
21 to the Oil and Gas Proceeds and Pass-Through Entity
22 Withholding Tax Act or a pass-through entity has deducted and
23 withheld an amount pursuant to the Oil and Gas Proceeds and
24 Pass-Through Entity Withholding Tax Act from the allocable
25 share of net income of an owner that is also a pass-through

1 entity, the remitter or payee pass-through entity may take
2 credit for that amount in determining the amount the remitter
3 or payee pass-through entity must withhold and deduct
4 pursuant to this section.

5 F. If the amount to be withheld from all payments
6 to a remittee in a calendar quarter has not exceeded thirty
7 dollars (\$30.00) and a payment to a remittee is less than ten
8 dollars (\$10.00), no withholding is required. If the amount
9 to be withheld from an owner's allocable share of net income
10 in any calendar year is less than one hundred dollars (\$100),
11 no withholding is required.

12 G. Except as provided in Subsection H of this
13 section, at the option of a remitter or pass-through entity,
14 a remitter or pass-through entity may agree with a remittee
15 or an owner that the remittee or owner pay the amount that
16 the remitter or pass-through entity would have been required
17 to withhold and remit to the department on behalf of the
18 remittee or owner pursuant to the Oil and Gas Proceeds and
19 Pass-Through Entity Withholding Tax Act. The payments by the
20 remittee or owner shall be remitted on the dates set forth in
21 Section 7-3A-6 NMSA 1978 on forms and in the manner required
22 by the department.

23 H. Excluding wages, a personal services business
24 shall deduct and withhold an amount equal to the owner's
25 allocable share of net income multiplied by the highest rate

1 for single individuals provided in Section 7-2-7 NMSA 1978.

2 I. If the remittee or owner is an insurance
3 company and falls under the provisions of Section 59A-6-6
4 NMSA 1978, no withholding is required pursuant to this
5 section."

6 SECTION 3. Section 7-3A-4 NMSA 1978 (being Laws 2003,
7 Chapter 86, Section 7, as amended) is amended to read:

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

16 SECTION 4. Section 7-3A-5 NMSA 1978 (being Laws 2003,
17 Chapter 86, Section 8, as amended) is amended to read:

18 "7-3A-5. REMITTERS AND PASS-THROUGH ENTITIES LIABLE FOR
19 AMOUNTS DEDUCTED AND WITHHELD--EXCEPTIONS.--

20 A. Every remitter or pass-through entity is liable
21 for:

22 (1) amounts required to be deducted and
23 withheld by the Oil and Gas Proceeds and Pass-Through Entity
24 Withholding Tax Act regardless of whether the amounts were in
25 fact deducted and withheld; and

1 (2) for the amounts that a remittee or an
2 owner has agreed to remit pursuant to Subsection G of Section
3 7-3A-3 NMSA 1978, once the department has notified the
4 remitter or pass-through entity that the remittee or owner
5 has failed to remit.

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

10 (1) the remitter or pass-through entity
11 fails to deduct and withhold the required amounts and if the
12 tax against which the required amounts would have been
13 credited is paid; or

14 (2) the remitter's or pass-through entity's
15 failure to deduct and withhold the required amounts is due to
16 reasonable cause."

17 SECTION 5. Section 7-3A-6 NMSA 1978 (being Laws 2003,
18 Chapter 86, Section 9, as amended) is amended to read:

19 "7-3A-6. DATE PAYMENT DUE--FORM.--

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

25 B. Amounts withheld under the provisions of the

1 Oil and Gas Proceeds and Pass-Through Entity Withholding Tax
2 Act by a pass-through entity are due on or before the due
3 date of the federal tax return required for the pass-through
4 entity.

5 C. The amount withheld shall be remitted on a form
6 and in a manner required by the department, provided that
7 amounts withheld and remitted from oil and gas proceeds are
8 kept distinct from every other tax or withheld amount."

9 SECTION 6. Section 7-3A-7 NMSA 1978 (being Laws 2003,
10 Chapter 86, Section 10, as amended) is amended to read:

11 "7-3A-7. STATEMENTS OF WITHHOLDING.--

12 A. Every remitter shall:

13 (1) file an annual statement of withholding
14 for each remittee that:

15 (a) is in electronic format and
16 includes a form 1099-Misc or a successor form or on a *pro*
17 *forma* 1099-Misc or a successor form for those entities that
18 do not receive an internal revenue service form 1099-Misc;

19 (b) is filed with the department on or
20 before the last day of February of the year following that
21 for which the statement is made; and

22 (c) includes the total oil and gas
23 proceeds paid to the remittee and the total amount of tax
24 withheld for the calendar year; and

25 (2) provide a copy of the annual statement

1 of withholding to the remittee on or before February 15 of
2 the year following the year for which the statement is made.

3 B. The department shall develop and adopt rules
4 regarding the filing of a report pursuant to this section and
5 the attachment of form 1099-Misc or a successor form or a *pro*
6 *forma* 1099-Misc or a successor form, if the remitter is not
7 able to file those forms in an electronic format.

8 C. Every remitter shall file an electronic report
9 of the remittees who have certified that the remittee is
10 responsible for filing the remittee's own oil and gas
11 proceeds tax report and for paying the remittee's oil and gas
12 proceeds tax liability due.

13 D. Every pass-through entity doing business in New
14 Mexico shall:

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

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

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

21 (c) contains all information required
22 by the department, including the pass-through entity's gross
23 income; the pass-through entity's net income; the amount of
24 each owner's allocable share of the pass-through entity's net
25 income; and the name, address and tax identification number

1 of each owner entitled to an allocable share of net income;
2 and

3 (2) provide to each of its owners sufficient
4 information to enable the owner to comply with the provisions
5 of the Income Tax Act and the Corporate Income and Franchise
6 Tax Act with respect to the owner's allocable share of net
7 income.

8 E. The department shall compile each year the
9 annual statements of withholding received from the remitters
10 and the annual information returns received from pass-through
11 entities and compare the compilations with the records of
12 corporations, individuals, estates or trusts filing income
13 tax returns."

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

16 "7-3A-8. WITHHELD AMOUNTS CREDITED AGAINST INCOME
17 TAX.--The entire amount of oil and gas proceeds and an
18 allocable share of net income upon which the tax was deducted
19 and withheld or upon which payments were made by owners in
20 lieu of withholding shall be included in the base income of
21 the remittee for purposes of the Income Tax Act and the
22 Corporate Income and Franchise Tax Act. The amount of tax
23 deducted and withheld or payments made by owners in lieu of
24 withholding pursuant to the Oil and Gas Proceeds and
25 Pass-Through Entity Withholding Tax Act during the taxable

1 year shall be credited against any income tax or corporate
2 income tax due from the remittee or owner."

3 SECTION 8. APPLICABILITY.--The provisions of this act
4 apply to taxable years beginning on or after January 1, 2012.==

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25