SLS 13RS-83 **ORIGINAL**

Regular Session, 2013

SENATE BILL NO. 106

BY SENATOR PEACOCK

TAX/TAXATION. Requires deduction and withholding of oil and gas proceeds of out-of-state entities. (gov sig)

AN ACT

To enact Subpart F-1 of Part I of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 47:120.11, relative to income tax; to require deduction and withholding of oil and gas proceeds and certain person's allocable share of net income from oil and gas proceeds; to provide for interest and penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart F-1 of Part I of Chapter 1 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, comprised of R.S. 47:120.11, is hereby enacted to read as follows:

SUBPART F-1. WITHHOLDING INCOME TAX ON OIL AND GAS PROCEEDS

§120.11. Withholding income tax on oil and gas proceeds

A. As used in this Section, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(2) "Net income" means, for any pass-through entity:

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(a) In the case of an owner that is taxed as a corporation for federal income tax purposes, "net income" as defined for purposes of Louisiana Corporate Income Tax.

(b) For all other owners, "net income" as defined for purposes of Louisiana Individual Income Tax.

(3) "Oil and gas" means crude oil, natural gas, liquid hydrocarbons, or any combination thereof, or carbon dioxide.

(4)(a) "Oil and gas proceeds" means any amount derived from oil and gas production from any well located in Louisiana and payable as a mineral lease, royalty interest, oil payment, 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.

(b) "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.

(5) "Owner" means the following:

(a) A partner in a partnership not taxed as a corporation for federal income tax purposes for the taxable year.

(b) 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.

(c) A member of a limited liability company or any similar person holding an ownership interest in any pass-through entity.

(6) "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.

(7) "Pass-through entity" means any business association other than the following:

(a) A sole proprietorship.

(b) An estate or trust that does not distribute income to beneficiaries.

(c) 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.

(d) A partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends, and sales of securities.

(e) A single member limited liability company that is treated as a disregarded entity for federal income tax purposes.

(f) A publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code.

(8) In addition to the definition provided by R.S. 47:2(2), "person" also means a club, cooperative association, joint venture, receiver, limited liability company, limited liability partnership, or gas, water or electric utility owned or operated by a parish 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.

(9) "Remittee" means a person that is entitled to payment of oil and gas proceeds by a remitter.

(10) "Remitter" means a person that pays oil and gas proceeds to any remittee.

B. Notwithstanding any other provision of law to the contrary, there shall be withholding from payments of oil and gas proceeds as provided for in

this Section.

C.(1)(a) Except as otherwise provided in this Section, beginning January 1, 2014, every remitter making payment of oil and gas proceeds shall deduct and withhold from such proceeds a tax in the amount of four percent.

(b) Except as otherwise provided in this Section, beginning January 1, 2014, a pass-through entity shall deduct and withhold from each owner's allocable share of net income from oil and gas proceeds for a calendar year an amount equal to the rate specified in Subparagraph (a) of this Paragraph multiplied by the owner's allocable share of such net income.

(2) If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to this Section, or a pass-through entity has deducted and withheld an amount pursuant to this Section from the allocable share of net income from oil and gas proceeds 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.

(3) If the amount to be withheld from all payments to a remittee in a calendar quarter does not exceed thirty dollars and a payment to a remittee is less than ten dollars, no withholding is required. If the amount to be withheld from an owner's allocable share of net income from oil and gas proceeds in any calendar year is less than one hundred dollars, no withholding is required.

D.(1) Income on which any tax is required to be withheld by a remitter or pass-through entity pursuant to this Section shall be included in the income tax return of the taxpayer, but the amount of tax deducted or withheld during any calendar year shall be allowed as a credit to such taxpayer against his income tax liability for his taxable year.

(2) To the extent that such credit, together with other credits allowed by law, is less than the amount of the taxpayer's income tax liability for the taxable year, the amount of such underpayment shall be paid on or before the date

prescribed by law for filing of income tax returns for such taxable year and shall be delinquent and past due after such date.

(3) To the extent that the credit, together with other credits allowed by law, is in excess of the taxpayer's income tax liability for the taxable period the overpayment shall be refunded in the manner provided by law.

E.(1)(a) A remittee and a pass-through entity shall be liable for the payment to the secretary of the amounts required to be withheld pursuant to this Section unless the remitter's or pass-through entity's failure to deduct and withhold the required amounts is due to reasonable cause.

(b) A remittee or a pass-through entity which has withheld and paid such amounts to the secretary shall not otherwise be liable to any person for the amounts of any such payments.

(c) Any amounts withheld in accordance with the provisions of this Section shall be deemed to be held in trust for the secretary.

(2) Upon failure of a remittee and a pass-through entity to pay as provided for in this Section any amounts withheld or required to be withheld, the remittee or the pass-through entity shall become personally liable for such amounts with the interest, penalties, and attorney fees payable as provided generally in the Subtitle, and the amount thereof may be determined, computed, and collected by any method generally provided for in this Subtitle.

(3) If the remitter or pass-through entity in violation of the provisions of this Section fails to deduct and withhold the tax under this Section, and thereafter the tax against which such amount may be credited is paid, the amount so required to be deducted and withheld shall not be collected from the remitter or pass-through entity, but this Paragraph shall in no case relieve the remitter or pass-through entity from liability for any penalties or other additions to the amount which would have been otherwise applicable because of such failure to deduct and withhold.

F. The obligation to deduct and withhold from payment of oil and gas

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proceeds or an owner's share of allocable net income shall not apply to payments that are made to the following entities:

(1) A corporation whose principal place of business is in Louisiana, or an individual who is a resident of Louisiana.

(2) Remittees with a Louisiana 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.

(5) Organizations that have been granted exemption from 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.

G.(1) Every remittee or pass-through entity required to deduct and withhold any tax pursuant to this Section shall make a calendar quarterly return to the secretary on a form prescribed by him.

(2) Date for filing quarterly returns. The due date for filing the quarterly returns required shall be the last day of the month following the close of the calendar quarterly reporting period.

(3) Every remittee or pass-through entity required to deduct and withhold any tax pursuant to this Section and who so deducts and withholds shall pay the tax due on the return as prescribed by the secretary. The tax paid shall in no event be less than the amount actually withheld.

H.(1)(a) Every remittee or pass-through entity shall also be required to

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file an annual return on a form prescribed by the secretary. The annual return shall consist of a reconciliation of all previously filed quarterly returns for the calendar year and copies of the receipts required to be furnished pursuant to this Section for that reporting period.

(b) The secretary may grant a reasonable extension of time, not exceeding thirty days, for filing the annual return.

(c) The reporting requirements may be waived by the secretary for a remittee or pass-through entity if hardship is shown by the remittee or pass-through entity in a request for waiver.

(2) Date for filing annual returns. On or before the first business day following February twenty-seventh of each year for the preceding calendar year, a remittee or pass-through entity shall file an annual return with the secretary.

I.(1) A late penalty shall be imposed for delinquent submission of, or failure to submit quarterly returns and annual returns.

(2) The penalty shall be five dollars for each quarterly return and annual return required to be furnished under this Section. The total penalty imposed pursuant to this Paragraph shall not exceed seven thousand five hundred dollars for each annual period. This penalty shall be an obligation to be collected and accounted for in the same manner as if it were part of the tax due and can be enforced either in a separate action or in the same action for the collection of the tax.

(3) If the failure to timely submit the annual return is attributable, not to the negligence of the remittee or pass-through entity, but to other causes set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payments of the whole or any part of the specific penalty provided for such failure. In any case where the penalty exceeds five thousand dollars, it may be waived by the secretary only after approval by the Board of Tax Appeals.

J. If the secretary in any case believes that the collection of the tax required to be withheld under this Section is in jeopardy for any reason, he may require the remittee or pass-through entity to make a return and pay the required tax at any time.

K. Use of prescribed forms. The secretary shall prescribe the forms to be used in compliance with the provisions of this Section. The secretary shall also promulgate rules and regulations in the manner provided for in the Administrative Procedure Act to prescribe the forms and any alternative technological, mathematical, or date-driven methods for filing, signing, and submitting any return, report, statement, or other document required under this Section. The secretary may also prescribe the types of media and record layout to be used in the submission of the returns and receipt.

Section 2. This Act shall not become effective if any bill originating in the 2013 Regular Session of the Legislature which repeals Louisiana corporate and individual income tax is enacted and becomes law.

Section 3. Unless the condition provided for in Section 2 occurs: This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

DIGEST

Proposed law requires deduction and withholding of oil and gas proceeds paid to out-of-state entities.

Proposed law requires every "remitter" making payment of "oil and gas proceeds" to deduct and withhold a tax in the amount of four percent beginning January 1, 2014.

"Oil and gas proceeds" is defined as any amount derived from oil and gas production from any well located in Louisiana and payable as a mineral lease, royalty interest, etc., 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. The term 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 a "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.

"Remitter" is defined as a person that pays oil and gas proceeds to any "remittee".

"Remittee" is defined as a person that is entitled to payment of oil and gas proceeds by a remitter.

Proposed law also requires a "pass-through entity" to deduct and withhold 4% from each "owner's" allocable share of "net income" from "oil and gas proceeds" for a calendar year.

"Pass-through entity" is defined as any business association other than the following:

(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.

(6) A publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code.

"Owner" is defined as the following:

(1) A partner in a partnership not taxed as a corporation for federal income tax purposes for the taxable year.

(2) 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.

(3) A member of a limited liability company or any similar person holding an ownership interest in any pass-through entity.

Proposed law excludes from the obligation to withhold payments that are made to the following entities:

(1) A corporation whose principal place of business is in Louisiana, or an individual who is a resident of Louisiana.

(2) Remittees with a Louisiana 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.

(5) Organizations that have been granted exemption from federal income tax by the United States Commissioner of Internal Revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code unless the income constitutes unrelated business income.

In addition, no withholding is required if the amount to be withheld from all payments to a remittee in a calendar quarter does not exceed $30 and a payment to a remittee is less than $10.

Proposed law provides that a remittee and a pass-through entity is liable for the payment of amounts required to be withheld unless the remitter's or pass-through entity's failure to deduct and withhold the required amounts is due to reasonable cause. Failure to withhold and pay makes the remitter or pass-through entity personally liable for the amounts with the interest, penalties, and attorney fees payable as provided generally in the income tax law. If the tax is thereafter paid by the taxpayer, the amount which was required to be withheld is not collected from the remitter or pass-through entity, but they are not relieved from liability for any penalties or other additions to the amount which would have been otherwise applicable because of the failure to withhold.

Proposed law requires quarterly and annual returns on forms prescribed by the secretary of DOR.

Proposed law requires a late penalty to be imposed for delinquent submission of, or failure to submit quarterly returns and annual returns of $5 for each quarterly return or annual return. The total penalty imposed cannot exceed $7,500 for each annual period. If the failure to timely submit the annual return is attributable, not to the negligence of the remittee or pass-through entity, but to other causes set forth in written form and considered reasonable by the secretary, the secretary may remit or waive payments of the whole or any part of the specific penalty provided for such failure. In any case where the penalty exceeds $5,000, it may be waived by the secretary only after approval by the Board of Tax Appeals.

Proposed law requires the secretary to prescribe the forms to be used to comply with the proposed law. The secretary must also promulgate rules and regulations in accordance with the APA to prescribe the forms and any alternative technological, mathematical, or date-driven methods for filing, signing, and submitting any return, report, statement, or other document required under this Section. The secretary may also prescribe the types of media and record layout to be used in the submission of the returns.

Effective upon signature of the governor or lapse of time for gubernatorial action unless any bill originating in the 2013 Regular Session which repeals Louisiana corporate and individual income tax is enacted and becomes law.

(Adds R.S. 47:120.11)