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SENATE BILL 170

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

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; PROVIDING FOR ITEMIZATION OF DEDUCTIONS FROM GROSS RECEIPTS FOR TAXATION PURPOSES; REQUIRING PERSONS CLAIMING EXEMPTIONS FROM CERTAIN TAXES TO FILE TAX RETURNS UNLESS SPECIFICALLY EXCEPTED FROM FILING.

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

SECTION 1. Section 7-1-13 NMSA 1978 (being Laws 1965, Chapter 248, Section 18, as amended) is amended to read:

"7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF TIME.--

A. Taxpayers are liable for tax at the time of and after the transaction or incident giving rise to tax until payment is made. Taxes are due on and after the date on which their payment is required until payment is made.

B. Every taxpayer shall, on or before the date on

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1 which payment of any tax is due, complete and file a tax return
2 in a form prescribed and according to the regulations issued by
3 the secretary. The secretary may create a combined reporting
4 system for reporting tax liabilities on a periodic basis for
5 taxes imposed pursuant to the Gross Receipts and Compensating
6 Tax Act and the Withholding Tax Act and other taxes for which
7 reporting on a periodic basis, more frequently than once per
8 year, is required.

9 C. Except as provided in Section 7-1-13.1 NMSA 1978
10 or by regulation, ruling, order or instruction of the
11 secretary, the payment of any tax or the filing of any return
12 may be accomplished by mail. When the filing of a tax return
13 or payment of a tax is accomplished by mail, the date of the
14 postmark shall be considered the date of submission of the
15 return or payment.

16 [~~G-~~] D. If any adjustment is made in the basis for
17 computation of any federal tax as a result of an audit by the
18 internal revenue service or the filing of an amended federal
19 return changing a prior election or making any other change for
20 which federal approval is required by the Internal Revenue
21 Code, the taxpayer affected shall, within ninety days of the
22 internal revenue service audit adjustment or payment of the
23 federal refund, file an amended return with the department.
24 Payment of any additional tax due shall accompany the return.

25 [~~D-~~] E. Payment of the total amount of all taxes

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1 that are due from the taxpayer shall precede or accompany the
2 return. Delivery to the department of a check that is not paid
3 upon presentment does not constitute payment.

4 ~~[E.]~~ F. The secretary or the secretary's delegate
5 may, for good cause, extend in favor of a taxpayer or a class
6 of taxpayers, for no more than a total of twelve months, the
7 date on which payment of any tax is required or on which any
8 return required by provision of the Tax Administration Act
9 shall be filed, but no extension shall prevent the accrual of
10 interest as otherwise provided by law. When an extension of
11 time for income tax has been granted a taxpayer under the
12 Internal Revenue Code, the extension shall serve to extend the
13 time for filing New Mexico income tax provided that a copy of
14 the approved federal extension of time is attached to the
15 taxpayer's New Mexico income tax return. The secretary by
16 regulation may also provide for the automatic extension for no
17 more than six months of the date upon which payment of any New
18 Mexico income tax or the filing of any New Mexico income tax
19 return is required. If the secretary or the secretary's
20 delegate believes it necessary to ensure the collection of the
21 tax, the secretary or the secretary's delegate may require, as
22 a condition of granting any extension, that the taxpayer
23 furnish security in accordance with the provisions of Section
24 7-1-54 NMSA 1978."

25 SECTION 2. Section 7-2-12 NMSA 1978 (being Laws 1965,

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1 Chapter 202, Section 10, as amended) is amended to read:

2 "7-2-12. TAXPAYER RETURNS--REPORTING EXEMPTIONS--PAYMENT
3 OF TAX.--

4 A. Every resident of this state and every
5 individual deriving income from any business transaction,
6 property or employment within this state [~~and not exempt from~~
7 ~~tax under the Income Tax Act~~] who is required by the laws of
8 the United States to file a federal income tax return shall
9 file a complete tax return with the department in form and
10 content as prescribed by the secretary. A person who is exempt
11 from tax pursuant to the Income Tax Act shall submit a tax
12 return stating income from any business transaction, property
13 or employment within this state and identify the exemption to
14 which the person is entitled.

15 B. Except as provided in Subsection [B] C of this
16 section, the return required and the tax imposed on individuals
17 under the Income Tax Act are due and payment is required on or
18 before the fifteenth day of the fourth month following the end
19 of the taxable year.

20 [~~B-~~] C. When the department approves electronic
21 media for use by a taxpayer whose taxable year is a calendar
22 year, the taxpayer who uses electronic media for both filing
23 and payment must submit the required return and the tax imposed
24 on individuals under the Income Tax Act on or before the
25 thirtieth day of the fourth month following the end of the

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1 taxable year."

2 SECTION 3. Section 7-9-5 NMSA 1978 (being Laws 1966,
3 Chapter 47, Section 5, as amended) is amended to read:

4 "7-9-5. PRESUMPTION OF TAXABILITY.--

5 A. To prevent evasion of the gross receipts tax and
6 to aid in its administration, it is presumed that all receipts
7 of a person engaging in business are subject to the gross
8 receipts tax. ~~[Any person engaged solely in transactions~~
9 ~~specifically exempt under the provisions of the Gross Receipts~~
10 ~~and Compensating Tax Act shall not be required to register or~~
11 ~~file a return under that act.] A person who has gross receipts
12 shall report all of the gross receipts for the period as
13 required by the department. The person shall itemize
14 exemptions or deductions claimed on a form provided by the
15 department and in a manner that meets rules of the department.
16 Each deduction shall be stated separately and identified.
17 Multiple deductions claimed for the period pursuant to the same
18 section of law may be aggregated. A person that is exempt from
19 the gross receipts or compensating taxes pursuant to the
20 following sections of the Gross Receipts and Compensating Tax
21 Act is not required to report pursuant to that act if the sole
22 purpose of reporting would be to claim the exemption for which
23 the person is qualified:~~

24 (1) Subsection A of Section 7-9-13 NMSA 1978;

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1 (2) Section 7-9-13.1, 7-9-13.4 through 7-9-14,
2 7-9-17, 7-9-18.1, 7-9-22 through 7-9-23.1, 7-9-25, 7-9-26,
3 7-9-28 or 7-9-41.3 NMSA 1978.

4 B. If receipts from nontaxable charges for mobile
5 telecommunications services are aggregated with and not
6 separately stated from taxable charges for mobile
7 telecommunications services, [~~then~~] the charges for nontaxable
8 mobile telecommunications services shall be subject to gross
9 receipts tax unless the home service provider can reasonably
10 identify nontaxable charges in its books and records that are
11 kept in the regular course of business. For the purposes of
12 this subsection, "charges for mobile telecommunications
13 services", "home service provider" and "mobile
14 telecommunications services" have the meanings given in the
15 federal Mobile Telecommunications Sourcing Act."

16 SECTION 4. Section 7-9C-4 NMSA 1978 (being Laws 1992,
17 Chapter 50, Section 4 and Laws 1992, Chapter 67, Section 4, as
18 amended) is amended to read:

19 "7-9C-4. PRESUMPTION OF TAXABILITY--ITEMIZING
20 DEDUCTIONS.--

21 A. To prevent evasion of the interstate
22 telecommunications gross receipts tax and to aid in its
23 administration, it is presumed that all receipts of a person
24 engaging in interstate telecommunications business are subject
25 to the interstate telecommunications gross receipts tax.

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1 B. If receipts from nontaxable charges for mobile
2 telecommunications services are aggregated with and not
3 separately stated from taxable charges for mobile
4 telecommunications services, [~~then~~] the charges for nontaxable
5 mobile telecommunications services shall be subject to
6 interstate telecommunications gross receipts tax unless the
7 home service provider can reasonably identify nontaxable
8 charges in its books and records that are kept in the regular
9 course of business.

10 C. A person claiming a deduction pursuant to the
11 Interstate Telecommunications Gross Receipts Tax Act shall
12 itemize each deduction from gross receipts claimed, specifying
13 the section of law in which the deduction is set forth and the
14 amount of each deduction claimed. The department shall provide
15 the form for reporting deductions claimed pursuant to the
16 Interstate Telecommunications Gross Receipts Tax Act."

17 SECTION 5. Section 7-13-5 NMSA 1978 (being Laws 1971,
18 Chapter 207, Section 5, as amended) is amended to read:

19 "7-13-5. TAX RETURNS--PAYMENT OF TAX--REPORTING
20 DEDUCTIONS.--

21 A. Distributors shall file gasoline tax returns in
22 form and content as prescribed by the secretary on or before
23 the twenty-fifth day of the month following the month in which
24 gasoline is received in New Mexico. Such returns shall be
25 accompanied by payment of the amount of gasoline tax due. The

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1 department may require that the tax returns be provided through
2 electronic means as long as an exception is provided for
3 distributors with limited amounts of fuel distributed.

4 B. A distributor claiming a deduction pursuant to
5 the Gasoline Tax Act shall itemize each deduction from gasoline
6 received that is claimed, specifying the section and subsection
7 of law pursuant to which the deduction is claimed and the
8 amount of gasoline deducted. The department shall adjust the
9 gasoline tax return forms to allow for deductions to be
10 itemized."

11 SECTION 6. Section 7-13-6 NMSA 1978 (being Laws 1971,
12 Chapter 207, Section 6, as amended) is amended to read:

13 "7-13-6. RETURNS BY WHOLESALERS--EXCEPTION--REPORTING
14 DEDUCTIONS.--

15 A. Wholesalers shall file information returns in
16 form and content as prescribed by the department on or before
17 the twenty-fifth day of the month following the month in which
18 gasoline is sold in New Mexico. The department may require
19 that the information returns be provided through electronic
20 means as long as an exception is provided for wholesalers with
21 limited amounts of fuel sold. Sales of gasoline in quantities
22 of thirty-five gallons or more delivered into the fuel tanks of
23 aircraft are not wholesale sales for the purposes of this
24 section, [~~and~~] but information returns on such sales [~~need not~~]
25 shall be filed with the department.

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1 B. A wholesaler claiming a deduction pursuant to
2 the Gasoline Tax Act shall itemize each deduction from gasoline
3 received that is claimed, specifying the section and subsection
4 of law pursuant to which the deduction is claimed and the
5 amount of gasoline deducted. The department shall adjust the
6 gasoline tax return forms to allow for deductions to be
7 itemized."

8 SECTION 7. Section 7-13-6.1 NMSA 1978 (being Laws 2005,
9 Chapter 109, Section 4) is amended to read:

10 "7-13-6.1. RETURNS BY RETAILERS--REQUIREMENTS--
11 EXCEPTION--REPORTING DEDUCTIONS--

12 A. Retailers shall file information returns in form
13 and content as prescribed by the department on or before the
14 twenty-fifth day of the month following the month in which
15 gasoline is sold in New Mexico. The department may require
16 that the information returns be provided through electronic
17 means if the department provides an exception from that
18 requirement for retailers that purchase limited amounts of
19 fuel.

20 B. A retailer claiming a deduction pursuant to the
21 Gasoline Tax Act shall itemize each deduction from gasoline
22 received that is claimed, specifying the section and subsection
23 of law pursuant to which the deduction is claimed and the
24 amount of gasoline deducted. The department shall adjust the
25 gasoline tax return forms to allow for deductions to be

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1 itemized."

2 SECTION 8. Section 7-13-6.2 NMSA 1978 (being Laws 2005,
3 Chapter 109, Section 5) is amended to read:

4 "7-13-6.2. RETURNS BY RACK OPERATORS--REQUIREMENTS--
5 REPORTING DEDUCTIONS.--

6 A. Rack operators shall file information returns in
7 form and content as prescribed by the department on or before
8 the twenty-fifth day of the month following the month in which
9 gasoline is sold in New Mexico. The department may require
10 that an information return be provided through electronic means
11 if the department provides an exception from that requirement
12 for rack operators that distribute limited amounts of fuel.

13 B. A rack operator claiming a deduction pursuant to
14 the Gasoline Tax Act shall itemize each deduction from gasoline
15 received that is claimed, specifying the section and subsection
16 of law pursuant to which the deduction is claimed and the
17 amount of gasoline deducted. The department shall adjust the
18 gasoline tax return forms to allow for deductions to be
19 itemized."

20 SECTION 9. APPLICABILITY.--The provisions of Section 2 of
21 this act apply to taxable years beginning on or after January
22 1, 2012.

23 SECTION 10. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is January 1, 2012.