

1 Bill

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING PASS-THROUGH ENTITIES AN ELECTION
12 TO PAY AN ENTITY-LEVEL TAX IN LIEU OF WITHHOLDING; ENACTING
13 SECTIONS OF THE NMSA 1978.

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

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

18 “[NEW MATERIAL] EXEMPTION--INCOME SUBJECT TO ENTITY-LEVEL
19 TAX.--Net income subject to entity-level taxation and for which
20 entity-level tax has been paid is exempt from income tax.”

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

23 “[NEW MATERIAL] EXEMPTION--INCOME SUBJECT TO ENTITY-LEVEL
24 TAX.-- Net income subject to entity-level taxation and for which
25 entity-level tax has been paid is exempt from income tax.”

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

3 “[NEW MATERIAL] ELECTION OF ENTITY-LEVEL TAX.--

4 A. For taxable years beginning on or after January 1,
5 2022, a pass through-entity may elect to pay an entity-level tax
6 for a taxable year. Pass-through entities electing to pay entity-
7 level tax for a taxable year are exempt from the requirements of
8 section 7-3A-3 NMSA 1978 for that taxable year.

9 B. The entity-level tax is imposed on the net income
10 of the pass-through entity allocated and apportioned to New Mexico
11 pursuant to the Uniform Division of Income for Tax Purposes Act
12 for the taxable year at the following rates:

13 (1) with respect to the income share of an owner
14 that is a corporation, the maximum bracket rate set by Section 7-
15 2A-5 NMSA 1978; or

16 (2) with respect to the income share of all other
17 owners, the maximum bracket rate set by Section 7-2-7 NMSA 1978.

18 C. Exempt from the entity-level tax are payments to:

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

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

24 (3) organizations that have been granted
25 exemption from the federal income tax by the United States

1 commissioner of internal revenue as organizations described in
2 section 501(c)(3) of the Internal Revenue Code. However, the
3 obligation to deduct and withhold from payments of allocable net
4 income to organizations identified in this paragraph applies if
5 that income constitutes unrelated business income.

6 D. Every pass-through entity electing to pay an
7 entity-level tax in lieu of withholding tax pursuant to Section 7-
8 3A-3 NMSA 1978 shall notify the department of the election no
9 later than April 1 of the year following the end of the entity's
10 taxable year. The election, once made, shall remain in effect
11 until the entity notifies the department that it will withhold tax
12 pursuant to Section 7-3A-3 NMSA 1978.

13 E. Pass-through entities electing to pay entity-level
14 tax shall file a complete tax return with the department in form
15 and content as prescribed by the secretary. The return shall be
16 filed no later than the original due date of the entity's federal
17 partnership return for the taxable year. Payment of entity-level
18 tax shall accompany or precede the filing of the return.

19 F. For the purposes of this section, the term "pass-
20 through entity" includes a single member limited liability company
21 that is treated as a disregarded entity for federal income tax
22 purposes."

23 **SECTION 5. APPLICABILITY.**--The provisions of this act apply
24 to taxable years beginning on or after 2022.