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SENATE BILL 208

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO TAXATION; TEMPORARILY DECREASING OIL AND GAS SEVERANCE TAX RATES; TEMPORARILY INCREASING TAX RATES IMPOSED PURSUANT TO THE OIL AND GAS EMERGENCY SCHOOL TAX ACT; PROTECTING HOLDERS OF SEVERANCE TAX BONDS FROM IMPAIRMENT; DISTRIBUTING A PORTION OF THE REVENUE FROM THE OIL AND GAS EMERGENCY SCHOOL TAX TO THE PUBLIC SCHOOL FUND.

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

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

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

A. Except as provided in Subsection B of this section, after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the

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1 suspense fund as of the last day of the month shall be  
2 identified by tax source and distributed or transferred in  
3 accordance with the provisions of Sections 7-1-6.21 through  
4 7-1-6.23, 7-1-6.60 and 7-1-6.61 NMSA 1978. After the necessary  
5 distributions and transfers, any balance, except for  
6 remittances unidentified as to source or disposition, shall be  
7 transferred to the general fund.

8 B. Payments on assessments issued by the department  
9 pursuant to the Oil and Gas Conservation Tax Act, the Oil and  
10 Gas Emergency School Tax Act, the Oil and Gas Ad Valorem  
11 Production Tax Act and the Oil and Gas Severance Tax Act shall  
12 be held in the extraction taxes suspense fund until the  
13 secretary determines that there is no substantial risk of  
14 protest or other litigation, whereupon after the necessary  
15 disbursements have been made from the extraction taxes suspense  
16 fund, the money remaining in the suspense fund as of the last  
17 day of the month attributed to these payments shall be  
18 identified by tax source and distributed or transferred in  
19 accordance with the provisions of Sections 7-1-6.21 through  
20 7-1-6.23, 7-1-6.60 and 7-1-6.61 NMSA 1978. After the necessary  
21 distributions and transfers, any balance, except for remittance  
22 unidentified as to source or disposition, shall be transferred  
23 to the general fund."

24 Section 2. A new section of the Tax Administration Act,  
25 Section 7-1-6.60 NMSA 1978, is enacted to read:

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1           "7-1-6.60. [NEW MATERIAL] DISTRIBUTION TO SEVERANCE TAX  
2 BONDING FUND OF OIL AND GAS EMERGENCY SCHOOL TAX RECEIPTS.--  
3 Upon the certification of the state board of finance to the  
4 secretary that a distribution is necessary to meet debt service  
5 obligations on outstanding severance tax bonds and supplemental  
6 severance tax bonds, a distribution pursuant to Section  
7 7-1-6.20 NMSA 1978 shall be made to the severance tax bonding  
8 fund of the net receipts attributable to the taxes and advance  
9 payment imposed pursuant to the Oil and Gas Emergency School  
10 Tax Act in the amount certified by the state board of finance;  
11 provided that no distribution pursuant to this section shall  
12 exceed an amount equal to one percent multiplied by the taxable  
13 value of products reported pursuant to the Oil and Gas  
14 Emergency School Tax Act for the month in which the  
15 distribution is made."

16           Section 3. A new section of the Tax Administration Act,  
17 Section 7-1-6.61 NMSA 1978, is enacted to read:

18           "7-1-6.61 [NEW MATERIAL] DISTRIBUTION--PUBLIC SCHOOL  
19 FUND.--

20           A. Subject to the provisions of Subsection B of  
21 this section, a distribution pursuant to Section 7-1-6.20 NMSA  
22 1978 shall be made to the public school fund in an amount equal  
23 to one percent multiplied by the taxable value of products  
24 reported pursuant to the Oil and Gas Emergency School Tax Act.  
25 Amounts distributed to the public school fund pursuant to this

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1 section shall not revert to the general fund.

2 B. If a distribution to the severance tax bonding  
3 fund is made pursuant to Section 7-1-6.60 NMSA 1978, the  
4 distribution pursuant to this section shall be reduced by the  
5 amount of the distribution pursuant to Section 7-1-6.60 NMSA  
6 1978."

7 Section 4. A new section of the Tax Administration Act is  
8 enacted to read:

9 "[NEW MATERIAL] PURPOSE--AUTHORITY TO ADJUST OIL AND GAS  
10 TAX RATES.--The purpose of this 2010 act is to temporarily  
11 decrease tax rates under the Oil and Gas Severance Tax Act and  
12 to temporarily increase tax rates under the Oil and Gas  
13 Emergency School Tax Act. This 2010 act is not intended to  
14 affect the total combined taxes due under those acts. In order  
15 to ensure that the total amount paid pursuant to the Oil and  
16 Gas Severance Tax Act and the Oil and Gas Emergency School Tax  
17 Act is not affected by the change in tax rates pursuant to this  
18 2010 act, the secretary shall, by rule, adjust tax rates under  
19 those acts if, because of oil or gas prices, one or more of the  
20 following provisions is applicable:

21 A. Paragraph (3), (4), (5), (6), (7), (8) or (9) of  
22 Subsection A of Section 7-29-4 NMSA 1978;

23 B. Subsection B of Section 7-29-4 NMSA 1978; or

24 C. Paragraph (4), (5), (6) or (7) of Subsection A  
25 of Section 7-31-4 NMSA 1978."

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1           Section 5. Section 7-27-14 NMSA 1978 (being Laws 1961,  
2 Chapter 5, Section 11, as amended) is amended to read:

3           "7-27-14. AMOUNT OF TAX--SECURITY FOR BONDS.--

4           A. The legislature shall provide for the continued  
5 assessment, levy, collection and deposit into the severance tax  
6 bonding fund of the tax or taxes upon natural resource products  
7 severed and saved from the soil of the state that, together  
8 with such other income as may be deposited to the fund, will be  
9 sufficient to produce an amount that is at least the amount  
10 necessary to meet annual debt service charges on all  
11 outstanding severance tax bonds and supplemental severance tax  
12 bonds.

13           B. Except as otherwise specifically provided by  
14 law, the state board of finance shall issue no severance tax  
15 bonds unless the aggregate amount of severance tax bonds  
16 outstanding, and including the issue proposed, can be serviced  
17 with not more than fifty percent of the annual deposits into  
18 the severance tax bonding fund, as determined by the deposits  
19 during the preceding fiscal year.

20           C. The state board of finance shall issue no  
21 supplemental severance tax bonds with a term that extends  
22 beyond the fiscal year in which the bonds are issued unless the  
23 aggregate amount of severance tax bonds and supplemental  
24 severance tax bonds outstanding, and including the issue  
25 proposed, can be serviced with not more than sixty-two and

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1 one-half percent of the annual deposits into the severance tax  
2 bonding fund, as determined by the deposits during the  
3 preceding fiscal year.

4 D. Except as otherwise specifically provided by  
5 law, the state board of finance may issue supplemental  
6 severance tax bonds with a term that does not extend beyond the  
7 fiscal year in which they are issued if the debt service on  
8 such supplemental severance tax bonds when added to the debt  
9 service previously paid or scheduled to be paid during that  
10 fiscal year on severance tax bonds and supplemental severance  
11 tax bonds does not exceed ninety-five percent of the deposits  
12 into the severance tax bonding fund during the preceding fiscal  
13 year.

14 E. The state board of finance shall issue no  
15 severance tax bonds or supplemental severance tax bonds with  
16 the expectation that a distribution pursuant to Section  
17 7-1-6.60 NMSA 1978 of oil and gas emergency school tax receipts  
18 will be used to satisfy any portion of the debt service due on  
19 either the bonds to be issued or any outstanding severance tax  
20 bonds or supplemental severance tax bonds.

21 F. For the purposes of Subsections B, C and D of  
22 this section, in determining the deposits into the severance  
23 tax bonding fund during the preceding fiscal year:

24 (1) in lieu of the actual deposits into the  
25 fund in fiscal year 2010, the amount used to calculate bonding

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1 capacity for fiscal year 2011 shall equal the amount  
2 distributed to the fund in fiscal year 2010 pursuant to Section  
3 7-1-6.23 NMSA 1978 less an amount equal to one percent  
4 multiplied by the taxable value of products reported pursuant  
5 to the Oil and Gas Severance Tax Act for fiscal year 2010;

6 (2) in lieu of the actual deposits into the  
7 fund in fiscal year 2013, the amount used to calculate bonding  
8 capacity for fiscal year 2014 shall equal the amount  
9 distributed to the fund in fiscal year 2013 pursuant to Section  
10 7-1-6.23 NMSA 1978 plus an amount equal to one percent  
11 multiplied by the taxable value of products reported pursuant  
12 to the Oil and Gas Severance Tax Act for fiscal year 2013; and

13 (3) any distributions of oil and gas emergency  
14 school tax receipts pursuant to Section 7-1-6.60 NMSA 1978  
15 shall not be considered.

16 [~~E.~~] G. The provisions of this section shall not be  
17 modified by the terms of any severance tax bonds or  
18 supplemental severance tax bonds hereafter issued."

19 Section 6. Section 7-29-4 NMSA 1978 (being Laws 1980,  
20 Chapter 62, Section 5, as amended) is amended to read:

21 "7-29-4. OIL AND GAS SEVERANCE TAX IMPOSED--  
22 COLLECTION--INTEREST OWNER'S LIABILITY TO STATE--INDIAN  
23 LIABILITY.--

24 A. There is imposed and shall be collected by the  
25 department a tax on all products that are severed and sold,

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1       except as provided in Subsection B of this section. The  
2       measure of the tax and the rates are:

3               (1) on natural gas severed and sold, except as  
4       provided in Paragraphs (4), (6), [~~and~~] (7) and (10) of this  
5       subsection, three and three-fourths percent of the taxable  
6       value determined pursuant to Section 7-29-4.1 NMSA 1978;

7               (2) on oil and on other liquid hydrocarbons  
8       removed from natural gas at or near the wellhead, except as  
9       provided in Paragraphs (3), (5), (8), [~~and~~] (9) and (11) of  
10      this subsection, three and three-fourths percent of taxable  
11      value determined pursuant to Section 7-29-4.1 NMSA 1978;

12              (3) on oil and on other liquid hydrocarbons  
13      removed from natural gas at or near the wellhead produced from  
14      a qualified enhanced recovery project, one and seven-eighths  
15      percent of the taxable value determined pursuant to Section  
16      7-29-4.1 NMSA 1978, provided that the annual average price of  
17      west Texas intermediate crude oil, determined by the department  
18      by averaging the posted prices in effect on the last day of  
19      each month of the twelve-month period ending on May 31 prior to  
20      the fiscal year in which the tax rate is to be imposed, was  
21      less than twenty-eight dollars (\$28.00) per barrel;

22              (4) on the natural gas from a well workover  
23      project that is certified by the oil conservation division of  
24      the energy, minerals and natural resources department in its  
25      approval of the well workover project, two and forty-five

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1 hundredths percent of the taxable value determined pursuant to  
2 Section 7-29-4.1 NMSA 1978, provided that the annual average  
3 price of west Texas intermediate crude oil, determined by the  
4 department by averaging the posted prices in effect on the last  
5 day of each month of the twelve-month period ending on May 31  
6 prior to the fiscal year in which the tax rate is to be  
7 imposed, was less than twenty-four dollars (\$24.00) per barrel;

8 (5) on the oil and on other liquid  
9 hydrocarbons removed from natural gas at or near the wellhead  
10 from a well workover project that is certified by the oil  
11 conservation division of the energy, minerals and natural  
12 resources department in its approval of the well workover  
13 project, two and forty-five hundredths percent of the taxable  
14 value determined pursuant to Section 7-29-4.1 NMSA 1978,  
15 provided that the annual average price of west Texas  
16 intermediate crude oil, determined by the department by  
17 averaging the posted prices in effect on the last day of each  
18 month of the twelve-month period ending on May 31 prior to the  
19 fiscal year in which the tax rate is to be imposed, was less  
20 than twenty-four dollars (\$24.00) per barrel;

21 (6) on the natural gas from a stripper well  
22 property, one and seven-eighths percent of the taxable value  
23 determined pursuant to Section 7-29-4.1 NMSA 1978, provided  
24 the average annual taxable value of natural gas was equal to or  
25 less than one dollar fifteen cents (\$1.15) per thousand cubic

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1 feet in the calendar year preceding July 1 of the fiscal year  
2 in which the tax rate is to be imposed;

3 (7) on the natural gas from a stripper well  
4 property, two and thirteen-sixteenths percent of the taxable  
5 value determined pursuant to Section 7-29-4.1 NMSA 1978,  
6 provided that the average annual taxable value of natural gas  
7 was greater than one dollar fifteen cents (\$1.15) per thousand  
8 cubic feet but not more than one dollar thirty-five cents  
9 (\$1.35) per thousand cubic feet in the calendar year preceding  
10 July 1 of the fiscal year in which the tax rate is to be  
11 imposed;

12 (8) on the oil and on other liquid  
13 hydrocarbons removed from natural gas at or near the wellhead  
14 from a stripper well property, one and seven-eighths percent of  
15 the taxable value determined pursuant to Section 7-29-4.1 NMSA  
16 1978, provided that the average annual taxable value of oil was  
17 equal to or less than fifteen dollars (\$15.00) per barrel in  
18 the calendar year preceding July 1 of the fiscal year in which  
19 the tax rate is to be imposed;

20 (9) on the oil and on other liquid  
21 hydrocarbons removed from natural gas at or near the wellhead  
22 from a stripper well property, two and thirteen-sixteenths  
23 percent of the taxable value determined pursuant to Section  
24 7-29-4.1 NMSA 1978, provided that the average annual taxable  
25 value of oil was greater than fifteen dollars (\$15.00) per

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1 barrel but not more than eighteen dollars (\$18.00) per barrel  
2 in the calendar year preceding July 1 of the fiscal year in  
3 which the tax rate is to be imposed; ~~and~~

4 (10) from July 1, 2010 through June 30, 2013,  
5 on natural gas severed and sold, except as provided in  
6 Paragraphs (4), (6) and (7) of this subsection, two and three-  
7 fourths percent of the taxable value determined pursuant to  
8 Section 7-29-4.1 NMSA 1978;

9 (11) from July 1, 2010 through June 30, 2013,  
10 on oil and on other liquid hydrocarbons removed from natural  
11 gas at or near the wellhead, except as provided in Paragraphs  
12 (3), (5), (8) and (9) of this subsection, two and three-fourths  
13 percent of the taxable value determined pursuant to Section  
14 7-29-4.1 NMSA 1978;

15 ~~(10)~~ (12) on carbon dioxide, helium and non-  
16 hydrocarbon gases, except as provided in Paragraph (13) of this  
17 subsection, three and three-fourths percent of the taxable  
18 value determined pursuant to Section 7-29-4.1 NMSA 1978; and

19 (13) from July 1, 2010 through June 30, 2013,  
20 on carbon dioxide, helium and non-hydrocarbon gases, two and  
21 three-fourths percent of the taxable value determined pursuant  
22 to Section 7-29-4.1 NMSA 1978.

23 B. The tax imposed in Subsection A of this section  
24 shall not be imposed on:

25 (1) natural gas severed and sold from a

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1 production restoration project during the first ten years of  
2 production following the restoration of production, provided  
3 that the annual average price of west Texas intermediate crude  
4 oil, determined by the department by averaging the posted  
5 prices in effect on the last day of each month of the twelve-  
6 month period ending on May 31 prior to each fiscal year in  
7 which the tax exemption is to be effective, was less than  
8 twenty-four dollars (\$24.00) per barrel; and

9 (2) oil and other liquid hydrocarbons removed  
10 from natural gas at or near the wellhead from a production  
11 restoration project during the first ten years of production  
12 following the restoration of production, provided that the  
13 annual average price of west Texas intermediate crude oil,  
14 determined by the department by averaging the posted prices in  
15 effect on the last day of each month of the twelve-month period  
16 ending on May 31 prior to each fiscal year in which the tax  
17 exemption is to be effective, was less than twenty-four dollars  
18 (\$24.00) per barrel.

19 C. Every interest owner shall be liable for the tax  
20 to the extent of [~~his~~] the interest owner's interest in such  
21 products. Any Indian tribe, Indian pueblo or Indian shall be  
22 liable for the tax to the extent authorized or permitted by  
23 law.

24 D. The tax imposed by this section may be referred  
25 to as the "oil and gas severance tax"."

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

3 "7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY  
4 DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN  
5 LIABILITY.--

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

10 (1) on oil and on oil and other liquid  
11 hydrocarbons removed from natural gas at or near the wellhead,  
12 except as provided in Paragraphs (4), [~~and~~] (5) and (8) of this  
13 subsection, three and fifteen hundredths percent of the taxable  
14 value determined pursuant to Section 7-31-5 NMSA 1978;

15 (2) on carbon dioxide, helium and non-  
16 hydrocarbon gases, except as provided in Paragraph (10) of this  
17 subsection, three and fifteen hundredths percent of the taxable  
18 value determined pursuant to Section 7-31-5 NMSA 1978;

19 (3) on natural gas, except as provided in  
20 Paragraphs (6), [~~and~~] (7) and (9) of this subsection, four  
21 percent of the taxable value determined pursuant to Section  
22 7-31-5 NMSA 1978;

23 (4) on the oil and on other liquid  
24 hydrocarbons removed from natural gas at or near the wellhead  
25 from a stripper well property, one and fifty-eight hundredths

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1 percent of the taxable value determined pursuant to Section  
2 7-31-5 NMSA 1978, provided that the average annual taxable  
3 value of oil was equal to or less than fifteen dollars (\$15.00)  
4 per barrel in the calendar year preceding July 1 of the fiscal  
5 year in which the tax rate is to be imposed;

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

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

22 (7) on the natural gas removed from a stripper  
23 well property, three percent of the taxable value determined  
24 pursuant to Section 7-31-5 NMSA 1978, provided that the average  
25 annual taxable value of natural gas was greater than one dollar

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1 fifteen cents (\$1.15) per thousand cubic feet but not more than  
2 one dollar thirty-five cents (\$1.35) per thousand cubic feet in  
3 the calendar year preceding July 1 of the fiscal year in which  
4 the tax rate is to be imposed;

5 (8) from July 1, 2010 through June 30, 2013,  
6 on oil and on other liquid hydrocarbons removed from natural  
7 gas at or near the wellhead, except as provided in Paragraphs  
8 (4) and (5) of this subsection, four and fifteen-hundredths  
9 percent of the taxable value determined pursuant to Section  
10 7-31-5 NMSA 1978;

11 (9) from July 1, 2010 through June 30, 2013,  
12 on natural gas, except as provided in Paragraphs (6) and (7) of  
13 this subsection, five percent of the taxable value determined  
14 pursuant to Section 7-31-5 NMSA 1978; and

15 (10) from July 1, 2010 through June 30, 2013,  
16 on carbon dioxide, helium and non-hydrocarbon gases, four and  
17 fifteen-hundredths percent of the taxable value determined  
18 pursuant to Section 7-31-5 NMSA 1978.

19 B. Every interest owner, for the purpose of levying  
20 this tax, is deemed to be in the business of severing products  
21 and is liable for this tax to the extent of [~~his~~] the owner's  
22 interest in the value of the products or to the extent of [~~his~~]  
23 the owner's interest as may be measured by the value of the  
24 products.

25 C. Any Indian tribe, Indian pueblo or Indian is

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1     liable for this tax to the extent authorized or permitted by  
2     law."

3             Section 8.   TEMPORARY PROVISION--DETERMINATION OF AVERAGE  
4     TAX FOR PURPOSES OF MAKING ADVANCE PAYMENTS.--

5             A.   Notwithstanding provisions to the contrary in  
6     Section 7-29-23 or 7-31-26 NMSA 1978:

7                     (1)   the average tax pursuant to those sections  
8     for the twelve months ending March 31, 2010 shall be determined  
9     as if the tax rates scheduled in this act for fiscal year 2011  
10    were in effect for those twelve months; and

11                    (2)   the average tax pursuant to those sections  
12    for the twelve months ending March 31, 2013 shall be determined  
13    as if the tax rates scheduled in this act for fiscal year 2014  
14    were in effect for those twelve months.

15             B.   The secretary of taxation and revenue shall  
16     promulgate such rules as are necessary to implement the  
17     provisions of this section.

18             Section 9.   DELAYED REPEAL.--Effective July 1, 2013,  
19     Section 7-1-6.60 NMSA 1978, as enacted by Section 2 of this  
20     act, Section 7-1-6.61 NMSA 1978, as enacted by Section 3 of  
21     this act, and Section 4 of this act are repealed.

22             Section 10.   APPLICABILITY.--The distribution pursuant to  
23     Section 3 of this act applies to receipts from the oil and gas  
24     emergency school tax that are attributable to sales on or after  
25     July 1, 2010 and prior to July 1, 2013.

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1           Section 11. EFFECTIVE DATE.--The effective date of the  
2 provisions of this act is July 1, 2010.

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