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AN ACT

RELATING TO TAXATION; EXEMPTING PUBLICLY TRADED PARTNERSHIPS
FROM INFORMATION RETURN FILING REQUIREMENTS PURSUANT TO THE
WITHHOLDING TAX ACT.

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

Section 1. Section 7-3-12 NMSA 1978 (being Laws 1999,
Chapter 14, Section 3, as amended) is amended to read:

"7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH
ENTITY--WITHHOLDING.--

A. A pass-through entity doing business in this
state shall file an annual information return with the
department on or before the due date of the entity's federal
return for the taxable year. The information return shall be
signed by the business manager or one of the owners of the
pass-through entity.

B. The information return required by this section
shall contain all information required by the department,
including:

- (1) the pass-through entity's gross income;
- (2) the pass-through entity's net income;
- (3) the amount of each owner's share of the
pass-through entity's net income; and
- (4) the name, address and tax identification
number of each owner entitled to a share of net income.

1 C. A pass-through entity shall provide to each of
2 its owners sufficient information to enable the owner to
3 comply with the provisions of the Income Tax Act and the
4 Corporate Income and Franchise Tax Act with respect to the
5 owner's share of net income.

6 D. The pass-through entity shall deduct and
7 withhold from each nonresident owner's share of net income an
8 amount equal to the owner's share of net income multiplied by
9 a rate set by department regulation. In the case of an owner
10 that is an individual or entity not taxed as a corporation
11 for federal income tax purposes for the taxable year, the
12 rate shall not exceed the rate for composite returns. In the
13 case of an owner that is a corporation or other entity taxed
14 as a corporation for the taxable year, the rate shall not
15 exceed the maximum rate for corporate income tax.

16 E. The provisions of Subsection D of this section
17 shall not apply with regard to:

18 (1) the share of net income of a nonresident
19 owner that has executed an agreement in accordance with
20 regulations or instructions of the department that the owner
21 will report and pay tax, if required, on its own return
22 pursuant to the Income Tax Act or the Corporate Income and
23 Franchise Tax Act;

24 (2) oil and gas proceeds subject to the Oil
25 and Gas Proceeds Withholding Tax Act; or

1 (3) a publicly traded partnership as defined
2 in Subsection (b) of Section 7704 of the Internal Revenue
3 Code, as may be amended or renumbered, and that is not
4 treated as a corporation pursuant to that section.

5 F. Amounts deducted from the owner's share of net
6 income under the provisions of this section shall be a
7 collected tax. No owner shall have a right of action against
8 the pass-through entity for any amount deducted and withheld
9 from the owner's share of net income."

10 Section 2. APPLICABILITY.--The provisions of this act
11 are applicable to taxable years beginning on or after January
12 1, 2005.

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