

1 SENATE BILL 535

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 George K. Munoz

5
6
7
8
9
10 AN ACT

11 RELATING TO TAXATION; CREATING THE ENERGY EDUCATION AND
12 MARKETING BOARD; CREATING THE ENERGY EDUCATION AND MARKETING
13 FUND; ENACTING THE ENERGY EDUCATION AND MARKETING TAX ACT;
14 AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN
15 APPROPRIATION.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
19 through 10 of this act may be cited as the "Energy Education
20 and Marketing Tax Act".

21 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
22 Energy Education and Marketing Tax Act:

23 A. "department" means the taxation and revenue
24 department, the secretary of taxation and revenue or any
25 employee of the department exercising authority lawfully

.192429.3

underscored material = new
[bracketed material] = delete

1 delegated to that employee by the secretary;

2 B. "interest owner" means a person owning an entire
3 or fractional interest of whatsoever kind or nature in the
4 products at the time of severance or removal from a production
5 unit or who has a right to a monetary payment that is
6 determined by the value of such products;

7 C. "operator" means any person:

8 (1) engaged in the severance of products from
9 a production unit; or

10 (2) owning an interest in any product at the
11 time of severance who receives a portion or all of such product
12 for the person's interest;

13 D. "person" means any individual, estate, trust,
14 receiver, business trust, corporation, firm, copartnership,
15 cooperative, joint venture, association, limited liability
16 company or other group or combination acting as a unit, and the
17 plural as well as the singular number;

18 E. "product" means oil, natural gas or liquid
19 hydrocarbon, individually or any combination thereof, carbon
20 dioxide, helium or a non-hydrocarbon gas;

21 F. "production unit" means a unit of property
22 designated by the department from which products of common
23 ownership are severed;

24 G. "purchaser" means a person who is the first
25 purchaser of a product after severance from a production unit,

underscored material = new
[bracketed material] = delete

1 except as otherwise provided in the Energy Education and
2 Marketing Tax Act;

3 H. "severance" means the taking from the soil of
4 any product in any manner whatsoever;

5 I. "tax" means the energy education and marketing
6 tax; and

7 J. "value" means the actual price received from
8 products at the production unit, except as otherwise provided
9 in the Energy Education and Marketing Tax Act.

10 SECTION 3. [NEW MATERIAL] SEVERANCE TAX IMPOSED--
11 COLLECTED BY DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO
12 STATE.--

13 A. There is imposed and shall be collected by the
14 department a tax on all products severed and sold in the state.
15 The tax imposed by this section may be referred to as the
16 "energy education and marketing tax". The rate of the tax
17 shall be one-tenth of one percent of the taxable value,
18 determined pursuant to Section 4 of the Energy Education and
19 Marketing Tax Act, on products severed or removed at or near
20 the wellhead.

21 B. Every interest owner, for the purpose of
22 imposing the tax, is deemed to be in the business of severing
23 products and is liable for the tax to the extent of the owner's
24 interest in the value of the products severed or removed or to
25 the extent of the owner's interest in the products severed or

.192429.3

underscored material = new
[bracketed material] = delete

1 removed.

2 SECTION 4. [NEW MATERIAL] TAXABLE VALUE--METHOD OF
3 DETERMINING.--To determine the taxable value, there shall be
4 deducted from the value of products:

5 A. royalties paid or due the United States or the
6 state of New Mexico;

7 B. royalties paid or due any Indian tribe, Indian
8 pueblo or Indian that is a ward of the United States; and

9 C. the reasonable expense of trucking any product
10 from the production unit to the first place of market.

11 SECTION 5. [NEW MATERIAL] VALUE MAY BE DETERMINED BY
12 DEPARTMENT--STANDARD.--The department may determine the value
13 of products severed from a production unit when:

14 A. the operator and purchaser are affiliated
15 persons;

16 B. the sale and purchase of products is not an
17 arm's length transaction; or

18 C. products are severed and removed from a
19 production unit and a value as defined in the Energy Education
20 and Marketing Tax Act is not established for such products.

21 The value determined by the department shall be commensurate
22 with the actual price received for products of like quality,
23 character and use that are severed in the same field or area.

24 SECTION 6. [NEW MATERIAL] PRICE INCREASE SUBJECT TO THE
25 APPROVAL OF ANY AGENCY OF THE UNITED STATES, THE STATE OF NEW

.192429.3

underscored material = new
[bracketed material] = delete

1 MEXICO OR ANY COURT--REFUND.--When an increase in the value of
2 any product is subject to the approval of any agency of the
3 United States, or the state of New Mexico or any court, the
4 increased value shall be subject to the tax. In the event the
5 increase in value is disapproved, either in whole or in part,
6 then the amount of tax that has been paid on the disapproved
7 part of the value shall be considered excess tax. Any person
8 who has paid any such excess tax may apply for a refund of that
9 excess tax in accordance with the provisions of Section 7-1-26
10 NMSA 1978.

11 SECTION 7. [NEW MATERIAL] PRODUCTS ON WHICH TAX HAS BEEN
12 IMPOSED--REGULATION BY DEPARTMENT.--The tax shall not be
13 imposed more than once on the same product. Reporting of
14 products on which the tax has been paid shall be subject to the
15 regulation of the department.

16 SECTION 8. [NEW MATERIAL] OPERATOR OR PURCHASER TO
17 WITHHOLD INTEREST OWNER'S TAX--DEPARTMENT MAY REQUIRE
18 WITHHOLDING OF TAX--TAX WITHHELD TO BE REMITTED TO THE STATE--
19 OPERATOR OR PURCHASER TO BE REIMBURSED.--

20 A. Any operator making a monetary payment to an
21 interest owner for the operator's portion of the value of
22 products from a production unit shall withhold from such
23 payment the amount of tax due from any interest owner.

24 B. Any purchaser who, by express or implied
25 agreement with the operator, makes a monetary payment to an

.192429.3

underscoring material = new
[bracketed material] = delete

1 interest owner for the purchaser's portion of the value of
2 products from a production unit shall withhold from such
3 payment the amount of tax due from the interest owner.

4 C. The department may require any purchaser making
5 a monetary payment to an interest owner for the purchaser's
6 portion of the value of products from a production unit to
7 withhold from such payment the amount of tax due from the
8 interest owner.

9 D. Any operator or purchaser who pays any tax due
10 from an interest owner shall be entitled to reimbursement from
11 the interest owner for the tax so paid, and may take credit for
12 such amount from any monetary payment to the interest owner for
13 the value of products.

14 SECTION 9. [NEW MATERIAL] OPERATOR'S REPORT--TAX
15 REMITTANCE--ADDITIONAL INFORMATION.--Each operator shall, in
16 the form and manner required by the department, make a return
17 to the department showing the total value, volume and kind of
18 products sold from each production unit for each calendar
19 month. All taxes due or to be remitted by the operator shall
20 accompany the return. The return shall be filed on or before
21 the twenty-fifth day of the second month after the calendar
22 month for which the return is required. Any additional report
23 or information the department may deem necessary for the proper
24 administration of the Energy Education and Marketing Tax Act
25 may be required.

.192429.3

underscored material = new
[bracketed material] = delete

1 SECTION 10. ~~[NEW MATERIAL]~~ PURCHASER'S REPORT--TAX
2 REMITTANCE--ADDITIONAL INFORMATION.--Each purchaser shall, in
3 the form and manner required by the department, make a return
4 to the department showing the total value, volume and kind of
5 products purchased by the purchaser from each production unit
6 for each calendar month. All taxes due or to be remitted by
7 the purchaser shall accompany the return. The return shall be
8 filed on or before the twenty-fifth day of the second month
9 after the calendar month for which the return is required. Any
10 additional reports or information the department may deem
11 necessary for the proper administration of the Energy Education
12 and Marketing Tax Act may be required.

13 SECTION 11. Section 7-1-2 NMSA 1978 (being Laws 1965,
14 Chapter 248, Section 2, as amended) is amended to read:

15 "7-1-2. APPLICABILITY.--The Tax Administration Act
16 applies to and governs:

17 A. the administration and enforcement of the
18 following taxes or tax acts as they now exist or may hereafter
19 be amended:

- 20 (1) Income Tax Act;
- 21 (2) Withholding Tax Act;
- 22 (3) Venture Capital Investment Act;
- 23 (4) Gross Receipts and Compensating Tax Act
- 24 and any state gross receipts tax;
- 25 (5) Liquor Excise Tax Act;

underscoring material = new
~~[bracketed material] = delete~~

- 1 (6) Local Liquor Excise Tax Act;
- 2 (7) any municipal local option gross receipts
- 3 tax;
- 4 (8) any county local option gross receipts
- 5 tax;
- 6 (9) Special Fuels Supplier Tax Act;
- 7 (10) Gasoline Tax Act;
- 8 (11) petroleum products loading fee, which fee
- 9 shall be considered a tax for the purpose of the Tax
- 10 Administration Act;
- 11 (12) Alternative Fuel Tax Act;
- 12 (13) Cigarette Tax Act;
- 13 (14) Estate Tax Act;
- 14 (15) Railroad Car Company Tax Act;
- 15 (16) Investment Credit Act, rural job tax
- 16 credit, Laboratory Partnership with Small Business Tax Credit
- 17 Act, Technology Jobs Tax Credit Act, film production tax
- 18 credit, New Mexico filmmaker tax credit, Affordable Housing Tax
- 19 Credit Act, high-wage jobs tax credit and Research and
- 20 Development Small Business Tax Credit Act;
- 21 (17) Corporate Income and Franchise Tax Act;
- 22 (18) Uniform Division of Income for Tax
- 23 Purposes Act;
- 24 (19) Multistate Tax Compact;
- 25 (20) Tobacco Products Tax Act; and

.192429.3

underscored material = new
[bracketed material] = delete

1 (21) the telecommunications relay service
2 surcharge imposed by Section 63-9F-11 NMSA 1978, which
3 surcharge shall be considered a tax for the purposes of the Tax
4 Administration Act;

5 B. the administration and enforcement of the
6 following taxes, surtaxes, advanced payments or tax acts as
7 they now exist or may hereafter be amended:

- 8 (1) Resources Excise Tax Act;
9 (2) Severance Tax Act;
10 (3) any severance surtax;
11 (4) Oil and Gas Severance Tax Act;
12 (5) Oil and Gas Conservation Tax Act;
13 (6) Oil and Gas Emergency School Tax Act;
14 (7) Oil and Gas Ad Valorem Production Tax Act;
15 (8) Natural Gas Processors Tax Act;
16 (9) Oil and Gas Production Equipment Ad

17 Valorem Tax Act;

18 (10) Copper Production Ad Valorem Tax Act;

19 (11) any advance payment required to be made
20 by any act specified in this subsection, which advance payment
21 shall be considered a tax for the purposes of the Tax
22 Administration Act;

23 (12) Enhanced Oil Recovery Act;

24 (13) Natural Gas and Crude Oil Production
25 Incentive Act; ~~and~~

.192429.3

underscored material = new
[bracketed material] = delete

1 (14) intergovernmental production tax credit
2 and intergovernmental production equipment tax credit; and

3 (15) Energy Education and Marketing Tax Act;

4 C. the administration and enforcement of the
5 following taxes, surcharges, fees or acts as they now exist or
6 may hereafter be amended:

7 (1) Weight Distance Tax Act;

8 (2) the workers' compensation fee authorized
9 by Section 52-5-19 NMSA 1978, which fee shall be considered a
10 tax for purposes of the Tax Administration Act;

11 (3) Uniform Unclaimed Property Act (1995);

12 (4) 911 emergency surcharge and the network
13 and database surcharge, which surcharges shall be considered
14 taxes for purposes of the Tax Administration Act;

15 (5) the solid waste assessment fee authorized
16 by the Solid Waste Act, which fee shall be considered a tax for
17 purposes of the Tax Administration Act;

18 (6) the water conservation fee imposed by
19 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
20 for the purposes of the Tax Administration Act; and

21 (7) the gaming tax imposed pursuant to the
22 Gaming Control Act; and

23 D. the administration and enforcement of all other
24 laws, with respect to which the department is charged with
25 responsibilities pursuant to the Tax Administration Act, but

.192429.3

underscored material = new
[bracketed material] = delete

1 only to the extent that the other laws do not conflict with the
2 Tax Administration Act."

3 SECTION 12. Section 7-1-6.21 NMSA 1978 (being Laws 1985,
4 Chapter 65, Section 7, as amended) is amended to read:

5 "7-1-6.21. DISTRIBUTION [~~TO~~]-OIL AND GAS RECLAMATION
6 FUND--ENERGY EDUCATION AND MARKETING FUND--CLEAN ENERGY GRANTS
7 FUND--LOTTERY TUITION FUND.--

8 A. With respect to any period for which the rate of
9 the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-
10 hundredths percent, a distribution pursuant to Section
11 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation
12 fund in an amount equal to two-nineteenths of the net receipts
13 attributable to the tax imposed under the Oil and Gas
14 Conservation Tax Act.

15 B. With respect to any period for which the total
16 rate of the tax imposed on oil by Section 7-30-4 NMSA 1978 is
17 twenty-four hundredths percent, a distribution pursuant to
18 Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas
19 reclamation fund in an amount equal to nineteen and seven-
20 tenths percent of the net receipts attributable to the tax
21 imposed under the Oil and Gas Conservation Tax Act.

22 C. A distribution pursuant to Section 7-1-6.20 NMSA
23 1978 shall be made in the following amounts to the following
24 funds of the net receipts attributable to the tax imposed under
25 the Energy Education and Marketing Tax Act:

.192429.3

1 (1) twenty-five percent to the energy
2 education and marketing fund;

3 (2) twenty-five percent to the clean energy
4 grants fund; and

5 (3) fifty percent to the lottery tuition
6 fund."

7 SECTION 13. [NEW MATERIAL] ENERGY EDUCATION AND MARKETING
8 BOARD--COMPOSITION--PER DIEM--DUTIES AND POWERS.--

9 A. The "energy education and marketing board" is
10 created, consisting of nine members. The secretary of energy,
11 minerals and natural resources or the secretary's designee
12 shall serve as an ex-officio voting member. The remaining
13 eight members shall each have at least five years of active
14 experience in the oil or gas industry and shall be appointed so
15 as to ensure equal representation of both the oil and gas
16 industries and as follows:

17 (1) two members by the president pro tempore
18 of the senate;

19 (2) two members by the minority floor leader
20 of the senate;

21 (3) two members by the speaker of the house of
22 representatives; and

23 (4) two members by the minority floor leader
24 of the house of representatives.

25 B. Initially, each appointing entity shall choose

.192429.3

underscored material = new
~~[bracketed material] = delete~~

1 one member for a two-year term and one member for a four-year
2 term. After the initial appointments, all members shall serve
3 four-year terms. Terms shall expire on January 1. Appointed
4 members shall serve until their successors are appointed. A
5 vacancy occurring other than by expiration of term shall be
6 filled in the same manner as the original appointment, but only
7 for the unexpired term.

8 C. Members of the board shall elect a chair from
9 among the membership of the board. The board shall meet at the
10 call of the chair at least four times per year.

11 D. A majority of the members currently serving
12 constitutes a quorum of the board.

13 E. Members of the board shall receive per diem and
14 mileage as provided for nonsalaried public officers in the Per
15 Diem and Mileage Act and shall receive no other compensation,
16 perquisite or allowance.

17 F. The board shall:

18 (1) promote the importance of the oil and
19 natural gas exploration and production industries in the state;

20 (2) encourage the efficient use of energy in
21 the state; and

22 (3) promote environmentally sound production
23 methods and technologies in the production of oil and natural
24 gas.

25 G. The board may:

.192429.3

underscored material = new
[bracketed material] = delete

1 (1) promulgate rules necessary to implement
2 the provisions of this section;

3 (2) enter into contracts as necessary to carry
4 out the duties of the board; and

5 (3) cooperate with a private, local, state or
6 national organization for joint programs beneficial to the oil
7 and natural gas industries.

8 SECTION 14. [NEW MATERIAL] ENERGY EDUCATION AND MARKETING

9 FUND--CREATED--PURPOSE.--The "energy education and marketing
10 fund" is created in the state treasury. The fund shall be
11 administered by the energy education and marketing board.

12 Earnings from investment of the fund shall accrue to the credit
13 of the fund. The fund shall consist of money from taxes
14 distributed to the fund and gifts, grants and donations made to
15 the fund. Money in the fund is appropriated to the board for
16 the purpose of carrying out the duties of the board. Any
17 interest accruing to the fund shall not revert. Any unexpended
18 or unencumbered balance in the fund shall revert to the general
19 fund at the end of a fiscal year. Disbursements from the fund
20 shall be made by warrant of the secretary of finance and
21 administration upon vouchers signed by the chair of the board
22 or the chair's authorized representative.

23 SECTION 15. APPLICABILITY.--The provisions of Sections 1
24 through 10 of this act apply to reporting periods beginning on
25 or after July 1, 2013.

.192429.3

underscoring material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.

- 15 -