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SENATE BILL 621

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO TAXATION; REQUIRING WITHHOLDING FROM PAYMENTS OF
OIL AND GAS PROCEEDS TO NONRESIDENTS AND CERTAIN OTHER PERSONS;
DISTRIBUTING THE RECEIPTS TO THE LEGISLATIVE RETIREMENT FUND.

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

Section 1. A new section of the Tax Administration Act is
enacted to read:

"[NEW MATERIAL] DISTRIBUTION OF CERTAIN WITHHOLDING
PAYMENTS. --A distribution pursuant to Section 7-1-6.1 NMSA 1978
shall be made to the legislative retirement fund in an amount
equal to the net receipts attributable to amounts deducted and
withheld pursuant to Subsection E of Section 7-3-3 NMSA 1978."

Section 2. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,
Chapter 5, Section 1, as amended) is amended to read:

"7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--

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1 PENALTY- - EXEMPTION. - -

2 A. Every taxpayer shall pay estimated corporate
3 income tax to the state of New Mexico during its taxable year
4 if its tax after applicable credits for such taxable year can
5 reasonably be expected to be five thousand dollars (\$5,000) or
6 more. A taxpayer to which this section applies shall calculate
7 estimated tax by one of the following methods:

8 (1) estimating the amount of tax due, net of
9 any credits, for the current taxable year, provided that the
10 estimated amount is at least eighty percent of the amount
11 determined to be due for the taxable year;

12 (2) using as the estimate an amount equal to
13 one hundred percent of the tax due for the previous taxable
14 year, if the previous taxable year was a full twelve-month year
15 and if the amount due for that previous taxable year was at
16 least five thousand dollars (\$5,000); or

17 (3) using as the estimate an amount equal to
18 one hundred ten percent of the tax due for the taxable year
19 immediately preceding the previous taxable year, if the taxable
20 year immediately preceding the previous taxable year was a full
21 twelve-month year, the amount due for the taxable year
22 immediately preceding the previous taxable year was at least
23 five thousand dollars (\$5,000) and the return for the previous
24 taxable year has not been filed and the extended due date for
25 filing that return has not occurred at the time the first

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1 installment is due for the taxable year.

2 B. If Subsection A of this section applies, the
3 amount of estimated tax shall be paid in installments as
4 follows: twenty-five percent of the estimated tax is due on or
5 before the fifteenth day of the fourth month of the taxable
6 year, another twenty-five percent is due on or before the
7 fifteenth day of the sixth month of the taxable year, another
8 twenty-five percent is due on or before the fifteenth day of
9 the ninth month of the taxable year and the final twenty-five
10 percent is due on or before the fifteenth day of the twelfth
11 month of the taxable year. Application of this subsection to a
12 taxable year that is a fractional part of a year shall be
13 determined by regulation of the secretary.

14 C. Every taxpayer to which Subsection A of this
15 section applies that fails to pay the estimated tax when due or
16 that makes estimated tax payments during the taxable year that
17 are less than the lesser of eighty percent of the income tax
18 imposed on the taxpayer under the Corporate Income and
19 Franchise Tax Act or the amount required by Paragraph (2) or
20 (3) of Subsection A of this section shall be subject to the
21 interest and penalty provisions of Sections 7-1-67 and 7-1-69
22 NMSA 1978 on the underpayment.

23 D. For purposes of this section, the amount of
24 underpayment shall be the excess of the amount of the
25 installment that would be required to be paid if the estimated

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1 tax were equal to eighty percent of the tax shown on the return
2 for the taxable year or the amount required by Paragraph (2) or
3 (3) of Subsection A of this section or, if no return was filed,
4 eighty percent of the tax for the taxable year for which the
5 estimated tax is due less the amount, if any, of the
6 installment paid on or before the last date prescribed for
7 payment.

8 E. For purposes of this section, the period of
9 underpayment shall run from the date the installment was
10 required to be paid to whichever of the following dates is
11 earlier:

12 (1) the fifteenth day of the third month
13 following the end of the taxable year; or

14 (2) with respect to any portion of the
15 underpayment, the date on which such portion is paid. For the
16 purposes of this paragraph, a payment of estimated tax on any
17 installment date shall be applied as a payment of any previous
18 underpayment only to the extent such payment exceeds the amount
19 of the installment determined under Subsection D of this
20 section due on such installment date.

21 F. For the purposes of this section, the amount of
22 tax deducted and withheld with respect to a taxpayer by a
23 remitter under the Withholding Tax Act shall be deemed a
24 payment of estimated tax. An equal amount of the amount of
25 withheld tax shall be deemed paid on each due date for the

1 applicable taxable year unless the taxpayer establishes the
2 dates on which all amounts were actually withheld, in which
3 case the amounts withheld shall be deemed payments of estimated
4 tax on the dates on which the amounts were actually withheld."

5 Section 3. Section 7-3-2 NMSA 1978 (being Laws 1990,
6 Chapter 64, Section 1, as amended) is amended to read:

7 "7-3-2. DEFINITIONS. --As used in the Withholding Tax Act:

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

12 B. "employee" means either an individual domiciled
13 within the state who performs services either within or without
14 the state for an employer or, to the extent permitted by law,
15 an individual domiciled outside of the state who performs
16 services within the state for an employer;

17 C. "employer" means a person, or an officer, agent
18 or employee of that person, having control of the payment of
19 wages, doing business in or deriving income from sources within
20 the state for whom an individual performs or performed any
21 service as the employee of that person, except that if the
22 person for whom the individual performs or performed the
23 services does not have control over the payment of the wages
24 for such services, "employer" means the person having control
25 of the payment of wages;

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1 D. "Internal Revenue Code" means the Internal
2 Revenue Code of 1986, as amended;

3 E. "oil and gas" means crude oil, natural gas,
4 casinghead gas, condensate or any other related hydrocarbons,
5 or carbon dioxide;

6 F. "oil and gas proceeds" means all payments
7 derived from oil and gas production from any well located in
8 New Mexico, whether royalty interest, overriding royalty
9 interest, production payment interest or working interest,
10 expressed as a right to a specified interest in the cash
11 proceeds received from the sale of oil and gas production or in
12 the cash value of that production, subject to all taxes
13 withheld therefrom pursuant to law, but excluding "net profits
14 interests" and other types of interest the extent of which
15 cannot be determined with reference to a specified share of the
16 oil and gas production;

17 [~~E.~~] G. "owner" means a partner in a partnership
18 not taxed as a corporation for federal income tax purposes for
19 the taxable year, a shareholder of an S corporation or of a
20 corporation other than an S corporation that is not taxed as a
21 corporation for federal income tax purposes for the taxable
22 year, a member of a limited liability company or any similar
23 person holding an ownership interest in any pass-through
24 entity;

25 [~~F.~~] H. "pass-through entity" means any business

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1 association other than:

2 (1) a sole proprietorship;

3 (2) an estate or trust;

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

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

11 [~~G.~~] I. "payor" means [~~any~~] a person making payment
12 of a pension or annuity to an individual domiciled in New
13 Mexico;

14 [~~H.~~] J. "payroll period" means a period for which a
15 payment of wages is made to [~~the~~] an employee by his employer;

16 [~~F.~~] K. "person" means [~~any~~] an individual, a club,
17 a company, a cooperative association, a corporation, an estate,
18 a firm, a joint venture, a partnership, a receiver, a
19 syndicate, a trust or other association and, to the extent
20 permitted by law, [~~any~~] a federal, state or other governmental
21 unit or subdivision or an agency, a department or an
22 instrumentality thereof;

23 L. "remitter" means a person that pays oil and gas
24 proceeds to:

25 (1) a nonresident individual who is entitled

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1 to the proceeds; or

2 (2) a person, other than an individual, who is
3 entitled to the proceeds and who has not notified the remitter
4 of the person's taxpayer identification number issued by the
5 department;

6 [~~J.~~] M. "wagerer" means any person who receives
7 winnings that are subject to withholding;

8 [~~K.~~] N. "wages" means remuneration in cash or other
9 form for services performed by an employee for an employer;

10 [~~L.~~] O. "winnings that are subject to withholding"
11 means "winnings which are subject to withholding" as that term
12 is defined in Section 3402 of the Internal Revenue Code;

13 [~~M.~~] P. "withholdee" means:

14 (1) an individual domiciled in New Mexico
15 receiving a pension or annuity from which an amount of tax is
16 deducted and withheld pursuant to the Withholding Tax Act;

17 (2) an employee; [~~and~~]

18 (3) a nonresident individual who is entitled
19 to the payment of oil and gas proceeds by a remitter;

20 (4) a person, other than an individual, who is
21 entitled to the payment of oil and gas proceeds by a remitter
22 and who has not notified the remitter of the person's taxpayer
23 identification number issued by the department; and

24 [~~(3)~~] (5) a wagerer; and

25 [~~N.~~] Q. "withholder" means a payor, an employer or

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1 any person required to deduct and withhold from winnings that
2 are subject to withholding or a remitter. "

3 Section 4. Section 7-3-3 NMSA 1978 (being Laws 1961,
4 Chapter 243, Section 3, as amended) is amended to read:

5 "7-3-3. TAX WITHHELD AT SOURCE. --

6 A. Every employer who deducts and withholds a
7 portion of an employee's wages for payment of income tax under
8 the provisions of the Internal Revenue Code shall deduct and
9 withhold an amount for each payroll period computed from a
10 state withholding tax table furnished by the department;
11 provided:

12 (1) if the employee instructs the employer to
13 withhold a greater amount, the employer shall deduct and
14 withhold the greater amount;

15 (2) if the employee is not a resident of New
16 Mexico and is to perform services in New Mexico for fifteen or
17 fewer days cumulatively during the calendar year, the employer
18 is not required to deduct and withhold an amount from that
19 employee's wages; and

20 (3) if the aggregate monthly amount withheld
21 under this section would be less than one dollar (\$1.00) for an
22 employee, the employer shall not be required to deduct and
23 withhold wages in regard to that employee.

24 B. The department shall devise and furnish a state
25 withholding tax table based on statutes made and provided to

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1 employers required to withhold amounts under this section.
2 This table shall be devised to provide for a yearly aggregate
3 withholding that will approximate the state income tax
4 liability of average taxpayers in each exemption category.

5 C. If an individual requests in writing that the
6 payor deduct and withhold an amount from the amount of the
7 pension or annuity due the individual, the payor making payment
8 of a pension or annuity to an individual domiciled in New
9 Mexico shall deduct and withhold the amount requested to be
10 deducted and withheld, provided that the payor is not required
11 to deduct and withhold any amount less than ten dollars
12 (\$10.00) per payment. The written request shall include the
13 payee's name, current address, taxpayer identification number
14 and, if applicable, the contract, policy or account number to
15 which the request applies.

16 D. Every person in New Mexico who is required by
17 the provisions of the Internal Revenue Code to deduct and
18 withhold federal tax from payment of winnings that are subject
19 to withholding shall deduct and withhold from such payment a
20 tax in an amount equal to six percent of the winnings, except
21 that an Indian nation, tribe or pueblo or an agency,
22 department, subdivision or instrumentality thereof is not
23 required to deduct or withhold from payments made to members or
24 spouses of members of that Indian nation, tribe or pueblo.

25 E. If the amount required to be withheld is at

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1 least ten dollars (\$10.00) for any period of one month or more,
2 a remitter shall deduct and withhold as a withholding tax six
3 and seventy-five hundredths percent of oil and gas proceeds
4 payable to:

5 (1) a nonresident individual; or

6 (2) a person, other than an individual, who
7 has not notified the remitter of the person's taxpayer
8 identification number issued by the department. "

9 Section 5. Section 7-3-4 NMSA 1978 (being Laws 1961,
10 Chapter 243, Section 4, as amended) is amended to read:

11 "7-3-4. DEDUCTIONS CONSIDERED TAXES. -- Amounts deducted
12 under the provisions of the Withholding Tax Act shall be a
13 collected tax. No employee shall have a right of action
14 against the employer for any amount deducted and withheld from
15 the employee's wages. No individual who has instructed a payor
16 to deduct and withhold an amount from the pension or annuity
17 due that individual shall have a right of action against a
18 payor for any amount deducted and withheld pursuant to the
19 instruction. No wagerer who receives winnings that are subject
20 to withholding shall have a right of action against the person
21 who deducted and withheld an amount from the wagerer's winnings
22 for the amount deducted and withheld. No withholdee who
23 receives oil and gas proceeds from a remitter has a right of
24 action against the remitter for the amount deducted and
25 withheld pursuant to Subsection E of Section 7-3-3 NMSA 1978. "

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1 Section 6. Section 7-3-7 NMSA 1978 (being Laws 1961,
2 Chapter 243, Section 8, as amended) is amended to read:

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

4 A. Every employer shall file an annual statement of
5 withholding for each employee. This statement shall be in a
6 form prescribed by the department and shall be filed with the
7 department on or before the last day of February of the year
8 following that for which the statement is made. It shall
9 include the total compensation paid the employee and the total
10 amount of tax withheld for the calendar year or portion of a
11 calendar year if the employee has worked less than a full
12 calendar year.

13 B. Every payor shall file an annual statement of
14 withholding for each individual from whom some portion of a
15 pension or an annuity has been deducted and withheld by that
16 payor. This statement shall be in a form prescribed by the
17 department and shall be filed with the department on or before
18 the last day of February of the year following that for which
19 the statement is made. It shall include the total amount of
20 pension or annuity paid to the individual and the amount of tax
21 withheld for the calendar year.

22 C. Every person required to deduct and withhold tax
23 from a payment of winnings that are subject to withholding
24 shall file an annual statement of withholding for each wagerer
25 from whom some portion of a payment of winnings has been

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1 deducted and withheld by that person. This statement shall be
2 in a form prescribed by the department and shall be filed with
3 the department on or before the last day of February of the
4 year following that for which the statement is made. It shall
5 include the total amount of winnings paid to the individual and
6 the amount of tax withheld for the calendar year. The
7 department may also require any person who is required to
8 submit an information return to the internal revenue service
9 regarding the winnings of another person to submit copies of
10 the return to the department.

11 D. A remitter shall file an annual statement of
12 withholding for each withholdee from whom a part of oil and gas
13 proceeds has been deducted and withheld by the remitter. The
14 statement shall be in a form prescribed by the department and
15 shall be filed with the department on or before the last day of
16 February of the year following that for which the statement is
17 made. It shall include the total amount of the oil and gas
18 proceeds paid to the withholdee and the amount of tax withheld
19 for the calendar year."

20 Section 7. Section 7-3-9 NMSA 1978 (being Laws 1961,
21 Chapter 243, Section 11, as amended) is amended to read:

22 "7-3-9. WITHHELD AMOUNTS CREDITED AGAINST TAX. --The
23 entire amount of income upon which tax was deducted and
24 withheld shall be included in the gross income of the
25 withholdee for state income tax or corporate income tax

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1 purposes. The amount of tax deducted and withheld under the
2 provisions of the Withholding Tax Act during the taxable year
3 shall be credited against any state income tax or corporate
4 income tax liability for that taxable year. "

5 Section 8. EFFECTIVE DATE--CONTINGENCY.--

6 A. Except as provided in Subsection B of this
7 section, the effective date of the provisions of this act is
8 July 1, 2003.

9 B. This act is contingent upon the enactment into
10 law of Senate Bill 620 by the first session of the forty-sixth
11 legislature or a substantially similar bill that creates the
12 legislative retirement fund. If no such bill is enacted into
13 law, the provisions of this act shall not become effective.