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HOUSE BILL 196

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Rob 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
without the state for an employer or, to the extent permitted

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1 by law, an individual domiciled outside of the state who
2 performs services within the state for an employer;

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

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

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

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

- (1) a sole proprietorship;
- (2) an estate or trust; or

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

5 G. "payor" means any person ~~[making]~~ who:

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

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

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

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

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

22 I. "person" means any individual, club, company,
23 cooperative association, corporation, estate, firm, joint
24 venture, partnership, receiver, syndicate, trust or other
25 association and, to the extent permitted by law, any federal,
state or other governmental unit or subdivision or an agency,
department or instrumentality thereof;

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

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

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

8 M. "withholdee" means:

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

13 (2) an employee; and

14 (3) a wagerer; and

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

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

20 "7-3-3. TAX WITHHELD AT SOURCE.--

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

(1) if the employee instructs the employer

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1 to withhold a greater amount, the employer shall deduct and
2 withhold the greater amount;

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

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

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

18 C. If an individual requests in writing that the
19 payor deduct and withhold an amount from the amount of the
20 interest, pension or annuity due the individual, the payor
21 making payment of interest or a pension or annuity to an
22 individual domiciled in New Mexico shall deduct and withhold
23 the amount requested to be deducted and withheld, provided
24 that the payor is not required to deduct and withhold any
25 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,

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1 the contract, policy or account number to which the request
2 applies.

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

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

15 "7-3-4. DEDUCTIONS CONSIDERED TAXES.--Amounts deducted
16 under the provisions of the Withholding Tax Act shall be a
17 collected tax. No employee shall have a right of action
18 against the employer for any amount deducted and withheld
19 from the employee's wages. No individual who has instructed
20 a payor to deduct and withhold an amount from the interest,
21 pension or annuity due that individual shall have a right of
22 action against a payor for any amount deducted and withheld
23 pursuant to the instruction. No wagerer who receives
24 winnings that are subject to withholding shall have a right
25 of action against the person who deducted and withheld an
amount from the wagerer's winnings for the amount deducted
and withheld."

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

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

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

13 B. Every payor shall file an annual statement of
14 withholding for each individual from whom some portion of
15 interest or a pension or an annuity has been deducted and
16 withheld by that payor. This statement shall be in a form
17 prescribed by the department and shall be filed with the
18 department on or before the last day of February of the year
19 following that for which the statement is made. It shall
20 include the total amount of interest, pension or annuity paid
21 to the individual and the amount of tax withheld for the
22 calendar year.

23 C. Every person required to deduct and withhold
24 tax from a payment of winnings that are subject to
25 withholding shall file an annual statement of withholding for
each wagerer from whom some portion of a payment of winnings
has been deducted and withheld by that person. This

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1 statement shall be in a form prescribed by the department and
2 shall be filed with the department on or before the last day
3 of February of the year following that for which the
4 statement is made. It shall include the total amount of
5 winnings paid to the individual and the amount of tax
6 withheld for the calendar year. The department may also
7 require any person who is required to submit an information
8 return to the internal revenue service regarding the winnings
9 of another person to submit copies of the return to the
10 department."

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