
SENATE FLOOR AMENDMENTS

Amendments proposed by Senator Peacock to Engrossed House Bill No. 681 by Representative Ortego

1 AMENDMENT NO. 1

2 On page 1, line 2, after R.S. 47:6035(B)(1)" insert the following:

3 "and to enact Subpart F-1 of Part I of Chapter 1 of Subtitle II of Title 47 of the
4 Louisiana Revised Statutes of 1950, to be comprised of R.S. 47:120.11"

5 AMENDMENT NO. 2

6 On page 1, line 2, after "tax credits;" insert the following:

7 "to provide credit from income tax for certain proceeds deducted and withheld; to
8 require the deduction and withholding of oil and gas proceeds and certain person's
9 allocable share of net income from oil and gas proceeds; to provide for interest and
10 penalties;"

11 AMENDMENT NO. 3

12 On page 1, line 7, after "reenacted" insert the following:

13 "and Subpart F-1 of Part I of Chapter 1 of Subtitle II of Title 47 of the Louisiana
14 Revised Statutes of 1950, comprised of R.S. 47:120.11 is hereby enacted"

15 AMENDMENT NO. 4

16 On page 1, between lines 7 and 8, insert the following:

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

19 §120.11. Withholding income tax on oil and gas proceeds

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

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

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

26 (3)(a) "Oil and gas proceeds" means any amount derived from oil and gas
27 production from any well located in Louisiana and payable as a mineral lease,
28 royalty interest, oil payment, overriding royalty interest, production payment interest,
29 working interest, or any other obligation expressed as a right to a specified interest
30 in the cash proceeds received from the sale of oil and gas production or in the cash
31 value of that production.

32 (b) "Oil and gas proceeds" excludes "net profits interest" and other types of
33 interest the extent of which cannot be determined with reference to a specified share
34 of the oil and gas production and excludes any amounts deducted by the remitter
35 from payments to interest owners or paid by interest owners to the remitter that are
36 for expenses related to the production from the well or cessation of production from
37 the well for which the interest owner is liable.

38 (4) In addition to the definition provided by R.S. 47:2(2), "person" also
39 means a club, cooperative association, joint venture, receiver, limited liability
40 company, limited liability partnership, or gas, water or electric utility owned or
41 operated by a parish or municipality and, to the extent permitted by law, a federal,
42 state, or other governmental unit or subdivision, or an agency, a department, or an
43 instrumentality thereof.

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

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

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

6 C.(1) Except as otherwise provided in this Section, beginning January 1,
7 2014, every remitter making payment of oil and gas proceeds shall deduct and
8 withhold from such proceeds a tax in the amount of four percent.

9 (2) If a remitter receives oil and gas proceeds from which an amount has been
10 deducted and withheld pursuant to this Section, the remitter may take credit for that
11 amount in determining the amount the remitter must withhold and deduct pursuant
12 to this Section.

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

17 (2) To the extent that such credit, together with other credits allowed by law,
18 is less than the amount of the taxpayer's income tax liability for the taxable year, the
19 amount of such underpayment shall be paid on or before the date prescribed by law
20 for filing of income tax returns for such taxable year and shall be delinquent and past
21 due after such date.

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

25 E.(1)(a) A remitter shall be liable for the payment to the secretary of the
26 amounts required to be withheld pursuant to this Section unless the remitter's failure
27 to deduct and withhold the required amounts is due to reasonable cause.

28 (b) A remitter which has withheld and paid such amounts to the secretary
29 shall not otherwise be liable to any person for the amounts of any such payments.

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

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

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

44 F. The obligation to deduct and withhold from payment of oil and gas
45 proceeds shall not apply to payments that are made to the following entities:

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

48 (2) Remittees with a Louisiana address as shown on internal revenue service
49 form 1099-Misc, or a successor form, or on a pro forma 1099-Misc, or a successor
50 form, for those entities that do not receive an internal revenue service form
51 1099-Misc.

52 (3) The United States, this state or any agency, instrumentality or political
53 subdivision of either.

54 (4) Any federally recognized Indian nation, tribe, or pueblo, or any agency,
55 instrumentality or political subdivision thereof.

56 (5) Organizations that have been granted exemption from federal income tax
57 by the United States Commissioner of Internal Revenue as organizations described
58 in Section 501(c)(3) of the Internal Revenue Code. However, the obligation to
59 deduct and withhold from payments of oil and gas proceeds to organizations
60 identified in this Paragraph applies if such income constitutes unrelated business
61 income.

1 G.(1) Every remitter required to deduct and withhold any tax pursuant to this
2 Section shall make a calendar quarterly return to the secretary on a form prescribed
3 by him.

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

7 (3) Every remitter required to deduct and withhold any tax pursuant to this
8 Section and who so deducts and withholds shall pay the tax due on the return as
9 prescribed by the secretary. The tax paid shall in no event be less than the amount
10 actually withheld.

11 H.(1)(a) Every remitter shall also be required to file an annual return on a
12 form prescribed by the secretary. The annual return shall consist of a reconciliation
13 of all previously filed quarterly returns for the calendar year and copies of the
14 receipts required to be furnished pursuant to this Section for that reporting period.

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

17 (c) The reporting requirements may be waived by the secretary for a remitter
18 if hardship is shown by the remitter in a request for waiver.

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

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

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

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

36 J. If the secretary in any case believes that the collection of the tax required
37 to be withheld under this Section is in jeopardy for any reason, he may require the
38 remitter to make a return and pay the required tax at any time.

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

47 * * *

48 AMENDMENT NO. 5

49 On page 2, after line 9, insert the following:

50 "Section 3. The provisions of this Act are severable. If any provision or item
51 of this Act, or the application thereof, is held invalid, such invalidity shall not affect
52 other provisions, items, or applications of this Act which can be given effect without
53 the invalid provision, item, or application."