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HOUSE BILL 470

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Candy Spence Ezzell

AN ACT

RELATING TO TAXATION; INCREASING THE THRESHOLD BEFORE THE  
PENALTY FOR UNDERPAYMENT OF ESTIMATED TAX DUE IS APPLIED.

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

**SECTION 1.** Section 7-2-12.2 NMSA 1978 (being Laws 1996,  
Chapter 17, Section 1, as amended) is amended to read:

"7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED  
TAX--PENALTY.--

A. Except as otherwise provided in this section, an  
individual who is required to file an income tax return under  
the Income Tax Act shall pay the required annual payment in  
installments through either withholding or estimated tax  
payments.

B. For the purposes of this section:

(1) "required annual payment" means the lesser

1 of:

2 (a) ninety percent of the tax shown on  
3 the return of the taxable year or, if no return is filed,  
4 ninety percent of the tax for the taxable year; or

5 (b) one hundred percent of the tax shown  
6 on the return for the preceding taxable year if the preceding  
7 taxable year was a taxable year of twelve months and the  
8 taxpayer filed a New Mexico tax return for that preceding  
9 taxable year; and

10 (2) "tax" means the tax imposed under Section  
11 7-2-3 NMSA 1978 less any amount allowed for applicable credits  
12 and rebates provided by the Income Tax Act.

13 C. There shall be four required installments for  
14 each taxable year. If a taxpayer is not liable for estimated  
15 tax payments on March 31, but becomes liable for estimated tax  
16 at some point after March 31, the taxpayer must make estimated  
17 tax payments as follows:

18 (1) if the taxpayer becomes required to pay  
19 estimated tax after March 31 and before June 1, fifty percent  
20 of the required annual payment must be paid on or before June  
21 15, twenty-five percent on September 15 and twenty-five percent  
22 on or before January 15 of the following taxable year;

23 (2) if the taxpayer becomes required to pay  
24 estimated tax after May 31, but before September 1, the  
25 taxpayer must pay seventy-five percent of the required annual

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1 payment on or before September 15 and twenty-five percent on or  
2 before January 15 of the following taxable year; and

3 (3) if the taxpayer becomes required to pay  
4 estimated tax after August 31, the taxpayer must pay one  
5 hundred percent of the required annual payment on or before  
6 January 15 of the following taxable year.

7 D. Except as otherwise provided in this section,  
8 for taxpayers reporting on a calendar year basis, estimated  
9 payments of the required annual payment are due on or before  
10 April 15, June 15 and September 15 of the taxable year and  
11 January 15 of the following taxable year. For taxpayers  
12 reporting on a fiscal year other than a calendar year, the due  
13 dates for the installments are the fifteenth day of the fourth,  
14 sixth and ninth months of the fiscal year and the fifteenth day  
15 of the first month following the fiscal year.

16 E. A rancher or farmer who expects to receive at  
17 least two-thirds of the rancher's or farmer's gross income for  
18 the taxable year from ranching or farming, or who has received  
19 at least two-thirds of the rancher's or farmer's gross income  
20 for the previous taxable year from ranching or farming, may:

21 (1) pay the required annual payment for the  
22 taxable year in one installment on or before January 15 of the  
23 following taxable year; or

24 (2) on or before March 1 of the following  
25 taxable year, file a return for the taxable year and pay in

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1 full the amount computed on the return as payable.

2 A penalty under Subsection G of this section shall not be  
3 imposed unless the rancher or farmer underpays the tax by more  
4 than one-third. If a joint return is filed, a rancher or  
5 farmer must consider the rancher's or farmer's spouse's gross  
6 income in determining whether at least two-thirds of gross  
7 income is from ranching or farming.

8 F. For the purposes of this section, the amount of  
9 tax deducted and withheld with respect to a taxpayer under the  
10 Withholding Tax Act or the Oil and Gas Proceeds and Pass-  
11 Through Entity Withholding Tax Act shall be deemed a payment of  
12 estimated tax. An equal part of the amount of withheld tax  
13 shall be deemed paid on each due date for the applicable  
14 taxable year unless the taxpayer establishes the dates on which  
15 all amounts were actually withheld. In that case, the amounts  
16 withheld shall be deemed payments of estimated tax on the dates  
17 on which the amounts were actually withheld. The taxpayer may  
18 apply the provisions of this subsection separately to wage  
19 withholding and any other amounts withheld under the  
20 Withholding Tax Act or the Oil and Gas Proceeds and Pass-  
21 Through Entity Withholding Tax Act. Amounts of tax paid by  
22 taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be  
23 deemed a payment of estimated tax.

24 G. Except as otherwise provided in this section, in  
25 the case of an underpayment of the required annual payment by a

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1 taxpayer, there shall be added to the tax a penalty determined  
2 by applying the rate specified in Subsection B of Section  
3 7-1-67 NMSA 1978 to the amount of the underpayment for the  
4 period of the underpayment, provided:

5 (1) the amount of the underpayment shall be  
6 the excess of the amount of the required annual payment over  
7 the amount, if any, paid on or before the due date for the  
8 installment;

9 (2) the period of the underpayment runs from  
10 the due date for the installment to whichever of the following  
11 dates is earlier:

12 (a) the fifteenth day of the fourth  
13 month following the close of the taxable year; or

14 (b) with respect to any portion of the  
15 underpayment, the date on which the portion was paid; and

16 (3) a payment of estimated tax shall be  
17 credited against unpaid or underpaid installments in the order  
18 in which the installments are required to be paid.

19 H. No penalty shall be imposed under Subsection G  
20 of this section for any taxable year if:

21 (1) the difference between the following is  
22 less than [~~five hundred dollars (\$500)~~] one thousand dollars  
23 (\$1,000):

24 (a) the tax shown on the return for the  
25 taxable year or, when no return is filed, the tax for the

1 taxable year; and

2 (b) any amount withheld under the  
3 provisions of the Withholding Tax Act or the Oil and Gas  
4 Proceeds and Pass-Through Entity Withholding Tax Act for that  
5 taxpayer for that taxable year;

6 (2) the taxpayer's preceding taxable year was  
7 a taxable year of twelve months, the taxpayer did not have a  
8 tax liability for the preceding taxable year and the taxpayer  
9 was a resident of New Mexico for the entire taxable year;

10 (3) through either withholding or estimated  
11 tax payments, the taxpayer paid the required annual payment as  
12 defined in Subsection B of this section; or

13 (4) the secretary determines that the  
14 underpayment was not due to fraud, negligence or disregard of  
15 rules and regulations.

16 I. If on or before January 31 of the following  
17 taxable year the taxpayer files a return for the taxable year  
18 and pays in full the amount computed on the return as payable,  
19 then a penalty under Subsection G of this section shall not be  
20 imposed on an underpayment of the fourth required installment  
21 for the taxable year.

22 J. This section applies to taxable years of less  
23 than twelve months and to taxpayers reporting on a fiscal year  
24 other than a calendar year in the manner determined by  
25 regulation or instruction of the secretary.

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1           K. Except as otherwise provided in Subsection L of  
2 this section, this section applies to any estate or trust.

3           L. This section does not apply to any trust that is  
4 subject to the tax imposed by Section 511 of the Internal  
5 Revenue Code or that is a private foundation. For a taxable  
6 year that ends before the date two years after the date of the  
7 decedent's death, this section does not apply to:

8                     (1) the estate of the decedent; or

9                     (2) any trust all of which was treated under  
10 Subpart E of Part I of Subchapter J of Chapter 1 of the  
11 Internal Revenue Code as owned by the decedent and to which the  
12 residue of the decedent's estate will pass under the decedent's  
13 will or, if no will is admitted to probate, that is the trust  
14 primarily responsible for paying debts, taxes and expenses of  
15 administration.

16           M. The provisions of this section do not apply to  
17 first-year residents."

18           **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
19 provisions of this act is July 1, 2011.

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