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SENATE BILL 169

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO TAXATION; AMENDING THE OIL AND GAS PROCEEDS AND  
PASS-THROUGH ENTITY WITHHOLDING TAX ACT; PROVIDING FOR  
INCLUSION OF CERTAIN INFORMATION FORMS TO REDUCE REDUNDANCY IN  
REPORTS FILED.

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

**SECTION 1.** Section 7-3A-3 NMSA 1978 (being Laws 2003,  
Chapter 86, Section 6, as amended) is amended to read:

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

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

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1 payable to the remittee.

2 B. Except as otherwise provided in this section, a  
3 pass-through entity shall deduct and withhold from each owner's  
4 share of net income for that quarter an amount equal to the  
5 rate specified in Subsection D of this section multiplied by  
6 the owner's share of that net income, reduced, but not below  
7 zero, by the amount required to be withheld from the owner's  
8 net income under Subsection A of this section.

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

12 (1) a corporation whose principal place of  
13 business is in New Mexico or an individual who is a resident of  
14 New Mexico;

15 (2) remittees with a New Mexico address as  
16 shown on internal revenue service form 1099-MISC or a successor  
17 form or on a pro forma 1099-MISC or a successor form for those  
18 entities that do not receive an internal revenue service form  
19 1099-MISC;

20 [~~(2)~~] (3) the United States, this state or any  
21 agency, instrumentality or political subdivision of either;

22 [~~(3)~~] (4) any federally recognized Indian  
23 nation, tribe or pueblo or any agency, instrumentality or  
24 political subdivision thereof; or

25 [~~(4)~~] (5) organizations that have been granted

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1 exemption from the federal income tax by the United States  
2 commissioner of internal revenue as organizations described in  
3 Section 501(c)(3) of the Internal Revenue Code.

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

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

19 F. If a remitter receives oil and gas proceeds from  
20 which an amount has been deducted and withheld pursuant to the  
21 Oil and Gas Proceeds and Pass-Through Entity Withholding Tax  
22 Act or a pass-through entity has deducted and withheld an  
23 amount pursuant to the Oil and Gas Proceeds and Pass-Through  
24 Entity Withholding Tax Act from the net income of an owner that  
25 is also a pass-through entity, the remitter or payee pass-

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1 through entity may take credit for that amount in determining  
2 the amount the remitter or payee pass-through entity must  
3 withhold and deduct pursuant to this section.

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

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

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

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1           SECTION 2. Section 7-3A-7 NMSA 1978 (being Laws 2003,  
2 Chapter 86, Section 10, as amended) is amended to read:

3           "7-3A-7. STATEMENTS OF WITHHOLDING.--

4           A. Every remitter shall:

5                   (1) file an annual statement of withholding  
6 for each remittee that:

7                           (a) is available in [a form prescribed  
8 by the department] electronic format and includes a form 1099-  
9 MISC or a successor form or a *pro forma* 1099-MISC or a  
10 successor form for those entities that do not receive an  
11 internal revenue service form 1099-MISC;

12                           (b) is filed with the department on or  
13 before the last day of February of the year following that for  
14 which the statement is made; and

15                           (c) includes the total oil and gas  
16 proceeds paid to the remittee and the total amount of tax  
17 withheld for the calendar year; and

18                   (2) provide a copy of the annual statement of  
19 withholding to the remittee on or before February 15 of the  
20 year following the year for which the statement is made.

21           B. The department shall develop and adopt rules  
22 regarding the filing of a report pursuant to this section and  
23 the attachment of form 1099-MISC or a successor form or a *pro*  
24 *forma* 1099-MISC or a successor form, if the remitter is not  
25 able to file those forms in an electronic format.

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1                   C. Every remitter shall file an electronic report  
2 of the remittees who have certified that the remittee is  
3 responsible for filing the remittee's own oil and gas proceeds  
4 tax report and for paying the remittee's oil and gas proceeds  
5 tax liability due.

6                   ~~[B-]~~ D. Every pass-through entity doing business in  
7 New Mexico shall:

8                                 (1) file an annual information return with the  
9 department that:

10   (a) is filed on or before the due date  
11 of the entity's federal return for the taxable year;

12   (b) is signed by the business manager or  
13 one of the owners of the pass-through entity; and

14   (c) contains all information required by  
15 the department, including the pass-through entity's gross  
16 income; the pass-through entity's net income; the amount of  
17 each owner's share of the pass-through entity's net income; and  
18 the name, address and tax identification number of each owner  
19 entitled to a share of net income; and

20                                 (2) provide to each of its owners sufficient  
21 information to enable the owner to comply with the provisions  
22 of the Income Tax Act and the Corporate Income and Franchise  
23 Tax Act with respect to the owner's share of net income.

24                   ~~[G-]~~ E. The department shall compile each year the  
25 annual statements of withholding received from the remitters

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1 and the annual information returns received from pass-through  
2 entities and compare the compilations with the records of  
3 corporations, individuals, estates or trusts filing income tax  
4 returns."

5 SECTION 3. APPLICABILITY.--The provisions of this act  
6 apply to taxable years beginning on or after January 1, 2012.