



The Legislature  
of the  
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 177

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR

HOUSE BILLS 607 AND 622, as amended

Introduced by



# Chapter 177

## AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
CREATING THE FILM PRODUCTION TAX CREDIT ACT; DISTRIBUTING  
REFUNDABLE FILM PRODUCTION TAX CREDIT AMOUNTS OVER MULTIPLE  
YEARS; SPECIFYING THE ANNUAL PAYOUT ON ACCRUED FILM PRODUCTION  
TAX CREDITS; PROVIDING THAT THE FILM PRODUCTION TAX CREDIT  
SHALL NOT APPLY TO CERTAIN EXPENDITURES; LIMITING THE AMOUNT  
OF CERTAIN EXPENDITURES THAT QUALIFY FOR THE TAX CREDIT;  
REQUIRING EXPENDITURES TO BE REPORTED WITHIN A CERTAIN TIME;  
REQUIRING THE SUBMISSION OF AN AUDIT OF EXPENDITURES UNDER  
CERTAIN CIRCUMSTANCES; PROVIDING FOR A PHYSICAL PRESENCE IN  
NEW MEXICO OF VENDORS; PROVIDING FOR PERFORMING ARTIST  
WITHHOLDING; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 7-1-68 NMSA 1978 (being Laws 1965,  
Chapter 248, Section 69, as amended) is amended to read:

"7-1-68. INTEREST ON OVERPAYMENTS.--

A. As provided in this section, interest shall be  
allowed and paid on the amount of tax overpaid by a person  
that is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue  
and be paid at the rate established for individuals pursuant  
to Section 6621 of the Internal Revenue Code, computed on a  
daily basis; provided that if a different rate is specified by

1 a compact or other interstate agreement to which New Mexico is  
2 a party, that rate shall apply to amounts due under the  
3 compact or other agreement.

4 C. Unless otherwise provided by this section,  
5 interest on an overpayment not arising from an assessment by  
6 the department shall be paid from the date of the claim for  
7 refund until a date preceding by not more than thirty days the  
8 date of the credit or refund to any person; interest on an  
9 overpayment arising from an assessment by the department shall  
10 be paid from the date of overpayment until a date preceding by  
11 not more than thirty days the date of the credit or refund to  
12 any person.

13 D. No interest shall be allowed or paid with  
14 respect to an amount credited or refunded if:

15 (1) the amount of interest due is less than  
16 one dollar (\$1.00);

17 (2) the credit or refund is made within:

18 (a) fifty-five days of the date of the  
19 claim for refund of income tax, pursuant to either the Income  
20 Tax Act or the Corporate Income and Franchise Tax Act for the  
21 tax year immediately preceding the tax year in which the claim  
22 is made;

23 (b) seventy-five days of the date of  
24 the claim for refund of gasoline tax to users of gasoline off  
25 the highways; or

1 (c) one hundred twenty days of the date  
2 of the claim for refund of tax imposed pursuant to the  
3 Resources Excise Tax Act, the Severance Tax Act, the Oil and  
4 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,  
5 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
6 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
7 or the Oil and Gas Production Equipment Ad Valorem Tax Act;

8 (3) the credit or refund is made within one  
9 hundred twenty days of the date of the claim for refund of  
10 income tax, pursuant to the Income Tax Act or the Corporate  
11 Income and Franchise Tax Act, for any tax year more than one  
12 year prior to the year in which the claim is made;

13 (4) Sections 6611(f) and 6611(g) of the  
14 Internal Revenue Code, as those sections may be amended or  
15 renumbered, prohibit payment of interest for federal income  
16 tax purposes;

17 (5) the credit or refund is made within  
18 sixty days of the date of the claim for refund of any tax  
19 other than income tax;

20 (6) the credit results from overpayments  
21 found in an audit of multiple reporting periods and applied to  
22 underpayments found in that audit or refunded as a net  
23 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
24 1978;

25 (7) the department applies the credit or

1 refund to an intercept program, to the taxpayer's estimated  
2 payment prior to the due date for the estimated payment or to  
3 offset prior liabilities of the taxpayer pursuant to  
4 Subsection E of Section 7-1-29 NMSA 1978;

5 (8) the credit or refund results from  
6 overpayments the department finds pursuant to Subsection F of  
7 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the  
8 taxpayer on the return; or

9 (9) the refund results from a film  
10 production tax credit pursuant to Section 7-2F-1 NMSA 1978.

11 E. Nothing in this section shall be construed to  
12 require the payment of interest upon interest."

13 SECTION 2. Section 7-2F-1 NMSA 1978 (being Laws 2002,  
14 Chapter 36, Section 1, as amended) is amended to read:

15 "7-2F-1. FILM PRODUCTION TAX CREDIT.--

16 A. The tax credit created by this section may be  
17 referred to as the "film production tax credit". An eligible  
18 film production company may apply for, and the taxation and  
19 revenue department may allow, subject to the limitation in  
20 Subsection D of this section, a tax credit in an amount equal  
21 to the percentage specified in Subsection B of this section  
22 of:

23 (1) direct production expenditures made in  
24 New Mexico that:

25 (a) are directly attributable to the

1 production in New Mexico of a film or commercial audiovisual  
2 product;

3 (b) are subject to taxation by the  
4 state of New Mexico;

5 (c) exclude direct production  
6 expenditures for which another taxpayer claims the film  
7 production tax credit; and

8 (d) do not exceed the usual and  
9 customary cost of the goods or services acquired when  
10 purchased by unrelated parties. The secretary of taxation and  
11 revenue may determine the value of the goods or services for  
12 purposes of this section when the buyer and seller are  
13 affiliated persons or the sale or purchase is not an arm's  
14 length transaction; and

15 (2) postproduction expenditures made in New  
16 Mexico that:

17 (a) are directly attributable to the  
18 production of a commercial film or audiovisual product;

19 (b) are for services performed in New  
20 Mexico;

21 (c) are subject to taxation by the  
22 state of New Mexico;

23 (d) exclude postproduction expenditures  
24 for which another taxpayer claims the film production tax  
25 credit; and

1 (e) do not exceed the usual and  
2 customary cost of the goods or services acquired when  
3 purchased by unrelated parties. The secretary of taxation and  
4 revenue may determine the value of the goods or services for  
5 purposes of this section when the buyer and seller are  
6 affiliated persons or the sale or purchase is not an arm's  
7 length transaction.

8 B. Except as provided in Subsections C and P of  
9 this section, the percentage to be applied in calculating the  
10 amount of the film production tax credit is twenty-five  
11 percent.

12 C. With respect to expenditures attributable to a  
13 production for which the film production company receives a  
14 tax credit pursuant to the federal new markets tax credit  
15 program, the percentage to be applied in calculating the film  
16 production tax credit is twenty percent.

17 D. A claim for film production tax credits shall  
18 be filed as part of a return filed pursuant to the Income Tax  
19 Act or the Corporate Income and Franchise Tax Act. The date a  
20 credit claim is received by the department shall determine the  
21 order that a credit claim is authorized for payment by the  
22 department. The aggregate amount of the film production tax  
23 credit claims that may be authorized for payment in any fiscal  
24 year is fifty million dollars (\$50,000,000) with respect to  
25 the direct production expenditures or postproduction

1 expenditures made on film or commercial audiovisual products.  
2 A film production company that submits a claim for a film  
3 production tax credit that is unable to receive the tax credit  
4 because the claims for the fiscal year exceed the limitation  
5 in this subsection shall be placed for the subsequent fiscal  
6 year at the front of a queue of film production tax credit  
7 claimants submitting claims in the subsequent fiscal year in  
8 the order of the date on which the credit was authorized for  
9 payment.

10 E. Credit claims authorized for payment pursuant  
11 to the Film Production Tax Credit Act shall be paid pursuant  
12 to provisions of the Tax Administration Act to the taxpayer as  
13 follows:

14 (1) a credit claim amount of less than two  
15 million dollars (\$2,000,000) per taxable year shall be paid  
16 immediately upon authorization for payment of the credit  
17 claim;

18 (2) a credit claim amount of two million  
19 dollars (\$2,000,000) or more but less than five million  
20 dollars (\$5,000,000) per taxable year shall be divided into  
21 two equal payments, with the first payment to be made  
22 immediately upon authorization of the payment of the credit  
23 claim and the second payment to be made twelve months  
24 following the date of the first payment; and

25 (3) a credit claim amount of five million



1 dollars (\$5,000,000) or more per taxable year shall be divided  
2 into three equal payments, with the first payment to be made  
3 immediately upon authorization of payment of the credit claim,  
4 the second payment to be made twelve months following the date  
5 of the first payment and the third payment to be made twenty-  
6 four months following the date of the first payment.

7 F. Any amount of a credit claim that is carried  
8 forward pursuant to Subsection E of this section shall be  
9 subject to the limit on the aggregate amount of credit claims  
10 that may be authorized for payment pursuant to Subsection D of  
11 this section in the fiscal year in which that amount is paid.

12 G. A credit claim shall only be considered  
13 received by the department if the credit claim is made on a  
14 complete tax return filed timely after the close of the  
15 taxable year. All direct production expenditures and  
16 postproduction expenditures incurred during the taxable year  
17 by a film production company shall be submitted as part of the  
18 same income tax return and paid pursuant to this section. A  
19 credit claim shall not be divided and submitted with multiple  
20 returns or in multiple years.

21 H. For purposes of determining the payment of  
22 credit claims pursuant to Subsection E of this section, the  
23 secretary of taxation and revenue may require that credit  
24 claims of affiliated persons be combined into one claim if  
25 necessary to accurately reflect closely integrated activities

1 of affiliated persons.

2 I. The film production tax credit shall not be  
3 claimed with respect to direct production expenditures or  
4 postproduction expenditures for which the film production  
5 company has delivered a nontaxable transaction certificate  
6 pursuant to Section 7-9-86 NMSA 1978.

7 J. A long-form narrative film production for which  
8 the film production tax credit is claimed pursuant to  
9 Paragraph (1) of Subsection A of this section shall contain an  
10 acknowledgment that the production was filmed in New Mexico.

11 K. To be eligible for the film production tax  
12 credit, a film production company shall submit to the division  
13 information required by the division to demonstrate conformity  
14 with the requirements of this section, including detailed  
15 information on each direct production expenditure and each  
16 postproduction expenditure. A film production company shall  
17 provide to the division a projection of the film production  
18 tax credit claim the film production company plans to submit  
19 in the fiscal year. In addition, the film production company  
20 shall agree in writing:

21 (1) to pay all obligations the film  
22 production company has incurred in New Mexico;

23 (2) to publish, at completion of principal  
24 photography, a notice at least once a week for three  
25 consecutive weeks in local newspapers in regions where filming

1 has taken place to notify the public of the need to file  
2 creditor claims against the film production company by a  
3 specified date;

4 (3) that outstanding obligations are not  
5 waived should a creditor fail to file by the specified date;  
6 and

7 (4) to delay filing of a claim for the film  
8 production tax credit until the division delivers written  
9 notification to the taxation and revenue department that the  
10 film production company has fulfilled all requirements for the  
11 credit.

12 L. The division shall determine the eligibility of  
13 the company and shall report this information to the taxation  
14 and revenue department in a manner and at times the economic  
15 development department and the taxation and revenue department  
16 shall agree upon. The division shall also post on its web  
17 site all information provided by the film production company  
18 that does not reveal revenue, income or other information that  
19 may jeopardize the confidentiality of income tax returns,  
20 including that the division shall report monthly the projected  
21 amount of credit claims for the fiscal year.

22 M. To provide guidance to film production  
23 companies regarding the amount of credit capacity remaining in  
24 the fiscal year, the taxation and revenue department shall  
25 post monthly on that department's web site the aggregate

1 amount of credits claimed and processed for the fiscal year.

2 N. To receive a film production tax credit, a film  
3 production company shall apply to the taxation and revenue  
4 department on forms and in the manner the department may  
5 prescribe. The application shall include a certification of  
6 the amount of direct production expenditures or postproduction  
7 expenditures made in New Mexico with respect to the film  
8 production for which the film production company is seeking  
9 the film production tax credit; provided that for the film  
10 production tax credit, the application shall be submitted  
11 within one year of the date of the last direct production  
12 expenditure in New Mexico or the last postproduction  
13 expenditure in New Mexico. If the amount of the requested tax  
14 credit exceeds five million dollars (\$5,000,000), the  
15 application shall also include the results of an audit,  
16 conducted by a certified public accountant licensed to  
17 practice in New Mexico, verifying that the expenditures have  
18 been made in compliance with the requirements of this section.  
19 If the requirements of this section have been complied with,  
20 subject to the provisions of Subsection D of this section, the  
21 taxation and revenue department shall approve the film  
22 production tax credit and issue a document granting the tax  
23 credit.

24 O. The film production company may apply all or a  
25 portion of the film production tax credit granted against

1 personal income tax liability or corporate income tax  
2 liability. If the amount of the film production tax credit  
3 claimed exceeds the film production company's tax liability  
4 for the taxable year in which the credit is being claimed, the  
5 excess shall be refunded.

6 P. As applied to direct production expenditures  
7 for the services of performing artists, the film production  
8 tax credit authorized by this section shall not exceed five  
9 million dollars (\$5,000,000) for services rendered by all  
10 performing artists in a production for which the film  
11 production tax credit is claimed."

12 SECTION 3. A new section of Chapter 7, Article 2F NMSA  
13 1978 is enacted to read:

14 "SHORT TITLE.--Chapter 7, Article 2F NMSA 1978 may be  
15 cited as the "Film Production Tax Credit Act"."

16 SECTION 4. Section 7-2F-2 NMSA 1978 (being Laws 2003,  
17 Chapter 127, Section 2, as amended) is amended to read:

18 "7-2F-2. DEFINITIONS.--As used in the Film Production  
19 Tax Credit Act:

20 A. "affiliated person" means a person who directly  
21 or indirectly owns or controls, is owned or controlled by or  
22 is under common ownership or control with another person  
23 through ownership of voting securities or other ownership  
24 interests representing a majority of the total voting power of  
25 the entity;

1           B. "commercial audiovisual product" means a film  
2 or a videogame intended for commercial exploitation;

3           C. "direct production expenditure":

4                 (1) except as provided in Paragraph (2) of  
5 this subsection, means a transaction that is subject to  
6 taxation in New Mexico, including:

7                         (a) payment of wages, fringe benefits  
8 or fees for talent, management or labor to a person who is a  
9 New Mexico resident;

10                        (b) payment to a personal services  
11 business for the services of a performing artist if the  
12 personal services business: 1) pays gross receipts tax in New  
13 Mexico on the portion of those payments qualifying for the tax  
14 credit; and; 2) deducts and remits withheld income tax  
15 pursuant to Subsection I of Section 7-3A-3 NMSA 1978; and

16                        (c) any of the following provided by a  
17 vendor: 1) the story and scenario to be used for a film; 2)  
18 set construction and operations, wardrobe, accessories and  
19 related services; 3) photography, sound synchronization,  
20 lighting and related services; 4) editing and related  
21 services; 5) rental of facilities and equipment; 6) leasing of  
22 vehicles, not including the chartering of aircraft for out-of-  
23 state transportation; however, New Mexico-based chartered  
24 aircraft for in-state transportation directly attributable to  
25 the production shall be considered a direct production

1 expenditure; provided that only the first one hundred dollars  
2 (\$100) of the daily expense of leasing a vehicle for passenger  
3 transportation on roadways in the state may be claimed as a  
4 direct production expenditure; 7) food or lodging; provided  
5 that only the first one hundred fifty dollars (\$150) of  
6 lodging per individual per day is eligible to be claimed as a  
7 direct production expenditure; 8) commercial airfare if  
8 purchased through a New Mexico-based travel agency or travel  
9 company for travel to and from New Mexico or within New Mexico  
10 that is directly attributable to the production; 9) insurance  
11 coverage and bonding if purchased through a New Mexico-based  
12 insurance agent, broker or bonding agent; and 10) other direct  
13 costs of producing a film in accordance with generally  
14 accepted entertainment industry practice; and

15 (2) does not include an expenditure for:

16 (a) a gift with a value greater than  
17 twenty-five dollars (\$25.00);

18 (b) artwork or jewelry, except that a  
19 work of art or a piece of jewelry may be a direct production  
20 expenditure if: 1) it is used in the film production; and 2)  
21 the expenditure is less than two thousand five hundred dollars  
22 (\$2,500); or

23 (c) entertainment, amusement or  
24 recreation;

25 D. "division" means the New Mexico film division

1 of the economic development department;

2 E. "federal new markets tax credit program" means  
3 the tax credit program codified as Section 45D of the United  
4 States Internal Revenue Code of 1986, as amended;

5 F. "film" means a single medium or multimedia  
6 program, excluding advertising messages other than national or  
7 regional advertising messages intended for exhibition, that:

8 (1) is fixed on film, digital medium,  
9 videotape, computer disc, laser disc or other similar delivery  
10 medium;

11 (2) can be viewed or reproduced;

12 (3) is not intended to and does not violate  
13 a provision of Chapter 30, Article 37 NMSA 1978; and

14 (4) is intended for reasonable commercial  
15 exploitation for the delivery medium used;

16 G. "film production company" means a person that  
17 produces one or more films or any part of a film;

18 H. "fiscal year" means the state fiscal year  
19 beginning on July 1;

20 I. "New Mexico resident" means an individual who is  
21 domiciled in this state during any part of the taxable year or  
22 an individual who is physically present in this state for one  
23 hundred eighty-five days or more during the taxable year; but  
24 any individual, other than someone who was physically present  
25 in the state for one hundred eighty-five days or more during



1 the taxable year and who, on or before the last day of the  
2 taxable year, changed the individual's place of abode to a  
3 place without this state with the bona fide intention of  
4 continuing actually to abide permanently without this state is  
5 not a resident for the purposes of the Film Production Tax  
6 Credit Act for periods after that change of abode;

7 J. "personal services business" means a business  
8 organization that receives payments for the services of a  
9 performing artist;

10 K. "physical presence" means a physical address in  
11 New Mexico, but does not include a post office box or other  
12 mail drop enterprise unless the physical presence is for a  
13 business and the business is providing mail services to a film  
14 production company from which a vendor conducts business,  
15 stores inventory or otherwise creates, assembles or offers for  
16 sale the product purchased or leased by a film production  
17 company;

18 L. "postproduction expenditure" means an  
19 expenditure for editing, Foley recording, automatic dialogue  
20 replacement, sound editing, special effects, including  
21 computer-generated imagery or other effects, scoring and music  
22 editing, beginning and end credits, negative cutting,  
23 soundtrack production, dubbing, subtitling or addition of  
24 sound or visual effects; but not including an expenditure for  
25 advertising, marketing, distribution or expense payments; and

1 M. "vendor" means a person selling goods or  
2 services that has a physical presence in New Mexico and is  
3 subject to gross receipts tax pursuant to the Gross Receipts  
4 and Compensating Tax Act and income tax pursuant to the Income  
5 Tax Act or corporate income tax pursuant to the Corporate  
6 Income and Franchise Tax Act."

7 SECTION 5. Section 7-3A-2 NMSA 1978 (being Laws 2003,  
8 Chapter 86, Section 5, as amended) is amended to read:

9 "7-3A-2. DEFINITIONS.--As used in the Oil and Gas  
10 Proceeds and Pass-Through Entity Withholding Tax Act:

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

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

17 C. "net income" means, for any pass-through  
18 entity, the income reported to an owner by the pass-through  
19 entity for federal income tax purposes, including ordinary  
20 business income or loss, net rental income or loss, guaranteed  
21 payments to a partner of a partnership, dividends, royalties  
22 and capital gain or loss, less associated deductions, plus  
23 interest earned on a state or local bond, less interest earned  
24 on a bond issued by the state of New Mexico or its political  
25 subdivisions, less income from obligations of the United

1 States less expenses incurred to earn that income; in the case  
2 of a subchapter S corporation, "net income" also includes  
3 income taxable to the corporation for federal income tax  
4 purposes;

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

8 E. "oil and gas proceeds" means any amount derived  
9 from oil and gas production from any well located in New  
10 Mexico and payable as royalty interest, overriding royalty  
11 interest, production payment interest, working interest or any  
12 other obligation expressed as a right to a specified interest  
13 in the cash proceeds received from the sale of oil and gas  
14 production or in the cash value of that production, subject to  
15 all taxes withheld therefrom pursuant to law; "oil and gas  
16 proceeds" excludes "net profits interest" and other types of  
17 interest the extent of which cannot be determined with  
18 reference to a specified share of the oil and gas production  
19 and excludes any amounts deducted by the remitter from  
20 payments to interest owners or paid by interest owners to the  
21 remitter that are for expenses related to the production from  
22 the well or cessation of production from the well for which  
23 the interest owner is liable;

24 F. "owner" means a partner in a partnership not  
25 taxed as a corporation for federal income tax purposes for the

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

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

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

15 (1) a sole proprietorship;

16 (2) an estate or trust that does not  
17 distribute income to beneficiaries;

18 (3) a corporation, limited liability  
19 company, partnership or other entity not a sole proprietorship  
20 taxed as a corporation for federal income tax purposes for the  
21 taxable year;

22 (4) a partnership that is organized as an  
23 investment partnership in which the partners' income is  
24 derived solely from interest, dividends and sales of  
25 securities;

1 (5) a single member limited liability  
2 company that is treated as a disregarded entity for federal  
3 income tax purposes; or

4 (6) a publicly traded partnership as defined  
5 in Subsection (b) of Section 7704 of the Internal Revenue  
6 Code;

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

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

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

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

24 SECTION 6. Section 7-3A-3 NMSA 1978 (being Laws 2003,  
25 Chapter 86, Section 6, as amended) is amended to read:

1 "7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS AND NET  
2 INCOME.--

3 A. Except as otherwise provided in this section, a  
4 remitter shall deduct and withhold from each payment of oil  
5 and gas proceeds being made to a remittee an amount equal to  
6 the rate specified in Subsection D of this section multiplied  
7 by the amount prior to withholding that otherwise would have  
8 been payable to the remittee.

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

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

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

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

24 (3) any federally recognized Indian nation,  
25 tribe or pueblo or any agency, instrumentality or political

1 subdivision thereof; or

2 (4) organizations that have been granted  
3 exemption from the federal income tax by the United States  
4 commissioner of internal revenue as organizations described in  
5 Section 501(c)(3) of the Internal Revenue Code.

6 D. Except as provided in Subsection I of this  
7 section, the rate of withholding shall be set by a department  
8 directive; provided that the rate may not exceed the higher of  
9 the maximum bracket rate set by Section 7-2-7 NMSA 1978 for  
10 the taxable year or the maximum bracket rate set by Section  
11 7-2A-5 NMSA 1978 for the taxable year; and provided further  
12 that remitters shall be given ninety days' notice of a change  
13 in the rate.

14 E. Except as provided in Subsection I of this  
15 section, if a pass-through entity has been in existence for at  
16 least one full taxable year prior to the current calendar  
17 year, the pass-through entity may use one-fourth of its total  
18 net income for the preceding full taxable year to compute the  
19 amount required to be deducted and withheld each quarter under  
20 Subsection B of this section.

21 F. If a remitter receives oil and gas proceeds  
22 from which an amount has been deducted and withheld pursuant  
23 to the Oil and Gas Proceeds and Pass-Through Entity  
24 Withholding Tax Act or a pass-through entity has deducted and  
25 withheld an amount pursuant to the Oil and Gas Proceeds and

1 Pass-Through Entity Withholding Tax Act from the net income of  
2 an owner that is also a pass-through entity, the remitter or  
3 payee pass-through entity may take credit for that amount in  
4 determining the amount the remitter or payee pass-through  
5 entity must withhold and deduct pursuant to this section.

6 G. If the amount to be withheld from all payments  
7 to a remittee in a calendar quarter has not exceeded thirty  
8 dollars (\$30.00) and a payment to a remittee is less than ten  
9 dollars (\$10.00), no withholding is required. If the amount  
10 to be withheld from an owner's share of net income in any  
11 calendar quarter is less than thirty dollars (\$30.00), no  
12 withholding is required.

13 H. Except as provided in Subsection I of this  
14 section, at the option of a remitter or pass-through entity, a  
15 remitter or pass-through entity may agree with a remittee or  
16 an owner that the remittee or owner pay the amount that the  
17 remitter or pass-through entity would have been required to  
18 withhold and remit to the department on behalf of the remittee  
19 or owner pursuant to the Oil and Gas Proceeds and Pass-Through  
20 Entity Withholding Tax Act. The payments by the remittee or  
21 owner shall be remitted on the dates set forth in Section  
22 7-3A-6 NMSA 1978 on forms and in the manner required by the  
23 department.

24 I. Excluding wages, a personal services business  
25 shall deduct and withhold an amount equal to the owner's share



1 of net income multiplied by the highest rate for single  
2 individuals provided in Section 7-2-7 NMSA 1978."

3 SECTION 7. APPLICABILITY.--The provisions of Sections 5  
4 and 6 of this act apply to amounts paid by a personal services  
5 business on and after July 1, 2011.

6 SECTION 8. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2011. \_\_\_\_\_

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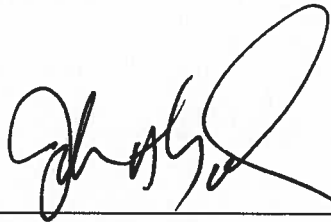
607 & 622  
SECTION 7-2-7 NMSA 1978  
APPLICABILITY



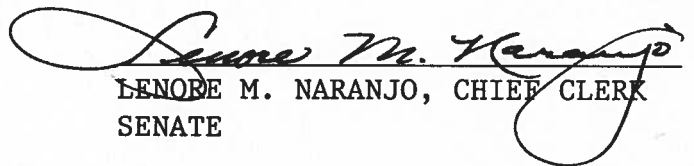
BEN LUJAN, SPEAKER  
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES



JOHN A. SANCHEZ, PRESIDENT  
SENATE



LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this 8<sup>th</sup> day of April, 2011



SUSANA MARTINEZ, GOVERNOR  
STATE OF NEW MEXICO

OFFICE OF THE GOVERNOR  
STATE OF NEW MEXICO  
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SECRETARY OF STATE  
STATE OF NEW MEXICO