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)