

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 607 & 622

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
CREATING THE FILM PRODUCTION TAX CREDIT ACT; DISTRIBUTING
REFUNDABLE FILM PRODUCTION TAX CREDIT AMOUNTS OVER MULTIPLE
YEARS; SPECIFYING THE ANNUAL PAYOUT ON ACCRUED FILM PRODUCTION
TAX CREDITS; PROVIDING THAT THE FILM PRODUCTION TAX CREDIT
SHALL NOT APPLY TO CERTAIN EXPENDITURES; LIMITING THE AMOUNT OF
CERTAIN EXPENDITURES THAT QUALIFY FOR THE TAX CREDIT; REQUIRING
EXPENDITURES TO BE REPORTED WITHIN A CERTAIN TIME; REQUIRING
THE SUBMISSION OF AN AUDIT OF EXPENDITURES UNDER CERTAIN
CIRCUMSTANCES; PROVIDING FOR A PHYSICAL PRESENCE IN NEW MEXICO
OF VENDORS; PROVIDING FOR PERFORMING ARTIST WITHHOLDING;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 7-1-68 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 69, as amended) is amended to read:

2 "7-1-68. INTEREST ON OVERPAYMENTS.--

3 A. As provided in this section, interest shall be
4 allowed and paid on the amount of tax overpaid by a person that
5 is subsequently refunded or credited to that person.

6 B. Interest on overpayments of tax shall accrue and
7 be paid at the rate established for individuals pursuant to
8 Section 6621 of the Internal Revenue Code, computed on a daily
9 basis; provided that if a different rate is specified by a
10 compact or other interstate agreement to which New Mexico is a
11 party, that rate shall apply to amounts due under the compact
12 or other agreement.

13 C. Unless otherwise provided by this section,
14 interest on an overpayment not arising from an assessment by
15 the department shall be paid from the date of the claim for
16 refund until a date preceding by not more than thirty days the
17 date of the credit or refund to any person; interest on an
18 overpayment arising from an assessment by the department shall
19 be paid from the date of overpayment until a date preceding by
20 not more than thirty days the date of the credit or refund to
21 any person.

22 D. No interest shall be allowed or paid with
23 respect to an amount credited or refunded if:

24 (1) the amount of interest due is less than
25 one dollar (\$1.00);

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1 (2) the credit or refund is made within:

2 (a) fifty-five days of the date of the
3 claim for refund of income tax, pursuant to either the Income
4 Tax Act or the Corporate Income and Franchise Tax Act for the
5 tax year immediately preceding the tax year in which the claim
6 is made;

7 (b) seventy-five days of the date of the
8 claim for refund of gasoline tax to users of gasoline off the
9 highways; or

10 (c) one hundred twenty days of the date
11 of the claim for refund of tax imposed pursuant to the
12 Resources Excise Tax Act, the Severance Tax Act, the Oil and
13 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
14 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
15 Valorem Production Tax Act, the Natural Gas Processors Tax Act
16 or the Oil and Gas Production Equipment Ad Valorem Tax Act;

17 (3) the credit or refund is made within one
18 hundred twenty days of the date of the claim for refund of
19 income tax, pursuant to the Income Tax Act or the Corporate
20 Income and Franchise Tax Act, for any tax year more than one
21 year prior to the year in which the claim is made;

22 (4) Sections 6611(f) and 6611(g) of the
23 Internal Revenue Code, as those sections may be amended or
24 renumbered, prohibit payment of interest for federal income tax
25 purposes;

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1 (5) the credit or refund is made within sixty
2 days of the date of the claim for refund of any tax other than
3 income tax;

4 (6) the credit results from overpayments found
5 in an audit of multiple reporting periods and applied to
6 underpayments found in that audit or refunded as a net
7 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
8 1978;

9 (7) the department applies the credit or
10 refund to an intercept program, to the taxpayer's estimated
11 payment prior to the due date for the estimated payment or to
12 offset prior liabilities of the taxpayer pursuant to Subsection
13 E of Section 7-1-29 NMSA 1978; [~~or~~]

14 (8) the credit or refund results from
15 overpayments the department finds pursuant to Subsection F of
16 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
17 taxpayer on the return; or

18 (9) the refund results from a film production
19 tax credit pursuant to Section 7-2F-1 NMSA 1978.

20 E. Nothing in this section shall be construed to
21 require the payment of interest upon interest."

22 SECTION 2. Section 7-2F-1 NMSA 1978 (being Laws 2002,
23 Chapter 36, Section 1, as amended) is amended to read:

24 "7-2F-1. FILM PRODUCTION TAX CREDIT.--

25 A. The tax credit created by this section may be

1 referred to as the "film production tax credit". An eligible
2 film production company may apply for, and the taxation and
3 revenue department may allow, subject to the limitation in
4 Subsection D of this section, a tax credit in an amount equal
5 to the percentage specified in Subsection B of this section of:

6 (1) direct production expenditures made in New
7 Mexico that:

8 (a) are directly attributable to the
9 production in New Mexico of a film or commercial audiovisual
10 product;

11 (b) are subject to taxation by the state
12 of New Mexico; and

13 (c) exclude direct production
14 expenditures for which another taxpayer claims the film
15 production tax credit; and

16 (2) postproduction expenditures made in New
17 Mexico that:

18 (a) are directly attributable to the
19 production of a commercial film or audiovisual product;

20 (b) are for services performed in New
21 Mexico;

22 (c) are subject to taxation by the state
23 of New Mexico; and

24 (d) exclude postproduction expenditures
25 for which another taxpayer claims the film production tax

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1 credit.

2 B. Except as provided in Subsections C and [F] L of
3 this section, the percentage to be applied in calculating the
4 amount of the film production tax credit is twenty-five
5 percent.

6 C. With respect to expenditures attributable to a
7 production for which the film production company receives a tax
8 credit pursuant to the federal new markets tax credit program,
9 the percentage to be applied in calculating the film production
10 tax credit is twenty percent.

11 D. A claim for film production tax credits shall be
12 filed as part of a return filed pursuant to the Income Tax Act
13 or the Corporate Income and Franchise Tax Act. The date a
14 claim is received by the department shall determine the order
15 that refunds are made by the department. The aggregate amount
16 of the film production tax credits that may be approved in any
17 fiscal year is forty-five million dollars (\$45,000,000) with
18 respect to the direct production expenditures or postproduction
19 expenditures made on film or commercial audiovisual products.
20 A film production company that submits a claim for a film
21 production tax credit that is unable to receive the tax credit
22 because the claims for the fiscal year exceed the limitation in
23 this subsection shall be placed for the subsequent fiscal year
24 at the front of a queue of film production tax credit claimants
25 submitting claims in the subsequent fiscal year in the order of

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1 the date on which the credit was authorized for payment.

2 E. Refunds allowed pursuant to the Film Production
3 Tax Credit Act shall be distributed pursuant to provisions of
4 the Tax Administration Act to the taxpayer as follows:

5 (1) refunds in amounts of less than one
6 million dollars (\$1,000,000) shall be distributed in the twelve
7 months following the date on which the initial refund claim was
8 received;

9 (2) refunds in amounts of one million dollars
10 (\$1,000,000) or more but less than five million dollars
11 (\$5,000,000) shall be divided into two equal allocations, with
12 the first allocation being distributed in the twelve months
13 following the date on which the initial refund claim was
14 received and the second allocation being distributed twelve
15 months following the date of the first distribution; and

16 (3) refunds in amounts of five million dollars
17 (\$5,000,000) or more shall be divided into three equal
18 allocations, with the first allocation being distributed in the
19 twelve months following the date on which the initial refund
20 claim was received, the second allocation being distributed
21 twelve months following the first distribution and the third
22 allocation being distributed twenty-four months following the
23 date on which the first distribution is made.

24 ~~[D.]~~ F. The film production tax credit shall not be
25 claimed with respect to direct production expenditures or

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1 postproduction expenditures for which the film production
2 company has delivered a nontaxable transaction certificate
3 pursuant to Section 7-9-86 NMSA 1978.

4 ~~[E.]~~ G. A long-form narrative film production for
5 which the film production tax credit is claimed pursuant to
6 Paragraph (1) of Subsection A of this section shall contain an
7 acknowledgment that the production was filmed in New Mexico.

8 ~~[F.]~~ H. To be eligible for the film production tax
9 credit, a film production company shall submit to the ~~[New~~
10 ~~Mexico film]~~ division ~~[of the economic development department]~~
11 information required by the division to demonstrate conformity
12 with the requirements of this section, ~~[and]~~ including detailed
13 information on each direct production expenditure and each
14 postproduction expenditure. In addition, the film production
15 company shall agree in writing:

16 (1) to pay all obligations the film production
17 company has incurred in New Mexico;

18 (2) to publish, at completion of principal
19 photography, a notice at least once a week for three
20 consecutive weeks in local newspapers in regions where filming
21 has taken place to notify the public of the need to file
22 creditor claims against the film production company by a
23 specified date;

24 (3) that outstanding obligations are not
25 waived should a creditor fail to file by the specified date;

1 and

2 (4) to delay filing of a claim for the film
3 production tax credit until the [~~New Mexico film~~] division
4 delivers written notification to the taxation and revenue
5 department that the film production company has fulfilled all
6 requirements for the credit.

7 [~~G.~~] I. The [~~New Mexico film~~] division shall
8 determine the eligibility of the company and shall report this
9 information to the taxation and revenue department in a manner
10 and at times the economic development department and the
11 taxation and revenue department shall agree upon. The division
12 shall also post on its web site all information provided by the
13 film production company that does not reveal revenue, income or
14 other information that may jeopardize the confidentiality of
15 income tax returns.

16 [~~H.~~] J. To receive a film production tax credit, a
17 film production company shall apply to the taxation and revenue
18 department on forms and in the manner the department may
19 prescribe. The application shall include a certification of
20 the amount of direct production expenditures or postproduction
21 expenditures made in New Mexico with respect to the film
22 production for which the film production company is seeking the
23 film production tax credit; provided that for the film
24 production tax credit, the application shall be submitted
25 within one year of the date of the last direct production

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1 expenditure in New Mexico or the last postproduction
2 expenditure in New Mexico. If the amount of the requested tax
3 credit exceeds five million dollars (\$5,000,000), the
4 application shall also include the results of an audit,
5 conducted by a certified public accountant licensed to practice
6 in New Mexico, verifying that the expenditures have been made
7 in compliance with the requirements of this section. If the
8 requirements of this section have been complied with, subject
9 to the provisions of Subsection D of this section, the taxation
10 and revenue department shall approve the film production tax
11 credit and issue a document granting the tax credit.

12 [~~F.~~] K. The film production company may apply all
13 or a portion of the film production tax credit granted against
14 personal income tax liability or corporate income tax
15 liability. If the amount of the film production tax credit
16 claimed exceeds the film production company's tax liability for
17 the taxable year in which the credit is being claimed, the
18 excess shall be refunded pursuant to Subsection E of this
19 section.

20 [~~J.~~] L. As applied to direct production
21 expenditures for the services of performing artists, the film
22 production tax credit authorized by this section shall not
23 exceed five million dollars (\$5,000,000) for services rendered
24 by all performing artists in a production for which the film
25 production tax credit is claimed."

1 SECTION 3. A new section of Chapter 7, Article 2F NMSA
2 1978 is enacted to read:

3 "[NEW MATERIAL] SHORT TITLE.--Chapter 7, Article 2F NMSA
4 1978 may be cited as the "Film Production Tax Credit Act"."

5 SECTION 4. Section 7-2F-2 NMSA 1978 (being Laws 2003,
6 Chapter 127, Section 2, as amended) is amended to read:

7 "7-2F-2. DEFINITIONS.--As used in [~~Chapter 7, Article 2F~~
8 ~~NMSA 1978~~] the Film Production Tax Credit Act:

9 A. "commercial audiovisual product" means a film or
10 a videogame intended for commercial exploitation;

11 B. "direct production expenditure":

12 (1) except as provided in Paragraph (2) of
13 this subsection, means a transaction that is subject to
14 taxation in New Mexico, including:

15 ~~[(1)]~~ (a) payment of wages, fringe
16 benefits or fees for talent, management or labor to a person
17 who is a New Mexico resident [~~for purposes of the Income Tax~~
18 ~~Act~~];

19 ~~[(2)]~~ (b) payment to a personal services
20 [~~corporation~~] business for the services of a performing artist
21 if [~~(a)~~] the personal services [~~corporation~~] business: 1) pays
22 gross receipts tax in New Mexico on the portion of those
23 payments qualifying for the tax credit; and [~~(b) the performing~~
24 ~~artist receiving payments from the personal services~~
25 ~~corporation pays New Mexico income tax~~]; 2) deducts and remits

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1 withheld income tax pursuant to Subsection I of Section 7-3A-3
2 NMSA 1978; and

3 ~~[(3)]~~ (c) any of the following provided
4 by a vendor: ~~[(a)]~~ 1) the story and scenario to be used for a
5 film; ~~[(b)]~~ 2) set construction and operations, wardrobe,
6 accessories and related services; ~~[(c)]~~ 3) photography, sound
7 synchronization, lighting and related services; ~~[(d)]~~ 4)
8 editing and related services; ~~[(e)]~~ 5) rental of facilities and
9 equipment; ~~[(f)]~~ 6) leasing of vehicles, not including the
10 chartering of aircraft for out-of-state transportation;
11 however, New Mexico-based chartered aircraft for in-state
12 transportation directly attributable to the production shall be
13 considered a direct production expenditure; provided that only
14 the first one hundred dollars (\$100) of the daily expense of
15 leasing a vehicle for passenger transportation on roadways in
16 the state may be claimed as a direct production expenditure;
17 ~~[(g)]~~ 7) food or lodging; provided that only the first one
18 hundred fifty dollars (\$150) of lodging per individual per day
19 is eligible to be claimed as a direct production expenditure;
20 ~~[(h)]~~ 8) commercial airfare if purchased through a New Mexico-
21 based travel agency or travel company for travel to and from
22 New Mexico or within New Mexico that is directly attributable
23 to the production; ~~[(i)]~~ 9) insurance coverage and bonding if
24 purchased through a New Mexico-based insurance agent, broker or
25 bonding agent; and ~~[(j)]~~ 10) other direct costs of producing a

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1 film in accordance with generally accepted entertainment
2 industry practice; and

3 (2) does not include an expenditure for:

4 (a) a gift with a value greater than
5 twenty-five dollars (\$25.00);

6 (b) artwork or jewelry, except that a
7 work of art or a piece of jewelry may be a direct production
8 expenditure if: 1) it is used in the film production; and 2)
9 the expenditure is less than two thousand five hundred dollars
10 (\$2,500); or

11 (c) entertainment, amusement or
12 recreation;

13 C. "division" means the New Mexico film division of
14 the economic development department;

15 [~~G.~~] D. "federal new markets tax credit program"
16 means the tax credit program codified as Section 45D of the
17 United States Internal Revenue Code of 1986, as amended;

18 [~~D.~~] E. "film" means a single [~~media~~] medium or
19 multimedia program, excluding advertising messages other than
20 national or regional advertising messages intended for
21 exhibition, that:

22 (1) is fixed on film, digital medium,
23 videotape, computer disc, laser disc or other similar delivery
24 medium;

25 (2) can be viewed or reproduced;

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1 (3) is not intended to and does not violate a
2 provision of Chapter 30, Article 37 NMSA 1978; and

3 (4) is intended for reasonable commercial
4 exploitation for the delivery medium used;

5 ~~[E.]~~ F. "film production company" means a person
6 that produces one or more films or any part of a film; ~~[and]~~

7 G. "fiscal year" means the state fiscal year
8 beginning on July 1;

9 H. "New Mexico resident" means an individual who
10 had a physical presence in New Mexico for six consecutive
11 months before the first expenditures made by the film
12 production company for the film production for which the film
13 production tax credit is claimed;

14 I. "personal services business" means a business
15 organization that receives payments for the services of a
16 performing artist;

17 J. "physical presence" means a physical address in
18 New Mexico, but does not include a post office box or other
19 mail drop enterprise unless the physical presence is for a
20 business and the business is providing mail services to a film
21 production company from which a vendor conducts business,
22 stores inventory or otherwise creates, assembles or offers for
23 sale the product purchased or leased by a film production
24 company;

25 ~~[F.]~~ K. "postproduction expenditure" means an

1 expenditure for editing, Foley recording, automatic dialogue
 2 replacement, sound editing, special effects, including
 3 computer-generated imagery or other effects, scoring and music
 4 editing, beginning and end credits, negative cutting,
 5 soundtrack production, dubbing, subtitling or addition of sound
 6 or visual effects; but not including an expenditure for
 7 advertising, marketing, distribution or expense payments; and

8 L. "vendor" means a person selling goods or
 9 services that has a physical presence in New Mexico and pays
 10 gross receipts tax pursuant to the Gross Receipts and
 11 Compensating Tax Act and income tax pursuant to the Income Tax
 12 Act or corporate income tax pursuant to the Corporate Income
 13 and Franchise Tax Act."

14 SECTION 5. Section 7-3A-2 NMSA 1978 (being Laws 2003,
 15 Chapter 86, Section 5, as amended) is amended to read:

16 "7-3A-2. DEFINITIONS.--As used in the Oil and Gas
 17 Proceeds and Pass-Through Entity Withholding Tax Act:

18 A. "department" means the taxation and revenue
 19 department, the secretary of taxation and revenue or any
 20 employee of the department exercising authority lawfully
 21 delegated to that employee by the secretary;

22 B. "Internal Revenue Code" means the Internal
 23 Revenue Code of 1986, as amended;

24 C. "net income" means, for any pass-through entity,
 25 the income reported to an owner by the pass-through entity for

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1 federal income tax purposes, including ordinary business income
2 or loss, net rental income or loss, guaranteed payments to a
3 partner of a partnership, dividends, royalties and capital gain
4 or loss, less associated deductions, plus interest earned on a
5 state or local bond, less interest earned on a bond issued by
6 the state of New Mexico or its political subdivisions, less
7 income from obligations of the United States less expenses
8 incurred to earn that income; in the case of a subchapter S
9 corporation, "net income" also includes income taxable to the
10 corporation for federal income tax purposes;

11 D. "oil and gas" means crude oil, natural gas,
12 liquid hydrocarbons or any combination thereof, or carbon
13 dioxide;

14 E. "oil and gas proceeds" means any amount derived
15 from oil and gas production from any well located in New Mexico
16 and payable as royalty interest, overriding royalty interest,
17 production payment interest, working interest or any other
18 obligation expressed as a right to a specified interest in the
19 cash proceeds received from the sale of oil and gas production
20 or in the cash value of that production, subject to all taxes
21 withheld therefrom pursuant to law; "oil and gas proceeds"
22 excludes "net profits interest" and other types of interest the
23 extent of which cannot be determined with reference to a
24 specified share of the oil and gas production and excludes any
25 amounts deducted by the remitter from payments to interest

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1 owners or paid by interest owners to the remitter that are for
2 expenses related to the production from the well or cessation
3 of production from the well for which the interest owner is
4 liable;

5 F. "owner" means a partner in a partnership not
6 taxed as a corporation for federal income tax purposes for the
7 taxable year, a shareholder of an S corporation or of a
8 corporation other than an S corporation that is not taxed as a
9 corporation for federal income tax purposes for the taxable
10 year, a member of a limited liability company or any similar
11 person holding an ownership interest in any pass-through
12 entity. "Owner" also means a performing artist to whom
13 payments are due from a personal services business;

14 G. "partnership" means a combination of persons,
15 including a partnership, joint venture, common trust fund,
16 association, pool or working agreement, or any other
17 combination of persons that is treated as a partnership for
18 federal income tax purposes;

19 H. "pass-through entity" means a personal services
20 business or any other business association other than:

- 21 (1) a sole proprietorship;
22 (2) an estate or trust that does not
23 distribute income to beneficiaries;
24 (3) a corporation, limited liability company,
25 partnership or other entity not a sole proprietorship taxed as

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1 a corporation for federal income tax purposes for the taxable
2 year;

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

6 (5) a single member limited liability company
7 that is treated as a disregarded entity for federal income tax
8 purposes; or

9 (6) a publicly traded partnership as defined
10 in Subsection (b) of Section 7704 of the Internal Revenue Code;

11 I. "person" means an individual, club, company,
12 cooperative association, corporation, estate, firm, joint
13 venture, partnership, receiver, syndicate, trust or other
14 association, limited liability company, limited liability
15 partnership or gas, water or electric utility owned or operated
16 by a county or municipality and, to the extent permitted by
17 law, a federal, state or other governmental unit or subdivision
18 or an agency, a department or an instrumentality thereof;

19 J. "personal services business" means a business
20 organization that receives payments for the services of a
21 performing artist for purposes of the film production tax
22 credit;

23 [~~J.~~] K. "remittee" means a person that is entitled
24 to payment of oil and gas proceeds by a remitter; and

25 [~~K.~~] L. "remitter" means a person that pays oil and

1 gas proceeds to any remittee."

2 SECTION 6. Section 7-3A-3 NMSA 1978 (being Laws 2003,
3 Chapter 86, Section 6, as amended) is amended to read:

4 "7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS AND NET
5 INCOME.--

6 A. Except as otherwise provided in this section, a
7 remitter shall deduct and withhold from each payment of oil and
8 gas proceeds being made to a remittee an amount equal to the
9 rate specified in Subsection D of this section multiplied by
10 the amount prior to withholding that otherwise would have been
11 payable to the remittee.

12 B. Except as otherwise provided in this section, a
13 pass-through entity shall deduct and withhold from each owner's
14 share of net income for that quarter an amount equal to the
15 rate specified in Subsection D of this section multiplied by
16 the owner's share of that net income, reduced, but not below
17 zero, by the amount required to be withheld from the owner's
18 net income under Subsection A of this section.

19 C. The obligation to deduct and withhold from
20 payments or net income as provided in Subsections A and B of
21 this section does not apply to payments that are made to:

22 (1) a corporation whose [~~principle~~] principal
23 place of business is in New Mexico or an individual who is a
24 resident of New Mexico;

25 (2) the United States, this state or any

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1 agency, instrumentality or political subdivision of either;

2 (3) any federally recognized Indian nation,
3 tribe or pueblo or any agency, instrumentality or political
4 subdivision thereof; or

5 (4) organizations that have been granted
6 exemption from the federal income tax by the United States
7 commissioner of internal revenue as organizations described in
8 Section 501(c)(3) of the Internal Revenue Code.

9 D. Except as provided in Subsection I of this
10 section, the rate of withholding shall be set by a department
11 directive; provided that the rate may not exceed the higher of
12 the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the
13 taxable year or the maximum bracket rate set by Section 7-2A-5
14 NMSA 1978 for the taxable year; and provided further that
15 remitters shall be given ninety days' notice of a change in the
16 rate.

17 E. Except as provided in Subsection I of this
18 section, if a pass-through entity has been in existence for at
19 least one full taxable year prior to the current calendar year,
20 the pass-through entity may use one-fourth of its total net
21 income for the preceding full taxable year to compute the
22 amount required to be deducted and withheld each quarter under
23 Subsection B of this section.

24 F. If a remitter receives oil and gas proceeds from
25 which an amount has been deducted and withheld pursuant to the

1 Oil and Gas Proceeds and Pass-Through Entity Withholding Tax
2 Act or a pass-through entity has deducted and withheld an
3 amount pursuant to the Oil and Gas Proceeds and Pass-Through
4 Entity Withholding Tax Act from the net income of an owner that
5 is also a pass-through entity, the remitter or payee pass-
6 through entity may take credit for that amount in determining
7 the amount the remitter or payee pass-through entity must
8 withhold and deduct pursuant to this section.

9 G. If the amount to be withheld from all payments
10 to a remittee in a calendar quarter has not exceeded thirty
11 dollars (\$30.00) and a payment to a remittee is less than ten
12 dollars (\$10.00), no withholding is required. If the amount to
13 be withheld from an owner's share of net income in any calendar
14 quarter is less than thirty dollars (\$30.00), no withholding is
15 required.

16 H. Except as provided in Subsection I of this
17 section, at the option of a remitter or pass-through entity, a
18 remitter or pass-through entity may agree with a remittee or an
19 owner that the remittee or owner pay the amount that the
20 remitter or pass-through entity would have been required to
21 withhold and remit to the department on behalf of the remittee
22 or owner pursuant to the Oil and Gas Proceeds and Pass-Through
23 Entity Withholding Tax Act. The payments by the remittee or
24 owner shall be remitted on the dates set forth in Section
25 7-3A-6 NMSA 1978 on forms and in the manner required by the

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1 department.

2 I. Excluding wages, a personal services business
3 shall deduct and withhold an amount equal to the owner's share
4 of net income multiplied by the highest rate for single
5 individuals provided in Section 7-2-7 NMSA 1978."

6 SECTION 7. APPLICABILITY.--

7 A. The provisions of Subsection D of Section 7-2F-1
8 NMSA 1978 apply to fiscal year 2012 and each subsequent fiscal
9 year.

10 B. The provisions of Sections 5 and 6 of this act
11 apply to amounts paid by a personal services business on and
12 after July 1, 2011.

13 SECTION 8. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2011.