

History: Laws 2021, ch. 83, § 5.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 83, § 7 made Laws 2021, ch. 83, § 5 effective January 1, 2022.

ARTICLE 3A

Oil and Gas Proceeds and Pass-Through Entity Withholding Tax

7-3A-1. Short title.

Chapter 7, Article 3A NMSA 1978 may be referred to as the "Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act".

History: 1978 Comp., § 7-3A-1, enacted by Laws 2003, ch. 86, § 4; 2010, ch. 53, § 8.

ANNOTATIONS

The 2010 amendment, effective May 19, 2010, added "and Pass-Through Entity".

Applicability. — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

7-3A-2. Definitions.

As used in the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act:

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

B. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

C. "net income" means, for any pass-through entity:

(1) in the case of an owner that is taxed as a corporation for federal income tax purposes, "net income" as defined in the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978]; and

(2) for all other owners, "net income" as defined in the Income Tax Act [Chapter 7, Article 2 NMSA 1978];

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

E. "oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production, subject 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 and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable;

F. "owner" means a partner in a partnership not taxed as a corporation for federal income tax purposes for the taxable year, a shareholder of an S corporation or of a corporation other than an S corporation that is not taxed as a corporation for federal income tax purposes for the taxable year, a member of a limited liability company or any similar person holding an ownership interest in any pass-through entity. "Owner" also means a performing artist to whom payments are due from a personal services business;

G. "partnership" means a combination of persons, including a partnership, joint venture, common trust fund, association, pool or working agreement, or any other combination of persons that is treated as a partnership for federal income tax purposes;

H. "pass-through entity" means a personal services business or any other business association other than:

- (1) a sole proprietorship;
- (2) an estate or trust that does not distribute income to beneficiaries;
- (3) a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year;
- (4) a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities;
- (5) a single member limited liability company that is treated as a disregarded entity for federal income tax purposes; or
- (6) a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code;

I. "person" means an individual, club, company, cooperative association, corporation, estate, firm, joint venture, partnership, receiver, syndicate, trust or other association, limited liability company, limited liability partnership or gas, water or electric utility owned or operated by a county or municipality and, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, a department or an instrumentality thereof;

J. "personal services business" means a business organization that receives payments for the services of a performing artist for purposes of the film production tax credit;

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

L. "remitter" means a person that pays oil and gas proceeds to any remittee.

History: 1978 Comp., § 7-3A-2, enacted by Laws 2003, ch. 86, § 5; 2010, ch. 53, § 9; 2011, ch. 177, § 5; 2012, ch. 40, § 1.

ANNOTATIONS

Cross references. — For Section 7704 of the Internal Revenue Code of 1986, see 26 U.S.C. § 7704.

The 2012 amendment, effective May 16, 2012, redefined "net income" as defined in New Mexico income tax acts rather than as "net income" for federal income tax purposes; and in Subsection C, deleted former language that defined "net income" as income reported for federal income tax purposes, and added Paragraphs (1) and (2).

Applicability. — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

The 2011 amendment, effective July 1, 2011, defined "owner" to include performing artists who are paid by a personal services business; defined "pass-through entity" to include personal services businesses; and added a definition of "personal services business".

The 2010 amendment, effective May 19, 2010, in the introductory sentence, added "and Pass-Through Entity"; added Subsections B and C; in Subsection E, after "a specified share of the oil and gas production", added the remainder of the sentence; added Subsections F, G and H; in Subsection I, after "trust or other association", added "limited liability company, limited liability partnership or gas, water, or electric utility owned or operated by a county or municipality"; and relettered subsections accordingly.

Temporary provisions. — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

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 for each quarter 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 payable to the remittee.

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

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

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

(2) remittees with a New Mexico address as shown on internal revenue service form 1099-Misc or a successor form or on a *pro forma* 1099-Misc or a successor form for those entities that do not receive an internal revenue service form 1099-Misc;

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

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

(5) organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code. However, the obligation to deduct and withhold from payments of allocable net income to organizations identified in this paragraph applies if that income constitutes unrelated business income.

D. Except as provided in Subsection H of this section, the rate of withholding shall be set by a department directive; provided that the rate may not exceed the higher of

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

E. If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act or a pass-through entity has deducted and withheld an amount pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from the allocable share of net income of an owner that is also a pass-through entity, the remitter or payee pass-through entity may take credit for that amount in determining the amount the remitter or payee pass-through entity must withhold and deduct pursuant to this section.

F. If the amount to be withheld from all payments to a remittee in a calendar quarter has not exceeded thirty dollars (\$30.00) and a payment to a remittee is less than ten dollars (\$10.00), no withholding is required. If the amount to be withheld from an owner's allocable share of net income in any calendar year is less than one hundred dollars (\$100), no withholding is required.

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

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

I. If the remittee or owner is an insurance company and falls under the provisions of Section 59A-6-6 NMSA 1978, no withholding is required pursuant to this section.

History: 1978 Comp., § 7-3A-3, enacted by Laws 2003, ch. 86, § 6; 2010, ch. 53, § 10; 2011, ch. 177, § 6; 2012, ch. 40, § 2.

ANNOTATIONS

The 2012 amendment, effective May 16, 2012, required quarterly withholding; exempted payment to remittees with a New Mexico address from withholding; required withholding if payments to charitable organizations constitute unrelated business income; increased the minimum annual amount that required withholding; exempted payments to insurance companies from withholding; in Subsection A, after "being made to a remittee", added "for each quarter"; in Subsection B, after "and withhold from each

owner's" added "allocable"; after "income for that", deleted "quarter" and added "calendar", after "multiplied by the owner's" added "allocable", and after "to be withheld from the owner's" added "allocable share of"; in Subsection C, in the introductory sentence, after "payments or", added "allocable", added Paragraph (2), and in Paragraph (5), added the last sentence; deleted former Subsection E, which required a pass-through entity that had been in existence for one full taxable year to compute withholding based on the net income of the entity for the preceding year; in Subsection E, after "Tax Act from the", added "allocable share of"; in Subsection F, in the second sentence, after "from an owner's", added "allocable", after "in any calendar", deleted "quarter" and added "year", and after "is less than", deleted "thirty dollars (\$30.00)" and added "one hundred dollars (\$100.00)"; in Subsection H, after "equal to the owner's", added "allocable"; and added Subsection I.

Applicability. — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

The 2011 amendment, effective July 1, 2011, required personal services businesses to deduct and withhold income tax from payments to performing artists.

The 2010 amendment, effective May 19, 2010, in Subsection A, after "Subsection", changed "C" to "D"; after "multiplied by the", deleted "gross"; and after "multiplied by the amount", added "prior to withholding"; added Subsection B; in Subsection C, after "withhold from payments", added "or net income" and after "as provided in", changed "Subsection A of this section" to "Subsections A and B of this section"; in Paragraph (1) of Subsection C, deleted "remittees with a New Mexico address as shown on internal revenue service form 1099-MISC or successor form" and added "a corporation whose principal place of business is in New Mexico or an individual who is a resident of New Mexico"; in Subsection D, after "The rate of withholding", deleted "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." and added "shall be set by a department directive"; added Subsections E and F; in Subsection G, in the first sentence, added "all payments to a remittee in a calendar quarter has not exceeded thirty dollars (\$30.00) and" and added the last sentence; and added Subsection H.

Temporary provisions. — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

7-3A-4. Deductions considered taxes.

Amounts deducted under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act are a collected tax. A remittee who receives payment of oil and gas proceeds or an owner with an allocable share of net income

does not have a right of action against the remitter or pass-through entity for the amount deducted and withheld from the oil and gas proceeds or an allocable share of net income.

History: 1978 Comp., § 7-3A-4, enacted by Laws 2003, ch. 86, § 7; 2010, ch. 53, § 11; 2012, ch. 40, § 3.

ANNOTATIONS

The 2012 amendment, effective May 16, 2012, measured net income by allocable shares and in the second sentence, after "or an owner with", deleted "a" and added "an allocable" and after the "gas proceeds or", added "an allocable share of".

Applicability. — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

The 2010 amendment, effective May 19, 2010, in the first sentence, added "and Pass-Through Entity" and in the second sentence, after "payment of oil and gas proceeds", added "or an owner with a share of net income"; after "against the remitter", added "or pass-through entity"; and after "withheld from oil and gas proceeds", added "or net income".

Temporary provisions. — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

7-3A-5. Remitters and pass-through entities liable for amounts deducted and withheld; exceptions.

A. Every remitter or pass-through entity is liable for:

(1) amounts required to be deducted and withheld by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act regardless of whether the amounts were in fact deducted and withheld; and

(2) for the amounts that a remittee or an owner has agreed to remit pursuant to Subsection G of Section 7-3A-3 NMSA 1978, once the department has notified the remitter or pass-through entity that the remittee or owner has failed to remit.

B. A remitter or pass-through entity is not liable for amounts required to be deducted and withheld by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act but not deducted or withheld if:

(1) the remitter or pass-through entity fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid; or

(2) the remitter's or pass-through entity's failure to deduct and withhold the required amounts is due to reasonable cause.

History: 1978 Comp., § 7-3A-5, enacted by Laws 2003, ch. 86, § 8; 2010, ch. 53, § 12; 2012, ch. 40, § 4.

ANNOTATIONS

The 2012 amendment, effective May 16, 2012, eliminated changes in net income for federal income tax purposes as an exception to liability for withholding and deleted former Subsection C, which provided that changes in net income due to a timely election for federal income tax purposes was reasonable cause for failing to withhold.

Applicability. — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

The 2010 amendment, effective May 19, 2010, in the catchline, changed "Remitter" to "Remitters and pass-through entities"; in Subsection A, in the introductory sentence, added "or pass-through entity"; in Subsection A(1), after "Oil and Gas Proceeds", added "and Pass-Through Entity" and after "deducted and withheld", deleted "except that" and added "and"; added Paragraph (2) of Subsection A; added the introductory sentence of Subsection B; in Subsection B(1), after "the remitter", added "or pass-through entity" and after "have been credited is paid", deleted "the remitter shall not be liable for those amounts not deducted and withheld"; in Subsection B(2), after "the remitter's", added "or pass-through entity's" and after "reasonable cause", deleted "such as reliance on addresses supplied by remitees, the remitter shall not be liable for amounts not deducted and withheld"; and added Subsection C.

Temporary provisions. — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

7-3A-6. Date payment due; form.

A. Amounts withheld under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by a remitter 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. Amounts withheld under the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by a pass-through entity are due on or before the due date of the federal tax return required for the pass-through entity.

C. The amount withheld shall be remitted on a form and in a manner required by the department, provided that amounts withheld and remitted from oil and gas proceeds are kept distinct from every other tax or withheld amount.

History: 1978 Comp., § 7-3A-6, enacted by Laws 2003, ch. 86, § 9; 2010, ch. 53, § 13; 2012, ch. 40, § 5.

ANNOTATIONS

The 2012 amendment, effective May 16, 2012, established a payment due date and added a new Subsection B and relettered former Subsection B as Subsection C.

Applicability. — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

The 2010 amendment, effective May 19, 2010, in Subsection A, after the phrase “Oil and Gas Proceeds”, adds the phrase “and Pass-Through Entity”.

Temporary provisions. — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

7-3A-7. Statements of withholding.

A. Every remitter shall:

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

(a) is in electronic format and includes a form 1099-Misc or a successor form or on a pro forma 1099-Misc or a successor form for those entities that do not receive an internal revenue service form 1099-Misc;

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

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

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

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

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

D. Every pass-through entity doing business in New Mexico shall:

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

(a) is filed on or before: 1) the due date of the entity's federal return for the taxable year; or 2) if the entity's taxable year is a calendar year, if the entity is approved by the department to use electronic media for filing and if the entity uses electronic media to file the annual information return, the end of the month in which the entity's federal return is due;

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

(c) contains all information required by the department, including the pass-through entity's gross income; the pass-through entity's net income; the amount of each owner's allocable share of the pass-through entity's net income; and the name, address and tax identification number of each owner entitled to an allocable share of net income; and

(2) provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] with respect to the owner's allocable share of net income.

E. The department shall compile each year the annual statements of withholding received from the remitters and the annual information returns received from pass-through entities and compare the compilations with the records of corporations, individuals, estates or trusts filing income tax returns.

History: 1978 Comp., § 7-3A-7, enacted by Laws 2003, ch. 86, § 10; 2010, ch. 53, § 14; 2012, ch. 40, § 6; 2015 (1st S.S.), ch. 2, § 5.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective September 6, 2015, amended the deadline for filing an annual information return by a pass-through entity doing business in New Mexico; in Subparagraph D(1)(a), after "on or before", added "1)", and after "the taxable year;", added "or 2) if the entity's taxable year is a calendar year, if the entity is approved by the department to use electronic media for filing and if the entity uses electronic media to file the annual information return, the end of the month in which the entity's federal return is due".

Applicability. — Laws 2015 (1st S.S.), ch. 2, § 25 provided that the provisions of Laws 2015 (1st S.S.), ch. 2, § 5 apply to taxable years beginning on or after January 1, 2015.

The 2012 amendment, effective May 16, 2012, required electronic filing of statements of withholding; provides for filing of reports if a remitter cannot file electronically; provided for filing by a remitter of reports if a remittee is responsible for filing a report and paying the tax due; in Subsection A, in Paragraph (1), in Subparagraph (a), after "is in", deleted "a form prescribed by the department" and added the remainder of the sentence; added new Subsections B and C and relettered the succeeding subsections; and in Subsection D, in Paragraph (1), in Subparagraph (c), after "each owner's", added "allocable" and after "owner entitled to", added "an allocable"; and in Paragraph (2), after "to the owner's", added "allocable".

Applicability. — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

The 2010 amendment, effective May 19, 2010, in Subsection A(1), after "each remittee", deleted "This statement shall be" and added "that"; in Subsection A(1)(a), at the beginning of the sentence, added "is" and after "department", deleted "and shall be"; in Subsection A(1)(b), at the beginning of the sentence, added "is" and after "statement is made", deleted "It shall include" and added "and"; in Subsection A(1)(c), at the beginning of the sentence, added "includes" and after "calendar year", deleted the former last sentence, which provided that the department shall compile each year the annual statements received from remitters and compare the compilation with records of individuals, estates or trusts filing income tax returns; in Subsection A(2), at the beginning of the sentence, added "provide a", after "statement of withholding", deleted "shall be furnished"; and after "to the remittee", deleted "by the remitter"; and added Subsections B and C.

Temporary provisions. — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

7-3A-8. Withheld amounts credited against income tax.

The entire amount of oil and gas proceeds and an allocable share of net income upon which the tax was deducted and withheld or upon which payments were made by owners in lieu of withholding shall be included in the base income of the remittee for purposes of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978]. The amount of tax deducted and withheld or payments made by owners in lieu of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act during the taxable year shall be credited against any income tax or corporate income tax due from the remittee or owner.

History: 1978 Comp., § 7-3A-8, enacted by Laws 2003, ch. 86, § 11; 2010, ch. 53, § 15; 2012, ch. 40, § 7.

ANNOTATIONS

The 2012 amendment, effective May 16, 2012, measured net income by allocable shares and in the first sentence, after "gas proceeds and", added "an allocable share of".

Applicability. — Laws 2012, ch. 40, § 8 provided that the provisions of Laws 2012, ch. 40, §§ 1 through 7 are applicable to taxable years beginning on or after January 1, 2012.

The 2010 amendment, effective May 19, 2010, in the first sentence, after "oil and gas proceeds", added "and net income" and after "deducted and withheld", added "or upon which payments were made by owners in lieu of withholding"; and in the second sentence, after "deducted and withheld", added "or payments made by owners in lieu of withholding"; after "Oil and Gas Proceeds", added "and Pass-Through Entity"; and after "tax due from the remittee", added "or owner".

Temporary provisions. — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

7-3A-9. Interpretation of act; administration and enforcement of act; report to legislature.

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

B. The department shall administer and enforce the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

C. No later than December 1 of each year, the department shall submit a report to the legislature showing:

(1) the total amount of taxes withheld by remitters and paid to the department during the previous calendar year pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act; and

(2) the amount of taxes withheld by remitters pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act that were credited against income taxes or corporate income taxes by remittees during the previous calendar year.

History: 1978 Comp., § 7-3A-9, enacted by Laws 2003, ch. 86, § 12; 2010, ch. 53, § 16; 2011, ch. 139, § 1.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, added Subsection C to require the department to submit a report to the legislature relating to the amount of taxes withheld from oil and gas proceeds.

The 2010 amendment, effective May 19, 2010, in Subsection A, added "and Pass-Through Entity"; and in Subsection B, after "enforce the Oil and Gas Proceeds", added "and Pass-Through Entity" and after "enforcement of the Oil and Gas Proceeds", added "and Pass-Through Entity".

Temporary provisions. — Laws 2010, ch. 53, § 17 provided that for a taxable year beginning on or after January 1, 2011, but before January 1, 2012, no remitter or pass-through entity shall be subject to the penalty imposed pursuant to Section 7-1-69 NMSA 1978 for failure to comply with the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

Applicability. — Laws 2010, ch. 53, § 19 provided that the provisions of this act are applicable to taxable years beginning on or after January 1, 2011.

7-3A-10. Election of entity-level tax; credit.

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

B. A pass-through entity electing to pay the entity-level tax shall make the election by filing a complete entity-level tax return with the department in the form and manner as prescribed by the department. The election shall be binding on all owners of the electing pass-through entity. The return shall be filed no later than the original or extended due date of the entity's federal partnership or S corporation return for the

taxable year. Payment of the entity-level tax shall accompany or precede the filing of the return.

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

D. Distributed net income of a pass-through entity shall equal the amount allocated and apportioned to New Mexico pursuant to the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978] from the following:

(1) the total income of the pass-through entity properly reported for federal income tax purposes plus, for partnerships, the amount of guaranteed payments other than premiums for health insurance paid by the partnership on behalf of a partner, less the net income or guaranteed payments properly allocated or made to:

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

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

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

(d) a corporate partner that would properly include the income in the partner's New Mexico tax return as part of the partner's unitary business income; or

(e) a pass-through entity that is an owner of the electing pass-through entity;
and

(2) less the amount of net capital gains that may be deducted pursuant to Section 7-2-34 NMSA 1978 and is properly allocated to owners who are subject to tax pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

E. A net operating loss shall not be included in the distributed net income calculated pursuant to Subsection D of this section but may be carried forward until exhausted.

F. Pass-through entities electing to pay the entity-level tax shall make estimated payments of the tax on forms and in the manner as determined by the department. Amounts remitted pursuant to Subsection B of Section 7-3A-3 NMSA 1978 by entities electing to pay the entity-level tax shall be deemed payments of estimated entity-level tax.

G. If, for a taxable year, the sum of the estimated payments of tax made by a pass-through entity pursuant to Subsection F of this section exceeds the amount of entity-level tax owed, the pass-through entity may apply for a refund of the difference. If, for a taxable year, the entity-level tax owed by a pass-through entity exceeds the sum of the estimated payments made by the pass-through entity, the pass-through entity shall remit the difference on or before the date the pass-through entity's entity-level tax is due.

H. An owner of a pass-through entity electing to pay the tax imposed under this section may be allowed a tax credit in an amount equal to the owner's share of the tax; provided that the pass-through entity paid the tax and furnished sufficient information on the pass-through entity's tax return to identify that owner. If the amount of the credit exceeds the amount of the owner's tax liabilities pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978], the excess shall be refunded to the owner.

I. As used in this section:

(1) "guaranteed payments" means the guaranteed payments described in Section 707(c) of the Internal Revenue Code, as that section may be amended or renumbered;

(2) "net capital gain" means "net capital gain" as defined in Section 1222(11) of the Internal Revenue Code;

(3) "net operating loss" means "net operating loss" as defined in Section 7-2-2 NMSA 1978; and

(4) "pass-through entity" means a partnership or corporation that elects to pass income, losses, deductions and credits through to the entity's owners for federal tax purposes.

History: Laws 2022, ch. 46, § 3 2023, ch. 159, § 3.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, converted a certain exemption to a credit for pass-through entities that elect to pay an entity-level tax, and defined "guaranteed payments," "net capital gain" and "net operating loss" as used in this section; in the section heading, added "credit"; in Subsection B, added "The election shall be binding on all owners of the electing pass-through entity."; in Subsection D, in the introductory clause, after "shall equal the amount", deleted "of net" and added "allocated and apportioned to New Mexico pursuant to the Uniform Division of Income for Tax Purposes Act from the following"; redesignated former Paragraphs D(1) through D(4) as Subparagraphs D(1)(a) through D(1)(d), respectively; in Paragraph D(1), added "the total", and deleted "allocated and apportioned to New Mexico pursuant to the