

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 173

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Robert M. Burpo

AN ACT

**RELATING TO TAXATION; AMENDING PROVISIONS OF THE WITHHOLDING
TAX ACT TO PROVIDE FOR OPTIONAL WITHHOLDING FOR CERTAIN
INTEREST.**

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

**Section 1. Section 7-3-2 NMSA 1978 (being Laws 1990,
Chapter 64, Section 1, as amended) is amended to read:**

**"7-3-2. DEFINITIONS. -- As used in the Withholding Tax
Act:**

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

**B. "employee" means either an individual domiciled
within the state who performs services either within or**

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 without the state for an employer or, to the extent permitted
2 by law, an individual domiciled outside of the state who
3 performs services within the state for an employer;

4 C. "employer" means a person, or an officer, agent
5 or employee of that person, having control of the payment of
6 wages, doing business in or deriving income from sources
7 within the state for whom an individual performs or performed
8 any service as the employee of that person, except that if the
9 person for whom the individual performs or performed the
10 services does not have control over the payment of the wages
11 for such services, "employer" means the person having control
12 of the payment of wages;

13 D. "Internal Revenue Code" means the Internal
14 Revenue Code of 1986, as amended;

15 E. "owner" means a partner in a partnership not
16 taxed as a corporation for federal income tax purposes for the
17 taxable year, a shareholder of an S corporation or of a
18 corporation other than an S corporation that is not taxed as a
19 corporation for federal income tax purposes for the taxable
20 year, a member of a limited liability company or any similar
21 person holding an ownership interest in any pass-through
22 entity;

23 F. "pass-through entity" means any business
24 association other than:

25 (1) a sole proprietorship;

underscored material = new
[bracketed material] = delete

1 (2) an estate or trust; or

2 (3) a corporation, limited liability company,
3 partnership or other entity not a sole proprietorship taxed as
4 a corporation for federal income tax purposes for the taxable
5 year;

6 G. "payor" means any person ~~[making]~~ that:

7 (1) makes payment of a pension or annuity to
8 an individual domiciled in New Mexico; or

9 (2) is required to submit an information
10 return pursuant to Section 6049 of the Internal Revenue Code
11 with respect to interest, as that term is defined in Section
12 6049 of the Internal Revenue Code, and:

13 (a) makes payment of interest, as that
14 term is defined in Section 6049 of the Internal Revenue Code,
15 aggregating one hundred dollars (\$100) or more to any other
16 person during any calendar year; or

17 (b) receives payment of such interest
18 as a nominee and that makes payments aggregating one hundred
19 dollars (\$100) or more during any calendar year to any other
20 person with respect to the interest so received;

21 H. "payroll period" means a period for which a
22 payment of wages is made to the employee by his employer;

23 I. "person" means any individual, club, company,
24 cooperative association, corporation, estate, firm, joint
25 venture, partnership, receiver, syndicate, trust or other

underscored material = new
[bracketed material] = delete

1 association and, to the extent permitted by law, any federal,
2 state or other governmental unit or subdivision or an agency,
3 department or instrumentality thereof;

4 J. "wagerer" means any person who receives
5 winnings that are subject to withholding;

6 K. "wages" means remuneration in cash or other
7 form for services performed by an employee for an employer;

8 L. "winnings that are subject to withholding"
9 means "winnings which are subject to withholding" as that term
10 is defined in Section 3402 of the Internal Revenue Code;

11 M. "withholdee" means:

12 (1) an individual domiciled in New Mexico
13 receiving interest or a pension or annuity from which an
14 amount of tax is deducted and withheld pursuant to the
15 Withholding Tax Act;

16 (2) an employee; and

17 (3) a wagerer; and

18 N. "withholder" means a payor, an employer or any
19 person required to deduct and withhold from winnings that are
20 subject to withholding. "

21 Section 2. Section 7-3-3 NMSA 1978 (being Laws 1961,
22 Chapter 243, Section 3, as amended) is amended to read:

23 "7-3-3. TAX WITHHELD AT SOURCE. --

24 A. Every employer who deducts and withholds a
25 portion of an employee's wages for payment of income tax under

. 134149. 1

underscored material = new
[bracketed material] = delete

1 the provisions of the Internal Revenue Code shall deduct and
2 withhold an amount for each payroll period computed from a
3 state withholding tax table furnished by the department;
4 provided:

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

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

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

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

23 C. If an individual requests in writing that the
24 payor deduct and withhold an amount from the amount of the
25 interest, pension or annuity due the individual, the payor

underscored material = new
[bracketed material] = delete

1 making payment of interest or a pension or annuity to an
2 individual domiciled in New Mexico shall deduct and withhold
3 the amount requested to be deducted and withheld; provided
4 that the payor is not required to deduct and withhold any
5 amount less than ten dollars (\$10.00) per payment. The
6 written request shall include the payee's name, current
7 address, taxpayer identification number and, if applicable,
8 the contract, policy or account number to which the request
9 applies.

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

19 Section 3. Section 7-3-4 NMSA 1978 (being Laws 1961,
20 Chapter 243, Section 4, as amended) is amended to read:

21 "7-3-4. DEDUCTIONS CONSIDERED TAXES.--Amounts deducted
22 under the provisions of the Withholding Tax Act shall be a
23 collected tax. No employee shall have a right of action
24 against the employer for any amount deducted and withheld from
25 the employee's wages. No individual who has instructed a

. 134149. 1

1 payor to deduct and withhold an amount from the interest,
2 pension or annuity due that individual shall have a right of
3 action against a payor for any amount deducted and withheld
4 pursuant to the instruction. No wagerer who receives winnings
5 that are subject to withholding shall have a right of action
6 against the person who deducted and withheld an amount from
7 the wagerer's winnings for the amount deducted and withheld. "

8 Section 4. Section 7-3-7 NMSA 1978 (being Laws 1961,
9 Chapter 243, Section 8, as amended) is amended to read:

10 "7-3-7. STATEMENTS OF WITHHOLDING. --

11 A. Every employer shall file an annual statement
12 of withholding for each employee. This statement shall be in
13 a form prescribed by the department and shall be filed with
14 the department on or before the last day of February of the
15 year following that for which the statement is made. It shall
16 include the total compensation paid the employee and the total
17 amount of tax withheld for the calendar year or portion of a
18 calendar year if the employee has worked less than a full
19 calendar year.

20 B. Every payor shall file an annual statement of
21 withholding for each individual from whom some portion of
22 interest or a pension or an annuity has been deducted and
23 withheld by that payor. This statement shall be in a form
24 prescribed by the department and shall be filed with the
25 department on or before the last day of February of the year

underscored material = new
[bracketed material] = delete

1 following that for which the statement is made. It shall
2 include the total amount of interest, pension or annuity paid
3 to the individual and the amount of tax withheld for the
4 calendar year.

5 C. Every person required to deduct and withhold
6 tax from a payment of winnings that are subject to withholding
7 shall file an annual statement of withholding for each wagerer
8 from whom some portion of a payment of winnings has been
9 deducted and withheld by that person. This statement shall be
10 in a form prescribed by the department and shall be filed with
11 the department on or before the last day of February of the
12 year following that for which the statement is made. It shall
13 include the total amount of winnings paid to the individual
14 and the amount of tax withheld for the calendar year. The
15 department may also require any person who is required to
16 submit an information return to the internal revenue service
17 regarding the winnings of another person to submit copies of
18 the return to the department."