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AN ACT

RELATING TO TAXATION; ENACTING THE OIL AND GAS PROCEEDS WITHHOLDING TAX ACT; REQUIRING WITHHOLDING FROM PAYMENTS OF OIL AND GAS PROCEEDS TO NONRESIDENTS AND CERTAIN OTHER PERSONS; MAKING A DISTRIBUTION TO THE LEGISLATIVE RETIREMENT FUND.

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

Section 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION TO LEGISLATIVE RETIREMENT FUND.--

A. A distribution pursuant to Section 7-1-6.1

NMSA 1978 shall be made to the legislative retirement fund in an amount equal to two hundred thousand dollars (\$200,000) or, if larger, one-twelfth of the amount necessary to pay out the retirement benefits due under state legislator member coverage plan 2 and Paragraph (2) of Subsection C of Section 10-11-42 NMSA 1978 for the calendar year.

B. In December 2003 and in each December thereafter, the public employees retirement association, with the assistance of the legislative council service, shall determine the amount of those retirement benefits for the succeeding calendar year. If the monthly average exceeds two hundred thousand dollars (\$200,000), the association shall notify immediately the department of the average amount. That average amount shall be the amount distributed pursuant to Subsection A of this section as of the end of each month of the twelve consecutive months beginning with the December in which the determination was made."

Section 2. Section 7-2A-9.1 NMSA 1978 (being Laws 1986, Chapter 5, Section 1, as amended) is amended to read:

"7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--PENALTY--EXEMPTION.--

A. Every taxpayer shall pay estimated corporate income tax to the state of New Mexico during its taxable year if its tax after applicable credits for such

1 taxable year can reasonably be expected to be five thousand dollars (\$5,000) or more.

2 A taxpayer to which this section applies shall calculate estimated tax by one of the
3 following methods:

4 (1) estimating the amount of tax due, net of any credits, for the
5 current taxable year, provided that the estimated amount is at least eighty percent of
6 the amount determined to be due for the taxable year;

7 (2) using as the estimate an amount equal to one hundred
8 percent of the tax due for the previous taxable year, if the previous taxable year was a
9 full twelve-month year and if the amount due for that previous taxable year was at least
10 five thousand dollars (\$5,000); or

11 (3) using as the estimate an amount equal to one hundred ten
12 percent of the tax due for the taxable year immediately preceding the previous taxable
13 year, if the taxable year immediately preceding the previous taxable year was a full
14 twelve-month year, the amount due for the taxable year immediately preceding the
15 previous taxable year was at least five thousand dollars (\$5,000) and the return for the
16 previous taxable year has not been filed and the extended due date for filing that
17 return has not occurred at the time the first installment is due for the taxable year.

18 B. If Subsection A of this section applies, the amount of estimated tax
19 shall be paid in installments as follows: twenty-five percent of the estimated tax is due
20 on or before the fifteenth day of the fourth month of the taxable year, another twenty-
21 five percent is due on or before the fifteenth day of the sixth month of the taxable year,
22 another twenty-five percent is due on or before the fifteenth day of the ninth month of
23 the taxable year and the final twenty-five percent is due on or before the fifteenth day
24 of the twelfth month of the taxable year. Application of this subsection to a taxable
25 year that is a fractional part of a year shall be determined by regulation of the
secretary.

C. Every taxpayer to which Subsection A of this section applies that
fails to pay the estimated tax when due or that makes estimated tax payments during
the taxable year that are less than the lesser of eighty percent of the income tax

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1 imposed on the taxpayer under the Corporate Income and Franchise Tax Act or the
2 amount required by Paragraph (2) or (3) of Subsection A of this section shall be
3 subject to the interest and penalty provisions of Sections 7-1-67 and 7-1-69 NMSA
4 1978 on the underpayment.

5 D. For purposes of this section, the amount of underpayment shall be
6 the excess of the amount of the installment that would be required to be paid if the
7 estimated tax were equal to eighty percent of the tax shown on the return for the
8 taxable year or the amount required by Paragraph (2) or (3) of Subsection A of this
9 section or, if no return was filed, eighty percent of the tax for the taxable year for which
10 the estimated tax is due less the amount, if any, of the installment paid on or before
11 the last date prescribed for payment.

12 E. For purposes of this section, the period of
13 underpayment shall run from the date the installment was required to be paid to
14 whichever of the following dates is earlier:

15 (1) the fifteenth day of the third month following the end of the
16 taxable year; or

17 (2) with respect to any portion of the underpayment, the date
18 on which such portion is paid. For the purposes of this paragraph, a payment of
19 estimated tax on any installment date shall be applied as a payment of any previous
20 underpayment only to the extent such payment exceeds the amount of the installment
21 determined under Subsection D of this section due on such installment date.

22 F. For the purposes of this section, the amount of tax deducted and
23 withheld with respect to a taxpayer by a remitter under the Oil and Gas Proceeds
24 Withholding Tax Act shall be deemed a payment of estimated tax. An equal amount of
25 the amount of withheld tax shall be deemed paid on each due date for the applicable
taxable year unless the taxpayer establishes the dates on which all amounts were
actually withheld, in which case the amounts withheld shall be deemed payments of
estimated tax on the dates on which the amounts were actually withheld."

Section 3. Section 7-3-12 NMSA 1978 (being Laws 1999, Chapter 14, Section

1 3, as amended) is amended to read:

2 "7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH
3 ENTITY--WITHHOLDING.--

4 A. A pass-through entity doing business in this state shall file an
5 annual information return with the department on or before the due date of the entity's
6 federal return for the taxable year. The information return shall be signed by the
7 business manager or one of the owners of the pass-through entity.

8 B. The information return required by this section shall contain all
9 information required by the department, including:

- 10 (1) the pass-through entity's gross income;
- 11 (2) the pass-through entity's net income;
- 12 (3) the amount of each owner's share of the pass-through
13 entity's net income; and
- 14 (4) the name, address and tax identification number of each
15 owner entitled to a share of net income.

16 C. A pass-through entity shall provide to each of its owners sufficient
17 information to enable the owner to comply with the provisions of the Income Tax Act
18 and the Corporate Income and Franchise Tax Act with respect to the owner's share of
19 net income.

20 D. The pass-through entity shall deduct and withhold from each
21 nonresident owner's share of net income an amount equal to the owner's share of net
22 income multiplied by a rate set by department regulation. In the case of an owner that
23 is an individual or entity not taxed as a corporation for federal income tax purposes for
24 the taxable year, the rate shall not exceed the rate for composite returns. In the case
25 of an owner that is a corporation or other entity taxed as a corporation for the taxable
year, the rate shall not exceed the maximum rate for corporate income tax.

E. The provisions of Subsection D of this section shall not apply with
regard to:

- (1) the share of net income of a nonresident owner that has

1 executed an agreement in accordance with regulations or instructions of the
2 department that the owner will report and pay tax, if required, on its own return
3 pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act; or
4 (2) oil and gas proceeds subject to the Oil and Gas Proceeds
Withholding Tax Act.

5 F. Amounts deducted from the owner's share of net income under the
6 provisions of this section shall be a collected tax. No owner shall have a right of action
7 against the pass-through entity for any amount deducted and withheld from the
8 owner's share of net income."

9 Section 4. A new Section 7-3A-1 NMSA 1978 is enacted to read:

10 "7-3A-1. SHORT TITLE.--Chapter 7, Article 3A NMSA 1978 may be referred to
11 as the "Oil and Gas Proceeds Withholding Tax Act"."

12 Section 5. A new Section 7-3A-2 NMSA 1978 is enacted to read:

13 "7-3A-2. DEFINITIONS.--As used in the Oil and Gas Proceeds Withholding Tax
Act:

14 A. "department" means the taxation and revenue department, the
15 secretary of taxation and revenue or any employee of the department exercising
16 authority lawfully delegated to that employee by the secretary;

17 B. "oil and gas" means crude oil, natural gas, liquid hydrocarbons or
18 any combination thereof, or carbon dioxide;

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

25 D. "person" means an individual, club, company, cooperative

1 association, corporation, estate, firm, joint venture, partnership, receiver, syndicate,
2 trust or other association and, to the extent permitted by law, a federal, state or other
3 governmental unit or subdivision or an agency, a department or an instrumentality
4 thereof;

5 E. "remittee" means a person that is entitled to payment of oil and gas
6 proceeds by a remitter; and

7 F. "remitter" means a person that pays oil and gas proceeds to any
8 remittee."

9 Section 6. A new Section 7-3A-3 NMSA 1978 is enacted to read:

10 "7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS.--

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

15 B. The obligation to deduct and withhold from payments as provided in
16 Subsection A of this section does not apply to payments that are made to:

17 (1) remittees with a New Mexico address as shown on internal
18 revenue service form 1099-MISC or successor form;

19 (2) the United States, this state or any agency, instrumentality
20 or political subdivision of either;

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

23 (4) organizations that have been granted exemption from the
24 federal income tax by the United States commissioner of internal revenue as
25 organizations described in Section 501(c)(3) of the United States Internal Revenue
Code of 1986, as amended.

C. The rate of withholding is six and three-fourths percent for the
period October 1, 2003 through December 31, 2004. Thereafter the rate shall be set
by department regulation; provided that the rate may not exceed the higher of the

1 maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year or the
2 maximum bracket rate set by Section 7-2A-5 NMSA 1978 for the taxable year; and
3 provided further that remitters shall be given ninety days' notice of a change in the
4 rate.

5 D. If the amount to be withheld from a payment to a remittee is less
6 than ten dollars (\$10.00), no withholding is required."

7 Section 7. A new Section 7-3A-4 NMSA 1978 is enacted to read:

8 "7-3A-4. DEDUCTIONS CONSIDERED TAXES.--Amounts deducted under the
9 provisions of the Oil and Gas Proceeds Withholding Tax Act are a collected tax. A
10 remittee who receives payment of oil and gas proceeds does not have a right of action
11 against the remitter for the amount deducted and withheld from the oil and gas
12 proceeds."

13 Section 8. A new Section 7-3A-5 NMSA 1978 is enacted to read:

14 "7-3A-5. REMITTER LIABLE FOR AMOUNTS DEDUCTED AND
15 WITHHELD--EXCEPTIONS.--Every remitter is liable for amounts required to be
16 deducted and withheld by the Oil and Gas Proceeds Withholding Tax Act regardless of
17 whether the amounts were in fact deducted and withheld, except that:

18 A. if the remitter fails to deduct and withhold the required amounts and
19 if the tax against which the required amounts would have been credited is paid, the
20 remitter shall not be liable for those amounts not deducted and withheld; or

21 B. if the remitter's failure to deduct and withhold the required amounts
22 is due to reasonable cause, such as reliance on addresses supplied by remittees, the
23 remitter shall not be liable for amounts not deducted and withheld."

24 Section 9. A new Section 7-3A-6 NMSA 1978 is enacted to read:

25 "7-3A-6. DATE PAYMENT DUE--FORM.--

A. Amounts withheld under the provisions of the Oil and Gas Proceeds
Withholding Tax Act are due on or before the twenty-fifth day of the month following
the end of the calendar quarter when the taxes were required to be withheld.

B. The amount withheld shall be remitted on a form and in a manner

1 required by the department, provided that amounts withheld and remitted from oil and
2 gas proceeds are kept distinct from every other tax or withheld amount."

3 Section 10. A new Section 7-3A-7 NMSA 1978 is enacted to read:

4 "7-3A-7. STATEMENTS OF WITHHOLDING.--

5 A. Every remitter shall file an annual statement of withholding for each
6 remittee. This statement shall be in a form prescribed by the department and shall be
7 filed with the department on or before the last day of February of the year following
8 that for which the statement is made. It shall include the total oil and gas proceeds
9 paid to the remittee and the total amount of tax withheld for the calendar year. The
10 department shall compile each year the annual statements received from the remitters
11 and compare the compilation with the records of individuals, estates or trusts filing
12 income tax returns.

13 B. A copy of the annual statement of withholding shall be furnished to
14 the remittee by the remitter on or before February 15 of the year following the year for
15 which the statement is made."

16 Section 11. A new Section 7-3A-8 NMSA 1978 is enacted to read:

17 "7-3A-8. WITHHELD AMOUNTS CREDITED AGAINST INCOME TAX.--The
18 entire amount of oil and gas proceeds upon which the tax was deducted and withheld
19 shall be included in the base income of the remittee for purposes of the Income Tax
20 Act and the Corporate Income and Franchise Tax Act. The amount of tax deducted
21 and withheld pursuant to the Oil and Gas Proceeds Withholding Tax Act during the
22 taxable year shall be credited against any income tax or corporate income tax due
23 from the remittee."

24 Section 12. A new Section 7-3A-9 NMSA 1978 is enacted to read:

25 "7-3A-9. INTERPRETATION OF ACT--ADMINISTRATION AND
ENFORCEMENT OF ACT.--

A. The department shall interpret the provisions of the Oil and Gas
Proceeds Withholding Tax Act.

B. The department shall administer and enforce the Oil and Gas

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1 Proceeds Withholding Tax Act, and the Tax Administration Act applies to the
2 administration and enforcement of the Oil and Gas Proceeds Withholding Tax Act."

3 Section 13. APPLICABILITY.--The provisions of Section 1 of this act apply to
4 distributions as of November 30, 2003 and thereafter.

5 Section 14. EFFECTIVE DATES.--

6 A. The effective date of the provisions of Section 1 of this act is
7 November 1, 2003.

8 B. Except as provided in Subsection C of this section, the effective
9 date of the provisions of Sections 2 through 12 of this act is October 1, 2003.

10 C. This act is contingent upon the enactment into
11 law of Senate Bill 620 or a substantially similar bill of the
12 first session of the forty-sixth legislature. If no such
13 bill is enacted into law, the provisions of this act shall
14 not become effective.

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