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SENATE BILL 37

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

LEONARD LEE RAWSON

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING THE INCOME TAX ACT AND CORPORATE INCOME AND FRANCHISE TAX ACT TO MAKE SPECIFIC THE TAXABILITY OF GAMBLING WINNINGS; AMENDING THE WITHHOLDING TAX ACT TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING WINNINGS; DECLARING AN EMERGENCY.

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

Section 1. Section 7-2-11 NMSA 1978 (being Laws 1965, Chapter 202, Section 9, as amended) is amended to read:

"7-2-11. TAX CREDIT--INCOME ALLOCATION AND APPORTIONMENT. --

A. Net income of any individual having income that is taxable both within and without this state shall be apportioned and allocated as follows:

(1) during the first taxable year in which an

Underscored material = new
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1 individual incurs tax liability as a resident, only income
2 earned on or after the date the individual became a resident
3 and, in addition, income earned in New Mexico while a
4 nonresident of New Mexico shall be allocated to New Mexico;

5 (2) except as provided otherwise in Paragraph
6 (1) of this subsection, income other than compensation or
7 gambling winnings shall be allocated and apportioned as provided
8 in the Uniform Division of Income for Tax Purposes Act, but if
9 the income is not allocated or apportioned by that act, then it
10 may be allocated or apportioned in accordance with instructions,
11 rulings or regulations of the secretary;

12 (3) except as provided otherwise in Paragraph
13 (1) of this subsection, compensation and gambling winnings of a
14 resident taxpayer shall be allocated to this state;

15 (4) compensation of a nonresident taxpayer
16 shall be allocated to this state to the extent that such
17 compensation is for activities, labor or personal services
18 within this state; provided, if the activities, labor or
19 services are performed in this state for fifteen or fewer days
20 during the taxpayer's taxable year, the compensation may be
21 allocated to the taxpayer's state of residence;

22 ~~(5) [except as provided otherwise in Paragraph~~
23 ~~(1) of this subsection, nonbusiness income as defined in the~~
24 ~~Uniform Division of Income for Tax Purposes Act not otherwise~~
25 ~~allocated or apportioned in the Uniform Division of Income for~~

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1 ~~Tax Purposes Act shall be equitably apportioned in accordance~~
2 ~~with regulations of the secretary]~~ gambling winnings of a
3 nonresident shall be allocated to this state if the gambling
4 winnings arose from a source within this state; and

5 (6) other deductions and exemptions allowable
6 in computing net income and not specifically allocated in the
7 Uniform Division of Income for Tax Purposes Act shall be
8 equitably allocated or apportioned in accordance with
9 instructions, rulings or regulations of the secretary.

10 B. For the purposes of this section, "non-New Mexico
11 percentage" means the percentage determined by dividing the
12 difference between the taxpayer's net income and the sum of the
13 amounts allocated or apportioned to New Mexico by that net
14 income.

15 C. A taxpayer may claim a credit in an amount equal
16 to the amount of tax determined to be due under Section 7-2-7 or
17 7-2-7.1 NMSA 1978 multiplied by the non-New Mexico percentage. "

18 Section 2. Section 7-2A-8 NMSA 1978 (being Laws 1981,
19 Chapter 37, Section 41, as amended) is amended to read:

20 "7-2A-8. CREDIT--INCOME ALLOCATION AND APPORTIONMENT. --

21 A. Net income of any taxpayer having income that is
22 taxable both within and without this state shall be apportioned
23 and allocated as follows:

24 (1) except as otherwise provided in Paragraphs
25 (2) [~~and (3)~~] through (4) of this subsection, income shall be

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1 allocated and apportioned as provided in the Uniform Division of
2 Income for Tax Purposes Act;

3 (2) except for gambling winnings, nonbusiness
4 income as defined in the Uniform Division of Income for Tax
5 Purposes Act not otherwise allocated or apportioned under the
6 Uniform Division of Income for Tax Purposes Act shall be
7 equitably allocated or apportioned in accordance with
8 instructions, rulings or regulations of the secretary; ~~[and]~~

9 (3) other deductions and exemptions allowable
10 in computing federal taxable income and not specifically
11 allocated in the Uniform Division of Income for Tax Purposes Act
12 shall be equitably allocated or apportioned in accordance with
13 instructions, rulings or regulations of the secretary; and

14 (4) gambling winnings that are nonbusiness
15 income and arise from sources within this state shall be
16 allocated to this state.

17 B. For the purposes of this section, "non-New Mexico
18 percentage" means the percentage determined by dividing the
19 difference between the taxpayer's net income and the sum of the
20 amounts allocated or apportioned to New Mexico by that net
21 income.

22 C. A taxpayer may claim a credit in an amount equal
23 to the amount of tax determined to be due under Section 7-2A-5
24 NMSA 1978 multiplied by the non-New Mexico percentage. "

25 Section 3. Section 7-3-2 NMSA 1978 (being Laws 1990,

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1 Chapter 64, Section 1) is amended to read:

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

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

7 B. "employee" means either an individual domiciled
8 within the state who performs services either within or without
9 the state for an employer or, to the extent permitted by law, an
10 individual domiciled outside of the state who performs services
11 within the state for an employer;

12 C. "employer" means a person, or an officer, agent
13 or employee of that person, having control of the payment of
14 wages, doing business in or deriving income from sources within
15 the state for whom an individual performs or performed any
16 service as the employee of that person, except that if the
17 person for whom the individual performs or performed the
18 services does not have control over the payment of the wages for
19 such services, "employer" means the person having control of the
20 payment of wages;

21 D. "Internal Revenue Code" means the Internal
22 Revenue Code of 1986, as amended;

23 E. "payor" means any person making payment of a
24 pension or annuity to an individual domiciled in New Mexico;

25 F. "payroll period" means a period for which a

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[bracketed material] = delete

1 payment of wages is made to the employee by his employer;

2 G. "person" means any individual, club, company,
3 cooperative association, corporation, estate, firm, joint
4 venture, partnership, receiver, syndicate, trust or other
5 association and, to the extent permitted by law, any federal,
6 state or other governmental unit or subdivision or an agency,
7 department or instrumentality thereof;

8 H. "wagerer" means any person who receives winnings
9 that are subject to withholding;

10 [~~H.~~] L. "wages" means remuneration in cash or other
11 form for services performed by an employee for an employer;

12 J. "winnings that are subject to withholding" means
13 "winnings which are subject to withholding" as that term is
14 defined in Section 3402 of the Internal Revenue Code;

15 [~~H.~~] K. "withholdee" means:

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

19 (2) an employee; and

20 (3) a wagerer; and

21 [~~J.~~] L. "withholder" means a payor, [~~or~~] an employer
22 or any person required to deduct and withhold from winnings that
23 are subject to withholding. "

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

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1 "7-3-3. TAX WITHHELD AT SOURCE. --

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

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

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

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

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

25 C. If an individual requests in writing that the

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

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

20 Section 5. Section 7-3-4 NMSA 1978 (being Laws 1961,
21 Chapter 243, Section 4, as amended) is amended to read:

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

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

8 Section 6. 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 of
12 withholding for each employee. This statement shall be in a
13 form prescribed by the department and shall be filed with the
14 department on or before the last day of February of the year
15 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 a
22 pension or an annuity has been deducted and withheld by that
23 payor. This statement shall be in a form prescribed by the
24 department and shall be filed with the department on or before
25 the last day of February of the year following that for which

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

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

18 Section 7. EFFECTIVE DATE. --The effective date of the
19 provisions of this act is April 1, 1996.

20 Section 8. EMERGENCY. --It is necessary for the public
21 peace, health and safety that this act take effect immediately.

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1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996

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5 JANUARY 23, 1996

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7 Mr. Presi dent:

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9 Your COMMI TTEES' COMMI TTEE, to whom has been referred

10
11 SENATE BILL 37

12
13 has had it under consideration and finds same to be GERMANE, PURSUANT
14 TO CONSTITUTIONAL PROVISIONS, and thence referred to the WAYS AND
15 MEANS COMMI TTEE.

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17 Respectfully submi tted,

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23 SENATOR MANNY M. ARAGON, Chai rman
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Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

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1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996
3
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SB 37/a

5 January 26, 1996
6

7 Mr. President:
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9 Your WAYS AND MEANS COMMITTEE, to whom has been referred
10

11 SENATE BILL 37
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13 has had it under consideration and reports same with recommendation that
14 it DO PASS, amended as follows:
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16 1. On page 9, line 7, after the word "winnings" insert "for the
17 amount deducted and withheld",
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19 and thence referred to the FINANCE COMMITTEE.
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21 Respectfully submitted,
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TITO D. CHAVEZ, Chairman

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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Page 14

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Riley

Absent:

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**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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**FORTY- SECOND LEGI SLATURE
SECOND SESSI ON, 1996**

February 9, 1996

Mr. President:

Your FINANCE COMMI TTEE, to whom has been referred

SENATE BILL 37, as amended

**has had it under consideration and reports same with recommendation that
it DO PASS.**

Respectfully submitted,

Ben D. Altami rano, Chair man

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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Page 16

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Aragon, Duran, Ingle, Kidd, Kysar, Sanchez

Absent: None

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State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 13, 1996

Mr. Speaker:

Your TAXATION AND REVENUE COMMITTEE, to whom has been referred

SENATE BILL 37, as amended

has had it under consideration and reports same with recommendation that it DO PASS.

Respectfully submitted,

Jerry W. Sandel, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

htrc/sb 37

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against
Yes: 10
Excused: Gonzales, Lovejoy, Sandel
Absent: None

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~~[bracketed material] = delete~~