

HOUSE BILL 102

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; PROVIDING PASS-THROUGH ENTITIES AN ELECTION TO PAY AN ENTITY-LEVEL TAX IN LIEU OF WITHHOLDING; EXEMPTING INCOME SUBJECT TO THE ENTITY-LEVEL TAX FROM THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT.

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

SECTION 1. A new section of the Income Tax Act is enacted to read:

.221817.4AIC February 7, 2022 (3:42pm)

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"[NEW MATERIAL] EXEMPTION--INCOME SUBJECT TO ENTITY-LEVEL TAX.--Net income subject to the entity-level tax is exempt from income tax."

SECTION 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"[NEW MATERIAL] EXEMPTION--INCOME SUBJECT TO ENTITY-LEVEL TAX.--Net income subject to the entity-level tax is exempt from corporate income tax."

SECTION 3. A new section of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act is enacted to read:

"[NEW MATERIAL] ELECTION OF ENTITY-LEVEL TAX.--

A. A pass-through entity may elect on an annual basis to pay a tax at the entity level for a taxable year. The tax that may elected to be paid pursuant to this section may be referred to as the "entity-level tax".

B. Pass-through entities electing to pay the entity-level tax shall make the election by filing a complete entity-level tax return with the department in the form and manner as prescribed by the department. The return shall be filed no later than the HTRC→original or extended←HTRC due date of the entity's federal partnership or S corporation return for the taxable year. Payment of the entity-level tax shall accompany or precede the filing of the return.

C. The entity-level tax is imposed on the distributed net income of the pass-through entity for the

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taxable year. The rate of entity-level tax is equal to the higher of the maximum tax rate imposed pursuant to Section 7-2-7 NMSA 1978 or the maximum tax rate imposed pursuant to Section 7-2A-5 NMSA 1978 for the taxable year.

D. Distributed net income of a pass-through entity shall equal the amount of net income of the pass-through entity allocated and apportioned to New Mexico pursuant to the Uniform Division of Income for Tax Purposes Act, less allocations of net income from that amount to:

(1) the United States, this state or a political subdivision of either;

(2) a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico, or any political subdivision thereof;

(3) an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code; or

(4) a corporate partner that would properly include the income in the partner's New Mexico tax return as part of the partner's unitary business income.

E. Pass-through entities electing to pay the entity-level tax shall make estimated payments of the tax at the same time and in the same amounts as the withholding required by Subsection B of Section 7-3A-3 NMSA 1978. Amounts

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remitted pursuant to Subsection B of Section 7-3A-3 NMSA 1978 by entities electing to pay the entity-level tax shall be deemed payments of estimated entity-level tax.

F. If, for a taxable year, the sum of the estimated payments of tax made by a pass-through entity pursuant to Subsection E of this section exceeds the amount of entity-level tax owed, the pass-through entity may apply for a refund of the difference. If, for a taxable year, the entity-level tax owed by a pass-through entity exceeds the sum of the estimated payments made by the pass-through entity, the pass-through entity shall remit the difference on or before the date the pass-through entity's entity-level tax is due."

**SECTION 4. APPLICABILITY.**--The provisions of this act apply to taxable years beginning on or after January 1, 2022.