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HOUSE BILL 487

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Jerry Sandel

AN ACT

RELATING TO TAXATION; AMENDING THE WITHHOLDING TAX ACT TO
REQUIRE PASS-THROUGH ENTITIES TO FILE INFORMATION RETURNS AND
TO WITHHOLD TAX FROM CERTAIN OWNERS.

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

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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 business
22 association, other than a sole proprietorship, not taxed as a
23 corporation for federal income tax purposes for the taxable
24 year;

25 F. "pass-through entity" means any business

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1 association other than:

2 (1) a sole proprietorship;

3 (2) an estate or trust; or

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

8 ~~[E.]~~ G. "payor" means any person making payment of
9 a pension or annuity to an individual domiciled in New Mexico;

10 ~~[F.]~~ H. "payroll period" means a period for which
11 a payment of wages is made to the employee by his employer;

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

18 ~~[H.]~~ J. "wagerer" means any person who receives
19 winnings that are subject to withholding;

20 ~~[I.]~~ K. "wages" means remuneration in cash or
21 other form for services performed by an employee for an
22 employer;

23 ~~[J.]~~ L. "winnings that are subject to withholding"
24 means "winnings which are subject to withholding" as that term
25 is defined in Section 3402 of the Internal Revenue Code;

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1 ~~[K.]~~ M. "withholdee" means:

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

5 (2) an employee; and

6 (3) a wagerer; and

7 ~~[L.]~~ N. "withholder" means a payor, an employer or
8 any person required to deduct and withhold from winnings that
9 are subject to withholding. "

10 Section 2. Section 7-3-5 NMSA 1978 (being Laws 1961,
11 Chapter 243, Section 5, as amended) is amended to read:

12 "7-3-5. WITHHOLDER LIABLE FOR AMOUNTS DEDUCTED AND
13 WITHHELD--EXCEPTIONS. --Every withholder or pass-through entity
14 shall be liable for amounts required to be deducted and
15 withheld by the Withholding Tax Act regardless of whether [~~or~~
16 ~~not~~] the amounts were in fact deducted and withheld, except
17 that:

18 A. if the withholder or pass-through entity fails
19 to deduct and withhold the required amounts and if the tax
20 against which the required amounts would have been credited is
21 paid, the withholder shall not be liable for those amounts not
22 deducted and withheld; or

23 B. if the withholder's or pass-through entity's
24 failure to deduct and withhold the required amounts was due to
25 reasonable cause, the withholder or pass-through entity shall

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1 not be liable for amounts not deducted and withheld."

2 Section 3. A new section of the Withholding Tax Act is
3 enacted to read:

4 "[NEW MATERIAL] INFORMATION RETURN REQUIRED FROM PASS-
5 THROUGH ENTITY-- WITHHOLDING. --

6 A. A pass-through entity doing business in this
7 state shall file an annual information return with the
8 department on or before the fifteenth day of the third month
9 following the end of the entity's taxable year. The
10 information return shall be signed by the business manager or
11 one of the owners of the pass-through entity.

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

- 15 (1) the pass-through entity's gross income;
- 16 (2) the pass-through entity's net income;
- 17 (3) the amount of each owner's share of the
18 pass-through entity's net income; and

19 (4) the name, address and tax identification
20 number of each owner entitled to a share of net income.

21 C. A pass-through entity shall provide to each of
22 its owners sufficient information to enable the owner to
23 comply with the provisions of the Income Tax Act and the
24 Corporate Income and Franchise Tax Act with respect to the
25 owner's share of net income.

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1 D. At the time of filing the information return
2 required by this section, the pass-through entity shall deduct
3 and withhold from each nonresident owner's share of net income
4 an amount equal to the owner's share of net income multiplied
5 by a rate set by department regulation. In the case of an
6 owner who is an individual or entity not taxed as a
7 corporation for federal income tax purposes for the taxable
8 year, the rate shall not exceed the rate for composite
9 returns. In the case of an owner that is a corporation or
10 other entity taxed as a corporation for the taxable year, the
11 rate shall not exceed the maximum rate for corporate income
12 tax.

13 E. The provisions of Subsection D of this section
14 shall not apply with regard to the share of net income of a
15 nonresident owner who has executed an agreement with the
16 department that the owner will report and pay tax, if
17 required, on its own return pursuant to the Income Tax Act or
18 the Corporate Income and Franchise Tax Act.

19 F. Amounts deducted from the owner's share of net
20 income under the provisions of this section shall be a
21 collected tax. No owner shall have a right of action against
22 the pass-through entity for any amount deducted and withheld
23 from the owner's share of net income. "

24 Section 4. APPLICABILITY. --The provisions of this act
25 are applicable to taxable years beginning on or after January

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1, 2000.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 10, 1999
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8 Mr. Speaker:
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10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 487
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

- 17 1. On page 5, line 8, strike "fifteenth day of the third
18 month" and strike line 9 up to the period and insert in lieu
19 thereof "due date of the entity's federal return for the taxable
20 year".
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HB 487

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Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 14 For 0 Against

Yes: 14

Excused: Burpo

Absent: None

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J: \99BillSWP\H0487

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

HB 487/a

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4 March 1, 1999

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6 Mr. President:

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8 Your WAYS & MEANS COMMITTEE, to whom has been referred
9 HOUSE BILL 487, as amended

10
11 has had it under consideration and reports same with
12 recommendation that it DO PASS, amended as follows:

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14 1. On page 7, line 1, strike "2000" and insert in lieu
15 thereof "1999".

16 Respectfully submitted,

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22 Carlos R. Cisneros, Chairman
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FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Carraro, Jennings

Absent: None

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