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HOUSE BILL 697

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

INTRODUCED BY

Joseph M Thompson

AN ACT

**RELATING TO TAXATION; AMENDING THE WITHHOLDING TAX ACT TO
EXEMPT CERTAIN PARTNERSHIPS FROM REPORTING AND WITHHOLDING
REQUIREMENTS.**

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

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
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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; or

6 (4) a partnership that is organized as an
7 investment partnership in which the partners' income is
8 derived solely from interest, dividends and sales of
9 securities;

10 G. "payor" means any person making payment of a
11 pension or annuity to an individual domiciled in New Mexico;

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

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

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

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

24 L. "winnings that are subject to withholding"
25 means "winnings which are subject to withholding" as that term

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is defined in Section 3402 of the Internal Revenue Code;

M "withholdee" means:

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

(2) an employee; and

(3) a wagerer; and

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

Section 2. APPLICABILITY. --The provisions of this act apply to taxable years beginning on or after January 1, 2001.