

HOUSE BILL 102

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

INTRODUCED BY

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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:

"[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

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1 corporate income tax."

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

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

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

9 B. Pass-through entities electing to pay the  
10 entity-level tax shall make the election by filing a complete  
11 entity-level tax return with the department in the form and  
12 manner as prescribed by the department. The return shall be  
13 filed no later than the due date of the entity's federal  
14 partnership or S corporation return for the taxable year.  
15 Payment of the entity-level tax shall accompany or precede the  
16 filing of the return.

17 C. The entity-level tax is imposed on the  
18 distributed net income of the pass-through entity for the  
19 taxable year. The rate of entity-level tax is equal to the  
20 higher of the maximum tax rate imposed pursuant to Section  
21 7-2-7 NMSA 1978 or the maximum tax rate imposed pursuant to  
22 Section 7-2A-5 NMSA 1978 for the taxable year.

23 D. Distributed net income of a pass-through entity  
24 shall equal the amount of net income of the pass-through entity  
25 allocated and apportioned to New Mexico pursuant to the Uniform

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1 Division of Income for Tax Purposes Act, less allocations of  
2 net income from that amount to:

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

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

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

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

15 E. Pass-through entities electing to pay the  
16 entity-level tax shall make estimated payments of the tax at  
17 the same time and in the same amounts as the withholding  
18 required by Subsection B of Section 7-3A-3 NMSA 1978. Amounts  
19 remitted pursuant to Subsection B of Section 7-3A-3 NMSA 1978  
20 by entities electing to pay the entity-level tax shall be  
21 deemed payments of estimated entity-level tax.

22 F. If, for a taxable year, the sum of the estimated  
23 payments of tax made by a pass-through entity pursuant to  
24 Subsection E of this section exceeds the amount of entity-level  
25 tax owed, the pass-through entity may apply for a refund of the

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1 difference. If, for a taxable year, the entity-level tax owed  
2 by a pass-through entity exceeds the sum of the estimated  
3 payments made by the pass-through entity, the pass-through  
4 entity shall remit the difference on or before the date the  
5 pass-through entity's entity-level tax is due."

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

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