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SENATE BILL 288

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO TAXATION; IMPOSING AN OIL AND GAS EMERGENCY SCHOOL SURTAX; ENACTING THE ELECTRICITY PRODUCTION TAX ACT; CREATING THE EARLY CHILDHOOD EDUCATION FUND; MAKING DISTRIBUTIONS TO THE FUND FROM THE OIL AND GAS EMERGENCY SCHOOL SURTAX AND THE ELECTRICITY PRODUCTION TAX; MAKING AN APPROPRIATION.

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

**SECTION 1.** Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. **APPLICABILITY.**--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

- (1) Income Tax Act;

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- 1 (2) Withholding Tax Act;
- 2 (3) Venture Capital Investment Act;
- 3 (4) Gross Receipts and Compensating Tax Act
- 4 and any state gross receipts tax;
- 5 (5) Liquor Excise Tax Act;
- 6 (6) Local Liquor Excise Tax Act;
- 7 (7) any municipal local option gross receipts
- 8 tax;
- 9 (8) any county local option gross receipts
- 10 tax;
- 11 (9) Special Fuels Supplier Tax Act;
- 12 (10) Gasoline Tax Act;
- 13 (11) petroleum products loading fee, which fee
- 14 shall be considered a tax for the purpose of the Tax
- 15 Administration Act;
- 16 (12) Alternative Fuel Tax Act;
- 17 (13) Cigarette Tax Act;
- 18 (14) Estate Tax Act;
- 19 (15) Railroad Car Company Tax Act;
- 20 (16) Investment Credit Act, rural job tax
- 21 credit, Laboratory Partnership with Small Business Tax Credit
- 22 Act, Technology Jobs and Research and Development Tax Credit
- 23 Act, Film Production Tax Credit Act, Affordable Housing Tax
- 24 Credit Act and high-wage jobs tax credit;
- 25 (17) Corporate Income and Franchise Tax Act;

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- 1 (18) Uniform Division of Income for Tax
- 2 Purposes Act;
- 3 (19) Multistate Tax Compact;
- 4 (20) Tobacco Products Tax Act; ~~[and]~~
- 5 (21) the telecommunications relay service
- 6 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 7 surcharge shall be considered a tax for the purposes of the Tax
- 8 Administration Act; and
- 9 (22) the Electricity Production Tax Act;
- 10 B. the administration and enforcement of the
- 11 following taxes, surtaxes, advanced payments or tax acts as
- 12 they now exist or may hereafter be amended:
- 13 (1) Resources Excise Tax Act;
- 14 (2) Severance Tax Act;
- 15 (3) any severance surtax;
- 16 (4) Oil and Gas Severance Tax Act;
- 17 (5) Oil and Gas Conservation Tax Act;
- 18 (6) Oil and Gas Emergency School Tax Act;
- 19 (7) Oil and Gas Ad Valorem Production Tax Act;
- 20 (8) Natural Gas Processors Tax Act;
- 21 (9) Oil and Gas Production Equipment Ad
- 22 Valorem Tax Act;
- 23 (10) Copper Production Ad Valorem Tax Act;
- 24 (11) any advance payment required to be made
- 25 by any act specified in this subsection, which advance payment

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1 shall be considered a tax for the purposes of the Tax  
2 Administration Act;

3 (12) Enhanced Oil Recovery Act;

4 (13) Natural Gas and Crude Oil Production  
5 Incentive Act; and

6 (14) intergovernmental production tax credit  
7 and intergovernmental production equipment tax credit;

8 C. the administration and enforcement of the  
9 following taxes, surcharges, fees or acts as they now exist or  
10 may hereafter be amended:

11 (1) Weight Distance Tax Act;

12 (2) the workers' compensation fee authorized  
13 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
14 tax for purposes of the Tax Administration Act;

15 (3) Uniform Unclaimed Property Act (1995);

16 (4) 911 emergency surcharge and the network  
17 and database surcharge, which surcharges shall be considered  
18 taxes for purposes of the Tax Administration Act;

19 (5) the solid waste assessment fee authorized  
20 by the Solid Waste Act, which fee shall be considered a tax for  
21 purposes of the Tax Administration Act;

22 (6) the water conservation fee imposed by  
23 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
24 for the purposes of the Tax Administration Act; and

25 (7) the gaming tax imposed pursuant to the

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1 Gaming Control Act; and

2 D. the administration and enforcement of all other  
3 laws, with respect to which the department is charged with  
4 responsibilities pursuant to the Tax Administration Act, but  
5 only to the extent that the other laws do not conflict with the  
6 Tax Administration Act."

7 SECTION 2. Section 7-1-6.20 NMSA 1978 (being Laws 1985,  
8 Chapter 65, Section 6, as amended) is amended to read:

9 "7-1-6.20. IDENTIFICATION OF MONEY IN EXTRACTION TAXES  
10 SUSPENSE FUND--DISTRIBUTION.--

11 A. Except as provided in Subsection B of this  
12 section, after the necessary disbursements have been made from  
13 the extraction taxes suspense fund, the money remaining in the  
14 suspense fund as of the last day of the month shall be  
15 identified by tax source and distributed or transferred in  
16 accordance with the provisions of Sections 7-1-6.21 through  
17 7-1-6.23 NMSA 1978 and Section 4 of this 2017 act. After the  
18 necessary distributions and transfers, any balance, except for  
19 remittances unidentified as to source or disposition, shall be  
20 transferred to the general fund.

21 B. Payments on assessments issued by the department  
22 pursuant to the Oil and Gas Conservation Tax Act, the Oil and  
23 Gas Emergency School Tax Act, the Oil and Gas Ad Valorem  
24 Production Tax Act and the Oil and Gas Severance Tax Act shall  
25 be held in the extraction taxes suspense fund until the

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1 secretary determines that there is no substantial risk of  
2 protest or other litigation, whereupon after the necessary  
3 disbursements have been made from the extraction taxes suspense  
4 fund, the money remaining in the suspense fund as of the last  
5 day of the month attributed to these payments shall be  
6 identified by tax source and distributed or transferred in  
7 accordance with the provisions of Sections 7-1-6.21 through  
8 7-1-6.23 NMSA 1978. After the necessary distributions and  
9 transfers, any balance, except for remittance unidentified as  
10 to source or disposition, shall be transferred to the general  
11 fund."

12 SECTION 3. Section 7-1-10 NMSA 1978 (being Laws 1965,  
13 Chapter 248, Section 15, as amended) is amended to read:

14 "7-1-10. RECORDS REQUIRED BY STATUTE--TAXPAYER  
15 RECORDS--ACCOUNTING METHODS--REPORTING METHODS--INFORMATION  
16 RETURNS.--

17 A. Every person required by the provisions of any  
18 statute administered by the department to keep records and  
19 documents and every taxpayer shall maintain books of account or  
20 other records in a manner that will permit the accurate  
21 computation of state taxes or provide information required by  
22 the statute under which the person is required to keep records.

23 B. Methods of accounting shall be consistent for  
24 the same business. A taxpayer engaged in more than one  
25 business may use a different method of accounting for each

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1 business.

2 C. Prior to changing the method of accounting in  
3 keeping books and records for tax purposes, a taxpayer shall  
4 first secure the consent of the secretary or the secretary's  
5 delegate. If consent is not secured, the department upon audit  
6 may require the taxpayer to compute the amount of tax due on  
7 the basis of the accounting method earlier used.

8 D. Prior to changing the method of reporting taxes,  
9 other than for changes required by law, a taxpayer shall first  
10 secure the consent of the secretary or the secretary's  
11 delegate. Consent shall be granted or withheld pursuant to the  
12 provisions of Section 7-4-19 NMSA 1978. If consent is not  
13 secured, the secretary or the secretary's delegate upon audit  
14 may require the taxpayer to compute the amount of tax due on  
15 the basis of the reporting method earlier used.

16 E. Upon the written application of a taxpayer and  
17 at the sole discretion of the secretary or the secretary's  
18 delegate, the secretary or the secretary's delegate may enter  
19 into an agreement with a taxpayer allowing the taxpayer to  
20 report values, gross receipts, deductions or the value of  
21 property on an estimated basis for gross receipts and  
22 compensating tax, oil and gas severance tax, oil and gas  
23 conservation tax, oil and gas emergency school tax, oil and gas  
24 emergency school surtax and oil and gas ad valorem production  
25 tax purposes for a limited period of time not to exceed four

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1 years. As used in this section, "estimated basis" means a  
2 methodology that is reasonably expected to approximate the tax  
3 that will be due over the period of the agreement using summary  
4 rather than detail data or alternate valuation applications or  
5 methods; provided that:

6 (1) nothing in this section shall be construed  
7 to require the secretary or the secretary's delegate to enter  
8 into such an agreement; and

9 (2) the agreement ~~[must]~~ shall:

10 (a) specify the receipts, deductions or  
11 values to be reported on an estimated basis and the methodology  
12 to be followed by the taxpayer in making the estimates;

13 (b) state the term of the agreement and  
14 the procedures for terminating the agreement prior to its  
15 expiration;

16 (c) be signed by the taxpayer or the  
17 taxpayer's representative and the secretary or the secretary's  
18 delegate; and

19 (d) contain a declaration by the  
20 taxpayer or the taxpayer's representative that all statements  
21 of fact made by the taxpayer or the taxpayer's representative  
22 in the taxpayer's application and the agreement are true and  
23 correct as to every material matter.

24 F. The secretary may, by regulation, require any  
25 person doing business in the state to submit to the department

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1 information reports that are considered reasonable and  
2 necessary for the administration of any provision of law to  
3 which the Tax Administration Act applies."

4 SECTION 4. A new section of the Tax Administration Act is  
5 enacted to read:

6 "[NEW MATERIAL] DISTRIBUTION--ELECTRICITY PRODUCTION TAX  
7 AND OIL AND GAS EMERGENCY SCHOOL SURTAX TO EARLY CHILDHOOD  
8 EDUCATION FUND.--

9 A. A distribution pursuant to Section 7-1-6.1 NMSA  
10 1978 shall be made to the early childhood education fund of the  
11 net receipts attributable to the electricity production tax.

12 B. A distribution pursuant to Section 7-1-6.20 NMSA  
13 1978 shall be made to the early childhood education fund of the  
14 net receipts, including advance payments, attributable to the  
15 oil and gas emergency school surtax."

16 SECTION 5. Section 7-29C-1 NMSA 1978 (being Laws 1995,  
17 Chapter 171, Section 1, as amended) is amended to read:

18 "7-29C-1. INTERGOVERNMENTAL TAX CREDITS.--

19 A. Any person who is liable for the payment of the  
20 oil and gas severance tax, the oil and gas conservation tax,  
21 the oil and gas emergency school tax, the oil and gas emergency  
22 school surtax or the oil and gas ad valorem production tax  
23 imposed on products severed from Indian tribal land or imposed  
24 on the privilege of severing products from Indian tribal land  
25 shall be entitled to a credit to be computed under this section

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1 and to be deducted from the payment of the indicated taxes with  
2 respect to products from qualifying wells. The credit provided  
3 by this subsection may be referred to as the "intergovernmental  
4 production tax credit".

5 B. Any person who is liable for the payment of the  
6 oil and gas production equipment ad valorem tax imposed on  
7 equipment located on Indian tribal land shall be entitled to a  
8 credit to be computed under this section and to be deducted  
9 from the payment of the indicated taxes with respect to  
10 equipment at qualifying wells. The credit provided by this  
11 subsection may be referred to as the "intergovernmental  
12 production equipment tax credit".

13 C. For the purposes of this section:

14 (1) "equipment" means wells and nonmobile  
15 equipment used at a well in connection with severance,  
16 treatment or storage of well products;

17 (2) "Indian tribal land" means all land that  
18 on March 1, 1995 was within the exterior boundaries of an  
19 Indian reservation or pueblo grant or held in trust by the  
20 United States for an Indian person, nation, tribe or pueblo;

21 (3) "product" means oil, natural gas or liquid  
22 hydrocarbon, individually or in combination, or carbon dioxide;  
23 and

24 (4) "qualifying well" means a well on Indian  
25 tribal land, the actual drilling of which commenced on or after

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1 July 1, 1995.

2 D. The intergovernmental production tax credit  
3 shall be determined separately for each calendar month and  
4 shall be equal to seventy-five percent of the lesser of:

5 (1) the aggregate amount of severance,  
6 privilege, ad valorem or similar tax in effect on March 1, 1995  
7 that is imposed by the Indian nation, tribe or pueblo upon the  
8 products severed from qualifying wells or upon the privilege of  
9 severing products from qualifying wells; or

10 (2) the aggregate amount of the oil and gas  
11 severance tax, the oil and gas conservation tax, the oil and  
12 gas emergency school tax, the oil and gas emergency school  
13 surtax and the oil and gas ad valorem production tax imposed by  
14 this state upon the products severed from qualifying wells or  
15 upon the privilege of severing products from qualifying wells.

16 E. The intergovernmental production equipment tax  
17 credit shall be determined annually for the equipment at  
18 qualifying wells and shall be equal to seventy-five percent of  
19 the lesser of:

20 (1) the amount of ad valorem or similar tax in  
21 effect on March 1, 1995 that is imposed by the Indian nation,  
22 tribe or pueblo upon the equipment for the calendar year; or

23 (2) the amount of the oil and gas production  
24 equipment ad valorem tax imposed by this state upon the  
25 equipment for the calendar year.

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1           F. If, after March 1, 1995, an Indian nation, tribe  
2 or pueblo increases any severance, privilege, ad valorem or  
3 similar tax applicable to products or equipment to which the  
4 tax credits provided by this section apply, the amount of the  
5 intergovernmental production tax credit for any month to which  
6 the increase applies shall be reduced by the difference between  
7 the aggregate amount of tax due to the Indian nation, tribe or  
8 pueblo for the production month and the aggregate amount of tax  
9 that would have been imposed by the terms of the tax or taxes  
10 in effect on March 1, 1995, and the intergovernmental  
11 production equipment tax credit shall be reduced by the  
12 difference between the aggregate amount of tax due to the  
13 Indian nation, tribe or pueblo for the year and the aggregate  
14 amount of tax that would have been imposed for the year by the  
15 terms of the tax or taxes in effect on March 1, 1995.

16           G. Notwithstanding any other provision of law to  
17 the contrary, the amount of credit taken and allowed shall be  
18 applied proportionately against the amount of oil and gas  
19 severance tax, oil and gas conservation tax, oil and gas  
20 emergency school tax, oil and gas emergency school surtax, oil  
21 and gas ad valorem production tax and oil and gas production  
22 equipment ad valorem tax due with respect to the products,  
23 severance of products or equipment taxed.

24           H. The taxation and revenue department shall  
25 administer and interpret the provisions of this section in

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1 accordance with the provisions of the Tax Administration Act.

2 I. The burden of showing entitlement to a credit  
3 authorized by this section is on the taxpayer claiming it, and  
4 [he] the taxpayer shall furnish to the appropriate tax  
5 collecting agency, in the manner determined by the taxation and  
6 revenue department, proof of payment of any tribal tax on which  
7 the credit is based."

8 SECTION 6. Section 7-31-2 NMSA 1978 (being Laws 1959,  
9 Chapter 54, Section 2, as amended) is amended to read:

10 "7-31-2. DEFINITIONS.--As used in the Oil and Gas  
11 Emergency School Tax Act:

12 A. "commission", "department" or "division" means  
13 the taxation and revenue department, the secretary of taxation  
14 and revenue or any employee of the department exercising  
15 authority lawfully delegated to that employee by the secretary;

16 B. "production unit" means a unit of property  
17 designated by the department from which products of common  
18 ownership are severed;

19 C. "severance" means the taking from the soil of  
20 any product in any manner whatsoever;

21 D. "value" means the actual price received from  
22 products at the production unit, except as otherwise provided  
23 in the Oil and Gas Emergency School Tax Act;

24 E. "product" or "products" means oil, natural gas  
25 or liquid hydrocarbon, individually or any combination thereof,

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1 carbon dioxide, helium or a non-hydrocarbon gas;

2 F. "operator" means any person:

3 (1) engaged in the severance of products from  
4 a production unit; or

5 (2) owning an interest in any product at the  
6 time of severance who receives a portion or all of such product  
7 for [~~his~~] the person's interest;

8 G. "purchaser" means a person who is the first  
9 purchaser of a product after severance from a production unit,  
10 except as otherwise provided in the Oil and Gas Emergency  
11 School Tax Act;

12 H. "person" means any individual, estate, trust,  
13 receiver, business trust, corporation, firm, copartnership,  
14 cooperative, joint venture, association, limited liability  
15 company or other group or combination acting as a unit, and the  
16 plural as well as the singular number;

17 I. "interest owner" means a person owning an entire  
18 or fractional interest of whatsoever kind or nature in the  
19 products at the time of severance from a production unit or who  
20 has a right to a monetary payment that is determined by the  
21 value of such products;

22 J. "stripper well property" means a crude oil or  
23 natural gas producing property that is assigned a single  
24 production unit number by the department and is certified by  
25 the oil conservation division of the energy, minerals and

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1 natural resources department pursuant to the Natural Gas and  
2 Crude Oil Production Incentive Act to have produced in the  
3 preceding calendar year:

4 (1) if a crude oil producing property, an  
5 average daily production of less than ten barrels of oil per  
6 eligible well per day;

7 (2) if a natural gas producing property, an  
8 average daily production of less than sixty thousand cubic feet  
9 of natural gas per eligible well per day; or

10 (3) if a property with wells that produce both  
11 crude oil and natural gas, an average daily production of less  
12 than ten barrels of oil per eligible well per day, as  
13 determined by converting the volume of natural gas produced by  
14 the well to barrels of oil by using a ratio of six thousand  
15 cubic feet to one barrel of oil; and

16 K. "average annual taxable value" means as  
17 applicable:

18 (1) the average of the taxable value per one  
19 thousand cubic feet, determined pursuant to Section 7-31-5 NMSA  
20 1978, of all natural gas produced in New Mexico for the  
21 specified calendar year as determined by the department; or

22 (2) the average of the taxable value per  
23 barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all  
24 oil produced in New Mexico for the specified calendar year as  
25 determined by the department [~~and~~

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1                   L. ~~"tax" means the oil and gas emergency school~~  
2 ~~tax]."~~

3                   SECTION 7. Section 7-31-4 NMSA 1978 (being Laws 1959,  
4 Chapter 54, Section 4, as amended) is amended to read:

5                   "7-31-4. PRIVILEGE TAX LEVIED--SURTAX LEVIED--COLLECTED  
6 BY DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--  
7 INDIAN LIABILITY.--

8                   A. There is levied and shall be collected by the  
9 department a privilege tax on the business of every person  
10 severing products in this state. The measure of the tax shall  
11 be:

12                               (1) on oil and on oil and other liquid  
13 hydrocarbons removed from natural gas at or near the wellhead,  
14 except as provided in Paragraphs (4) and (5) of this  
15 subsection, three and [~~fifteen hundredths~~] fifteen-hundredths  
16 percent of the taxable value determined pursuant to Section  
17 7-31-5 NMSA 1978;

18                               (2) on carbon dioxide, helium and non-  
19 hydrocarbon gases, three and [~~fifteen hundredths~~] fifteen-  
20 hundredths percent of the taxable value determined pursuant to  
21 Section 7-31-5 NMSA 1978;

22                               (3) on natural gas, except as provided in  
23 Paragraphs (6) and (7) of this subsection, four percent of the  
24 taxable value determined pursuant to Section 7-31-5 NMSA 1978;

25                               (4) on the oil and on other liquid



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1 hydrocarbons removed from natural gas at or near the wellhead  
2 from a stripper well property, one and fifty-eight hundredths  
3 percent of the taxable value determined pursuant to Section  
4 7-31-5 NMSA 1978; provided that the average annual taxable  
5 value of oil was equal to or less than fifteen dollars (\$15.00)  
6 per barrel in the calendar year preceding July 1 of the fiscal  
7 year in which the tax rate is to be imposed;

8 (5) on the oil and on other liquid  
9 hydrocarbons removed from natural gas at or near the wellhead  
10 from a stripper well property, two and thirty-six hundredths  
11 percent of the taxable value determined pursuant to Section  
12 7-31-5 NMSA 1978; provided that the average annual taxable  
13 value of oil was greater than fifteen dollars (\$15.00) per  
14 barrel but not more than eighteen dollars (\$18.00) per barrel  
15 in the calendar year preceding July 1 of the fiscal year in  
16 which the tax rate is to be imposed;

17 (6) on the natural gas removed from a stripper  
18 well property, two percent of the taxable value determined  
19 pursuant to Section 7-31-5 NMSA 1978; provided that the average  
20 annual taxable value of natural gas was equal to or less than  
21 one dollar fifteen cents (\$1.15) per thousand cubic feet in the  
22 calendar year preceding July 1 of the fiscal year in which the  
23 tax rate is to be imposed; and

24 (7) on the natural gas removed from a stripper  
25 well property, three percent of the taxable value determined

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1 pursuant to Section 7-31-5 NMSA 1978; provided that the average  
2 annual taxable value of natural gas was greater than one dollar  
3 fifteen cents (\$1.15) per thousand cubic feet but not more than  
4 one dollar thirty-five cents (\$1.35) per thousand cubic feet in  
5 the calendar year preceding July 1 of the fiscal year in which  
6 the tax rate is to be imposed.

7 B. A surtax is imposed on the business of every  
8 person severing products in this state. The measure of the  
9 surtax shall be:

10 (1) on oil and on oil and other liquid  
11 hydrocarbons removed from natural gas at or near the wellhead,  
12 one-hundredth percent of the taxable value determined pursuant  
13 to Section 7-31-5 NMSA 1978;

14 (2) on carbon dioxide, helium and non-  
15 hydrocarbon gases, one-hundredth percent of the taxable value  
16 determined pursuant to Section 7-31-5 NMSA 1978; and

17 (3) on natural gas, one-hundredth percent of  
18 the taxable value determined pursuant to Section 7-31-5 NMSA  
19 1978.

20 C. The tax imposed pursuant to Subsection A of this  
21 section may be cited as the "oil and gas emergency school tax".  
22 The tax imposed pursuant to Subsection B of this section may be  
23 cited as the "oil and gas emergency school surtax".

24 ~~[B-]~~ D. Every interest owner, for the purpose of  
25 levying ~~[this tax]~~ the taxes imposed in this section, is deemed

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1 to be in the business of severing products and is liable for  
2 [~~this tax~~] the taxes to the extent of [~~his~~] the owner's  
3 interest in the value of the products or to the extent of [~~his~~]  
4 the owner's interest as may be measured by the value of the  
5 products.

6 [G.] E. Any Indian tribe, Indian pueblo or Indian  
7 is liable for [~~this tax~~] the taxes imposed in this section to  
8 the extent authorized or permitted by law."

9 **SECTION 8.** Section 7-31-7 NMSA 1978 (being Laws 1959,  
10 Chapter 54, Section 7, as amended) is amended to read:

11 "7-31-7. PRICE INCREASE SUBJECT TO APPROVAL OF AGENCY OF  
12 UNITED STATES OF AMERICA, STATE OF NEW MEXICO OR COURT--  
13 REFUND.--When an increase in the value of any product is  
14 subject to the approval of any agency of the United States of  
15 America or the state of New Mexico or any court, the increased  
16 value shall be subject to [~~this tax~~] the taxes imposed pursuant  
17 to the Oil and Gas Emergency School Tax Act. In the event the  
18 increase in value is disapproved, either in whole or in part,  
19 then the amount of tax [~~which~~] that has been paid on the  
20 disapproved part of the value shall be considered excess tax.  
21 Any person who has paid any such excess tax may apply for a  
22 refund of that excess tax in accordance with the provisions of  
23 Section 7-1-26 NMSA 1978."

24 **SECTION 9.** Section 7-31-8 NMSA 1978 (being Laws 1959,  
25 Chapter 54, Section 8) is amended to read:

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1 "7-31-8. PRODUCTS ON WHICH TAX HAS BEEN LEVIED--  
2 REGULATION BY [~~COMMISSION~~] DEPARTMENT.--~~[This tax]~~ The taxes  
3 imposed pursuant to the Oil and Gas Emergency School Tax Act  
4 shall not be levied more than once on the same product.  
5 Reporting of products on which [~~this tax has~~] the taxes have  
6 been paid shall be subject to the regulation of the  
7 [~~commission~~] department."

8 SECTION 10. Section 7-31-26 NMSA 1978 (being Laws 1991,  
9 Chapter 9, Section 38) is amended to read:

10 "7-31-26. ADVANCE PAYMENT REQUIRED.--

11 A. Any person required to make payment of tax  
12 pursuant to Section 7-31-10 or 7-31-11 NMSA 1978 shall make the  
13 advance payment required by this section.

14 B. For the purposes of this section:

15 (1) "advance payment" means the payment  
16 required to be made by this section in addition to any oil and  
17 gas emergency school tax or oil and gas emergency school  
18 surtax, penalty or interest due; and

19 (2) "average tax" means the aggregate amount  
20 of tax, [~~net of~~] less any refunds or credits, paid by a person  
21 during the twelve-month period ending March 31 pursuant to the  
22 Oil and Gas Emergency School Tax Act divided by the number of  
23 months during that period for which the person made payment.

24 C. Each year, prior to July 1, each person required  
25 to pay tax pursuant to the Oil and Gas Emergency School Tax Act

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1 shall compute the average tax for the period ending March 31 of  
2 that year. The average tax calculated for a year shall be used  
3 during the twelve-month period beginning with July of that year  
4 and ending with June of the following year as the basis for  
5 making the advance payments required by Subsection D of this  
6 section.

7 D. Every month, beginning with July 1991, every  
8 person required to pay tax in a month pursuant to the Oil and  
9 Gas Emergency School Tax Act shall pay, in addition to any  
10 amount of tax, interest or penalty due, an advance payment in  
11 an amount equal to the applicable average tax, except:

12 (1) if the person is making a final return  
13 under the Oil and Gas Emergency School Tax Act, no advance  
14 payment pursuant to this subsection is due for that return; and

15 (2) as provided in Subsection F of this  
16 section.

17 E. Every month, beginning with tax payments in  
18 August 1991, every person required to pay tax pursuant to the  
19 Oil and Gas Emergency School Tax Act may claim a credit equal  
20 to the amount of advance payment made in the previous month,  
21 except as provided in Subsection F of this section.

22 F. If, in any month, a person is not required to  
23 pay tax pursuant to the Oil and Gas Emergency School Tax Act,  
24 that person is not required to pay the advance payment and may  
25 not claim a credit pursuant to Subsection E of this section;

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1 provided that, in any succeeding month when the person has  
2 liability under the Oil and Gas Emergency School Tax Act, the  
3 person may claim a credit for any advance payment made and not  
4 credited.

5 G. In the event that the date by which a person is  
6 required to pay ~~the~~ tax pursuant to the Oil and Gas Emergency  
7 School Tax Act is accelerated to a date earlier than the  
8 twenty-fifth day of the second month following the month of  
9 production, the advance payment provision contained in this  
10 section is ~~null and~~ void and any money held as advance  
11 payments shall be credited to the taxpayers' accounts."

12 SECTION 11. [NEW MATERIAL] SHORT TITLE.--Sections 11  
13 through 14 of this act may be cited as the "Electricity  
14 Production Tax Act".

15 SECTION 12. [NEW MATERIAL] PRIVILEGE TAX LEVIED--  
16 COLLECTED BY THE TAXATION AND REVENUE DEPARTMENT--RATE--  
17 INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

18 A. There is levied and shall be collected by the  
19 taxation and revenue department a privilege tax for producing  
20 electricity in this state for sale or trade.

21 B. The measure and rate of the tax shall be one  
22 cent (\$.01) on each kilowatt hour, or portion thereof, that is  
23 produced in this state.

24 C. Every interest owner shall be liable for this  
25 tax to the extent of the owner's interest in the electricity

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1 produced. An Indian nation, tribe or pueblo shall be liable  
2 for this tax to the extent authorized or permitted by law.

3 D. The tax imposed by this section may be referred  
4 to as the "electricity production tax".

5 SECTION 13. [NEW MATERIAL] EXEMPTION.--

6 A. Exempted from the electricity production tax is  
7 electricity produced by:

8 (1) the United States or any agency,  
9 department or instrumentality thereof;

10 (2) the state of New Mexico or any political  
11 subdivision of the state;

12 (3) any Indian nation, tribe or pueblo from  
13 activities or transactions occurring on its sovereign  
14 territory; or

15 (4) any foreign nation or agency,  
16 instrumentality or political subdivision of the foreign nation,  
17 but only when required by a treaty in force to which the United  
18 States is a party.

19 B. Exempted from the electricity production tax is  
20 electricity produced for the personal consumption of the  
21 producer, including any excess production of electricity not  
22 consumed by the producer that does not exceed five hundred  
23 kilowatt hours in a twenty-four-hour period.

24 SECTION 14. [NEW MATERIAL] DATE PAYMENT DUE.--The tax  
25 imposed by the Electricity Production Tax Act is to be paid on

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1 or before February 1 of the year immediately following the year  
2 in which the electricity was produced.

3 SECTION 15. [NEW MATERIAL] EARLY CHILDHOOD EDUCATION  
4 FUND--CREATION--PURPOSE.--

5 A. The "early childhood education fund" is created  
6 in the state treasury. The fund shall consist of  
7 appropriations, income from investment of the fund, gifts,  
8 grants, donations and bequests. The fund shall be administered  
9 by the children, youth and families department or a successor  
10 department created to administer early childhood education.  
11 Subject to legislative appropriation, money in the fund is  
12 appropriated to the department to carry out the purposes of  
13 early childhood education programs of the state. Money shall be  
14 disbursed on warrant of the secretary of finance and  
15 administration pursuant to vouchers signed by the secretary of  
16 children, youth and families, or the secretary's successor for  
17 early childhood education, or the authorized representative of  
18 the secretary. Money in the fund shall not revert to the  
19 general fund at the end of a fiscal year.

20 B. Money in the fund shall be used to supplement,  
21 and not supplant, existing revenue sources for early childhood  
22 education, including other state funding and federal and  
23 private funding.

24 C. The fund shall be used for the following  
25 purposes:

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1 (1) to provide early childhood education to  
2 children from birth to age five;

3 (2) for curriculum development and materials  
4 for early childhood education; and

5 (3) to improve the quality of the provision of  
6 early childhood education.

7 SECTION 16. APPLICABILITY.--

8 A. The provisions of Sections 4 through 9 of this  
9 act apply to products severed and sold beginning on and after  
10 July 1, 2017.

11 B. The provisions of Sections 11 through 14 of this  
12 act apply to the production of electricity beginning on and  
13 after July 1, 2017.