



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 116

HOUSE BILL 470, as amended

Introduced by

REPRESENTATIVE CANDY SPENCE EZZELL



Chapter 116

AN ACT

RELATING TO TAXATION; INCREASING THE THRESHOLD BEFORE THE
PENALTY FOR UNDERPAYMENT OF ESTIMATED TAX DUE IS APPLIED.

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

SECTION 1. Section 7-2-12.2 NMSA 1978 (being Laws 1996,
Chapter 17, Section 1, as amended) is amended to read:

"7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED
TAX--PENALTY.--

A. Except as otherwise provided in this section,
an individual who is required to file an income tax return
under the Income Tax Act shall pay the required annual payment
in installments through either withholding or estimated tax
payments.

B. For the purposes of this section:

(1) "required annual payment" means the
lesser of:

(a) ninety percent of the tax shown on
the return of the taxable year or, if no return is filed,
ninety percent of the tax for the taxable year; or

(b) one hundred percent of the tax
shown on the return for the preceding taxable year if the
preceding taxable year was a taxable year of twelve months and
the taxpayer filed a New Mexico tax return for that preceding
taxable year; and

1 (2) "tax" means the tax imposed under
2 Section 7-2-3 NMSA 1978 less any amount allowed for applicable
3 credits and rebates provided by the Income Tax Act.

4 C. There shall be four required installments for
5 each taxable year. If a taxpayer is not liable for estimated
6 tax payments on March 31, but becomes liable for estimated tax
7 at some point after March 31, the taxpayer must make estimated
8 tax payments as follows:

9 (1) if the taxpayer becomes required to pay
10 estimated tax after March 31 and before June 1, fifty percent
11 of the required annual payment must be paid on or before June
12 15, twenty-five percent on September 15 and twenty-five
13 percent on or before January 15 of the following taxable year;

14 (2) if the taxpayer becomes required to pay
15 estimated tax after May 31, but before September 1, the
16 taxpayer must pay seventy-five percent of the required annual
17 payment on or before September 15 and twenty-five percent on
18 or before January 15 of the following taxable year; and

19 (3) if the taxpayer becomes required to pay
20 estimated tax after August 31, the taxpayer must pay one
21 hundred percent of the required annual payment on or before
22 January 15 of the following taxable year.

23 D. Except as otherwise provided in this section,
24 for taxpayers reporting on a calendar year basis, estimated
25 payments of the required annual payment are due on or before

1 April 15, June 15 and September 15 of the taxable year and
2 January 15 of the following taxable year. For taxpayers
3 reporting on a fiscal year other than a calendar year, the due
4 dates for the installments are the fifteenth day of the
5 fourth, sixth and ninth months of the fiscal year and the
6 fifteenth day of the first month following the fiscal year.

7 E. A rancher or farmer who expects to receive at
8 least two-thirds of the rancher's or farmer's gross income for
9 the taxable year from ranching or farming, or who has received
10 at least two-thirds of the rancher's or farmer's gross income
11 for the previous taxable year from ranching or farming, may:

12 (1) pay the required annual payment for the
13 taxable year in one installment on or before January 15 of the
14 following taxable year; or

15 (2) on or before March 1 of the following
16 taxable year, file a return for the taxable year and pay in
17 full the amount computed on the return as payable.

18 A penalty under Subsection G of this section shall not
19 be imposed unless the rancher or farmer underpays the tax by
20 more than one-third. If a joint return is filed, a rancher or
21 farmer must consider the rancher's or farmer's spouse's gross
22 income in determining whether at least two-thirds of gross
23 income is from ranching or farming.

24 F. For the purposes of this section, the amount of
25 tax deducted and withheld with respect to a taxpayer under the

1 Withholding Tax Act or the Oil and Gas Proceeds and Pass-
2 Through Entity Withholding Tax Act shall be deemed a payment
3 of estimated tax. An equal part of the amount of withheld tax
4 shall be deemed paid on each due date for the applicable
5 taxable year unless the taxpayer establishes the dates on
6 which all amounts were actually withheld. In that case, the
7 amounts withheld shall be deemed payments of estimated tax on
8 the dates on which the amounts were actually withheld. The
9 taxpayer may apply the provisions of this subsection
10 separately to wage withholding and any other amounts withheld
11 under the Withholding Tax Act or the Oil and Gas Proceeds and
12 Pass-Through Entity Withholding Tax Act. Amounts of tax paid
13 by taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be
14 deemed a payment of estimated tax.

15 G. Except as otherwise provided in this section,
16 in the case of an underpayment of the required annual payment
17 by a taxpayer, there shall be added to the tax a penalty
18 determined by applying the rate specified in Subsection B of
19 Section 7-1-67 NMSA 1978 to the amount of the underpayment for
20 the period of the underpayment, provided:

21 (1) the amount of the underpayment shall be
22 the excess of the amount of the required annual payment over
23 the amount, if any, paid on or before the due date for the
24 installment;

25 (2) the period of the underpayment runs from

1 the due date for the installment to whichever of the following
2 dates is earlier:

3 (a) the fifteenth day of the fourth
4 month following the close of the taxable year; or

5 (b) with respect to any portion of the
6 underpayment, the date on which the portion was paid; and

7 (3) a payment of estimated tax shall be
8 credited against unpaid or underpaid installments in the order
9 in which the installments are required to be paid.

10 H. No penalty shall be imposed under Subsection G
11 of this section for any taxable year if:

12 (1) the difference between the following is
13 less than one thousand dollars (\$1,000):

14 (a) the tax shown on the return for the
15 taxable year or, when no return is filed, the tax for the
16 taxable year; and

17 (b) any amount withheld under the
18 provisions of the Withholding Tax Act or the Oil and Gas
19 Proceeds and Pass-Through Entity Withholding Tax Act for that
20 taxpayer for that taxable year;

21 (2) the taxpayer's preceding taxable year
22 was a taxable year of twelve months, the taxpayer did not have
23 a tax liability for the preceding taxable year and the
24 taxpayer was a resident of New Mexico for the entire taxable
25 year;

1 (3) through either withholding or estimated
2 tax payments, the taxpayer paid the required annual payment as
3 defined in Subsection B of this section; or

4 (4) the secretary determines that the
5 underpayment was not due to fraud, negligence or disregard of
6 rules and regulations.

7 I. If on or before January 31 of the following
8 taxable year the taxpayer files a return for the taxable year
9 and pays in full the amount computed on the return as payable,
10 then a penalty under Subsection G of this section shall not be
11 imposed on an underpayment of the fourth required installment
12 for the taxable year.

13 J. This section applies to taxable years of less
14 than twelve months and to taxpayers reporting on a fiscal year
15 other than a calendar year in the manner determined by
16 regulation or instruction of the secretary.

17 K. Except as otherwise provided in Subsection L of
18 this section, this section applies to any estate or trust.

19 L. This section does not apply to any trust that
20 is subject to the tax imposed by Section 511 of the Internal
21 Revenue Code or that is a private foundation. For a taxable
22 year that ends before the date two years after the date of the
23 decedent's death, this section does not apply to:

24 (1) the estate of the decedent; or

25 (2) any trust all of which was treated under

1 Subpart E of Part I of Subchapter J of Chapter 1 of the
2 Internal Revenue Code as owned by the decedent and to which
3 the residue of the decedent's estate will pass under the
4 decedent's will or, if no will is admitted to probate, that is
5 the trust primarily responsible for paying debts, taxes and
6 expenses of administration.

7 M. The provisions of this section do not apply to
8 first-year residents."

9 SECTION 2. APPLICABILITY.--The provisions of this act
10 shall apply to taxable years beginning on or after January 1,
11 2012.

12 SECTION 3. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2011. _____

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Ben Lujan

BEN LUJAN, SPEAKER
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STEPHEN R. ARIAS, CHIEF CLERK
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SENATE

Lenore M. Naranjo

LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 7th day of April, 2011

Susana Martinez

SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO

CLERK OF THE HOUSE OF REPRESENTATIVES

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