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HOUSE BILL 128

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

JERRY W. SANDEL

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE INCOME TAX ACT PERTAINING TO ESTIMATED TAX PAYMENTS; DECLARING AN EMERGENCY.

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) is amended to read:

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

A. Except as otherwise provided in this section, every individual who is required to file an income tax return under the Income Tax Act shall pay the required annual payment in installments ~~[The amount of any required installment shall be twenty five percent of the required annual payment]~~ through either withholding or estimated tax payments

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B. For the purposes of this section:

(1) "required annual payment" means the lesser of:

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

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

(2) "tax" means the tax imposed under Section 7-2-3 NMSA 1978 less any amount allowed for credits provided by Sections 7-2-13 and 7-2-18.1 through 7-2-18.4 NMSA 1978 and for any applicable tax rebates provided by the Income Tax Act.

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

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

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1 (2) if the taxpayer becomes required to pay
2 estimated tax after May 31, but before September 1, seventy-five
3 percent of the required annual payment must be paid on September
4 15 and twenty-five percent on January 15 of the following
5 taxable year; and

6 (3) if the taxpayer becomes required to pay
7 estimated tax after August 31, one hundred percent of the
8 required annual payment must be paid on January 15 of the
9 following taxable year.

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

20 E. A rancher or farmer who expects to receive at
21 least two-thirds of his gross income for the taxable year from
22 ranching or farming, or who has received at least two-thirds of
23 his gross income for the previous taxable year from ranching or
24 farming, may:

25 (1) pay the required annual payment for the

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1 taxable year in one installment on January 15 of the following
2 taxable year; or

3 (2) on or before March 1 of the following
4 taxable year, file a return for the taxable year and pay in full
5 the amount computed on the return as payable.

6 No penalty under Subsection G of this section shall be
7 imposed unless the rancher or farmer underpays his tax by more
8 than one-third. If a joint return is filed, a rancher or farmer
9 must consider his or her spouse's gross income in determining
10 whether at least two-thirds of gross income is from ranching or
11 farming.

12 ~~[D.]~~ F. For the purposes of ~~[applying]~~ this section,
13 the amount of tax deducted and withheld with respect to a
14 taxpayer under the Withholding Tax Act shall be deemed a payment
15 of estimated tax. An equal part of the amount of withheld tax
16 shall be deemed paid on each due date for the applicable taxable
17 year unless the taxpayer establishes the dates on which all
18 amounts were actually withheld, in which case the amounts
19 withheld shall be deemed payments of estimated tax on the dates
20 on which the amounts were actually withheld. The taxpayer may
21 apply the provisions of this subsection separately to wage
22 withholding and any other amounts withheld under the Withholding
23 Tax Act.

24 ~~[E.]~~ G. Except as otherwise provided in this
25 section, in the case of any underpayment of ~~[estimated tax]~~ the

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

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

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

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

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

17 (3) [~~for the purposes of Subparagraph (b) of~~
18 ~~Paragraph (2) of this subsection~~] a payment of estimated tax
19 shall be credited against unpaid [~~required~~] or underpaid
20 installments in the order in which the installments are required
21 to be paid.

22 [~~F.~~] H. No penalty shall be imposed under Subsection
23 [~~E~~] G of this section for any taxable year if:

24 (1) the difference between the following is
25 less than five hundred dollars (\$500):

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1 (a) the tax shown on the return for the
2 taxable year or, when no return is filed, the tax for the
3 taxable year; and

4 (b) any amount withheld under the
5 provisions of the Withholding Tax Act for that taxpayer for that
6 taxable year;

7 (2) the individual's preceding taxable year was
8 a taxable year of twelve months, the individual did not have any
9 tax liability for the preceding taxable year and the individual
10 was a resident of New Mexico for the entire taxable year; ~~[or]~~

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

14 [~~(3)~~] (4) the secretary determines that the
15 underpayment was not due to fraud, negligence or disregard of
16 rules and regulations.

17 [~~G-~~] I. If, on or before January 31 of the following
18 taxable year, the taxpayer files a return for the taxable year
19 and pays in full the amount computed on the return as payable,
20 then no penalty under Subsection [~~E~~] G of this section shall be
21 imposed with respect to any underpayment of the fourth required
22 installment for the taxable year.

23 [~~H-~~] J. This section shall be applied to taxable
24 years of less than twelve months in the manner determined by
25 regulation or instruction of the secretary.

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1 ~~[I.]~~ K. Except as otherwise provided in Subsection
2 ~~[J]~~ L of this section, this section applies to any estate or
3 trust.

4 ~~[J.]~~ L. This section does not apply to any trust
5 that is subject to the tax imposed by Section 511 of the
6 Internal Revenue Code or that is a private foundation. With
7 respect to any taxable year ending before the date two years
8 after the date of the decedent's death, this section does not
9 apply to:

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

18 Section 2. APPLICABILITY. --The provisions of this act
19 apply to taxable years beginning on or after January 1, 1997.

20 Section 3. EMERGENCY. --It is necessary for the public
21 peace, health and safety that this act take effect immediately.

State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 3, 1997

Mr. Speaker:

Your TAXATION AND REVENUE COMMITTEE, to whom has
been referred

HOUSE BILL 128

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 2, line 23, after "on" insert "or before".
2. On page 2, line 24, after both occurrences of "on" insert
"or before".
3. On page 3, line 3, after "on" insert "or before".

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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4. On page 3, line 4, after "on" insert "or before".

5. On page 3, line 8, after "on" insert "or before".

6. On page 4, line 1, after "on" insert "or before".

7. On page 6, line 24, after "months" insert " and to
taxpayers reporting on a fiscal year other than a calendar year".

Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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The roll call vote was 11 For 0 Against

Yes: 11

Excused: Gonzal es, Luj an

Absent: None

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FORTY- THIRD LEGISLATURE
FIRST SESSION, 1997

March 17, 1997

Mr. President:

Your WAYS AND MEANS COMMITTEE, to whom has been
referred

HOUSE BILL 128, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Carlos R. Cisneros, Chairman

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: McSorley, Nava

Absent: None

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