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HOUSE BILL 12

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

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

C. "employer" means a person, or an officer, agent

underscored material = new
[bracketed material] = delete

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

9 D. "Internal Revenue Code" means the Internal
10 Revenue Code of 1986, as amended;

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

19 F. "pass-through entity" means any business
20 association other than:

21 (1) a sole proprietorship;

22 (2) an estate or trust; ~~[or]~~

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

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

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[bracketed material] = delete

1 securities;

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

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

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

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

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

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

19 M. "withholdee" means:

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

23 (2) an employee; and

24 (3) a wagerer; and

25 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, 2002.

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