SENATE BILL 161

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Gregg Schmedes

AN ACT

RELATING TO TAXATION; ALLOWING EMPLOYERS WITH FIFTY OR FEWER EMPLOYEES TO ELECT TO NOT WITHHOLD THOSE EMPLOYEES' WAGES FOR PAYMENT OF INCOME TAX.

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

SECTION 1. Section 7-3-3 NMSA 1978 (being Laws 1961, Chapter 243, Section 3, as amended) is amended to read:

"7-3-3. TAX WITHHELD AT SOURCE.--

A. Every employer who deducts and withholds a portion of an employee's wages for payment of income tax under the provisions of the Internal Revenue Code shall deduct and withhold an amount for each payroll period computed from a state withholding tax table furnished by the department; provided:

(1) if the employee instructs the employer to
withhold a greater amount, the employer shall deduct and
withhold the greater amount;

(2) if the employee is not a resident of New
Mexico and is to perform services in New Mexico for fifteen or
fewer days cumulatively during the calendar year, the employer
is not required to deduct and withhold an amount from that
employee's wages; [and]

(3) if the aggregate monthly amount withheld
under this section would be less than one dollar ($1.00) for an
employee, the employer shall not be required to deduct and
withhold wages in regard to that employee; and

(4) if the employer has fifty employees or
fewer, the employer may elect not to withhold an amount from
those employee's wages. An employer that makes this election
shall notify the department, on a form and in a manner
prescribed by the department, and shall provide a copy of the
notification to each employee.

B. The department shall devise and furnish a state
withholding tax table based on statutes made and provided to
employers required to withhold amounts under this section.
This table shall be devised to provide for a yearly aggregate
withholding that will approximate the state income tax
liability of average taxpayers in each exemption category.

C. If an individual requests in writing that the
payor deduct and withhold an amount from the amount of the
pension or annuity due the individual, the payor making payment of a pension or annuity to an individual domiciled in New Mexico shall deduct and withhold the amount requested to be deducted and withheld, provided that the payor is not required to deduct and withhold any amount less than ten dollars ($10.00) per payment. The written request shall include the payee's name, current address, taxpayer identification number and, if applicable, the contract, policy or account number to which the request applies.

D. Every person in New Mexico who is required by the provisions of the Internal Revenue Code to deduct and withhold federal tax from payment of winnings that are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to six percent of the winnings, except that an Indian nation, tribe or pueblo or an agency, department, subdivision or instrumentality thereof is not required to deduct or withhold from payments made to members or spouses of members of that Indian nation, tribe or pueblo."

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2022.