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AN ACT

RELATING TO TAXATION; PROVIDING PASS-THROUGH ENTITIES AN
ELECTION TO PAY AN ENTITY-LEVEL TAX IN LIEU OF WITHHOLDING;
EXEMPTING INCOME SUBJECT TO THE ENTITY-LEVEL TAX FROM THE
INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX
ACT.

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

SECTION 1. A new section of the Income Tax Act is
enacted to read:

"EXEMPTION--INCOME SUBJECT TO ENTITY-LEVEL TAX.--Net
income subject to the entity-level tax is exempt from income
tax."

SECTION 2. A new section of the Corporate Income and
Franchise Tax Act is enacted to read:

"EXEMPTION--INCOME SUBJECT TO ENTITY-LEVEL TAX.--Net
income subject to the entity-level tax is exempt from
corporate income tax."

SECTION 3. A new section of the Oil and Gas Proceeds
and Pass-Through Entity Withholding Tax Act is enacted to
read:

"ELECTION OF ENTITY-LEVEL TAX.--

A. A pass-through entity may elect on an annual
basis to pay a tax at the entity level for a taxable year.
The tax that may elected to be paid pursuant to this section

1 may be referred to as the "entity-level tax".

2 B. Pass-through entities electing to pay the
3 entity-level tax shall make the election by filing a complete
4 entity-level tax return with the department in the form and
5 manner as prescribed by the department. The return shall be
6 filed no later than the original or extended due date of the
7 entity's federal partnership or S corporation return for the
8 taxable year. Payment of the entity-level tax shall
9 accompany or precede the filing of the return.

10 C. The entity-level tax is imposed on the
11 distributed net income of the pass-through entity for the
12 taxable year. The rate of entity-level tax is equal to the
13 higher of the maximum tax rate imposed pursuant to Section
14 7-2-7 NMSA 1978 or the maximum tax rate imposed pursuant to
15 Section 7-2A-5 NMSA 1978 for the taxable year.

16 D. Distributed net income of a pass-through entity
17 shall equal the amount of net income of the pass-through
18 entity allocated and apportioned to New Mexico pursuant to
19 the Uniform Division of Income for Tax Purposes Act, less
20 allocations of net income from that amount to:

21 (1) the United States, this state or a
22 political subdivision of either;

23 (2) a federally recognized Indian nation,
24 tribe or pueblo located wholly or partially in New Mexico, or
25 any political subdivision thereof;

1 (3) an organization that has been granted
2 exemption from the federal income tax by the United States
3 commissioner of internal revenue as an organization described
4 in Section 501(c)(3) of the Internal Revenue Code; or

5 (4) a corporate partner that would properly
6 include the income in the partner's New Mexico tax return as
7 part of the partner's unitary business income.

8 E. Pass-through entities electing to pay the
9 entity-level tax shall make estimated payments of the tax at
10 the same time and in the same amounts as the withholding
11 required by Subsection B of Section 7-3A-3 NMSA 1978.

12 Amounts remitted pursuant to Subsection B of Section 7-3A-3
13 NMSA 1978 by entities electing to pay the entity-level tax
14 shall be deemed payments of estimated entity-level tax.

15 F. If, for a taxable year, the sum of the
16 estimated payments of tax made by a pass-through entity
17 pursuant to Subsection E of this section exceeds the amount
18 of entity-level tax owed, the pass-through entity may apply
19 for a refund of the difference. If, for a taxable year, the
20 entity-level tax owed by a pass-through entity exceeds the
21 sum of the estimated payments made by the pass-through
22 entity, the pass-through entity shall remit the difference on
23 or before the date the pass-through entity's entity-level tax
24 is due."

25 SECTION 4. APPLICABILITY.--The provisions of this act

1 apply to taxable years beginning on or after January 1, 2022. = HB 102/a
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