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AN ACT
RELATING TO TAXATION; ADDING MANUFACTURING SERVICE PROVIDERS
TO A GROSS RECEIPTS TAX DEDUCTION FOR MANUFACTURERS.

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

SECTION 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 2019, Chapter 270, Section 23 and by Laws 2019, Chapter 274, Section 11) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating Tax Act:

A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "digital good" means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone;

D. "financial corporation" means a savings and loan association or an incorporated savings and loan company, trust company, mortgage banking company, consumer finance

1 company or other financial corporation;

2 E. "initial use" or "initially used" means the
3 first employment for the intended purpose and does not
4 include the following activities:

5 (1) observation of tests conducted by the
6 performer of services;

7 (2) participation in progress reviews,
8 briefings, consultations and conferences conducted by the
9 performer of services;

10 (3) review of preliminary drafts, drawings
11 and other materials prepared by the performer of services;

12 (4) inspection of preliminary prototypes
13 developed by the performer of services; or

14 (5) similar activities;

15 F. "leasing" means an arrangement whereby, for a
16 consideration, property is employed for or by any person
17 other than the owner of the property, except that the
18 granting of a license to use property is licensing and is not
19 a lease;

20 G. "local option gross receipts tax" means a tax
21 authorized to be imposed by a county or municipality upon a
22 taxpayer's gross receipts and required to be collected by the
23 department at the same time and in the same manner as the
24 gross receipts tax;

25 H. "manufactured home" means a movable or portable

1 housing structure for human occupancy that exceeds either a
2 width of eight feet or a length of forty feet constructed to
3 be towed on its own chassis and designed to be installed with
4 or without a permanent foundation;

5 I. "manufacturing" means combining or processing
6 components or materials to increase their value for sale in
7 the ordinary course of business, but does not include
8 construction services; farming; electric power generation;
9 processing of natural resources, including hydrocarbons; or
10 the processing or preparation of meals for immediate
11 consumption;

12 J. "manufacturing service" means the service of
13 combining or processing components or materials owned by
14 another, but does not include construction services; farming;
15 electric power generation; processing of natural resources,
16 including hydrocarbons; or the processing or preparation of
17 meals for immediate consumption;

18 K. "marketplace provider" means a person who
19 facilitates the sale, lease or license of tangible personal
20 property or services or licenses for use of real property on
21 a marketplace seller's behalf, or on the marketplace
22 provider's own behalf, by:

23 (1) listing or advertising the sale, lease
24 or license, by any means, whether physical or electronic,
25 including by catalog, internet website or television or radio

1 broadcast; and

2 (2) either directly or indirectly, through
3 agreements or arrangements with third parties collecting
4 payment from the customer and transmitting that payment to
5 the seller, regardless of whether the marketplace provider
6 receives compensation or other consideration in exchange for
7 the marketplace provider's services;

8 L. "marketplace seller" means a person who sells,
9 leases or licenses tangible personal property or services or
10 who licenses the use of real property through a marketplace
11 provider;

12 M. "person" means:

13 (1) an individual, estate, trust, receiver,
14 cooperative association, club, corporation, company, firm,
15 partnership, limited liability company, limited liability
16 partnership, joint venture, syndicate or other entity,
17 including any gas, water or electric utility owned or
18 operated by a county, municipality or other political
19 subdivision of the state; or

20 (2) a national, federal, state, Indian or
21 other governmental unit or subdivision, or an agency,
22 department or instrumentality of any of the foregoing;

23 N. "property" means:

24 (1) real property;

25 (2) tangible personal property, including

1 electricity and manufactured homes;

2 (3) licenses, including licenses of digital
3 goods, but not including the licenses of copyrights,
4 trademarks or patents; and

5 (4) franchises;

6 0. "research and development services" means an
7 activity engaged in for other persons for consideration, for
8 one or more of the following purposes:

9 (1) advancing basic knowledge in a
10 recognized field of natural science;

11 (2) advancing technology in a field of
12 technical endeavor;

13 (3) developing a new or improved product,
14 process or system with new or improved function, performance,
15 reliability or quality, whether or not the new or improved
16 product, process or system is offered for sale, lease or
17 other transfer;

18 (4) developing new uses or applications for
19 an existing product, process or system, whether or not the
20 new use or application is offered as the rationale for
21 purchase, lease or other transfer of the product, process or
22 system;

23 (5) developing analytical or survey
24 activities incorporating technology review, application,
25 trade-off study, modeling, simulation, conceptual design or

1 similar activities, whether or not offered for sale, lease or
2 other transfer; or

3 (6) designing and developing prototypes or
4 integrating systems incorporating the advances, developments
5 or improvements included in Paragraphs (1) through (5) of
6 this subsection;

7 P. "secretary" means the secretary of taxation and
8 revenue or the secretary's delegate;

9 Q. "service" means all activities engaged in for
10 other persons for a consideration, which activities involve
11 predominantly the performance of a service as distinguished
12 from selling or leasing property. "Service" includes
13 activities performed by a person for its members or
14 shareholders. In determining what is a service, the intended
15 use, principal objective or ultimate objective of the
16 contracting parties shall not be controlling. "Service"
17 includes construction activities and all tangible personal
18 property that will become an ingredient or component part of
19 a construction project. That tangible personal property
20 retains its character as tangible personal property until it
21 is installed as an ingredient or component part of a
22 construction project in New Mexico. Sales of tangible
23 personal property that will become an ingredient or component
24 part of a construction project to persons engaged in the
25 construction business are sales of tangible personal

1 property; and

2 R. "use" or "using" includes use, consumption or
3 storage other than storage for subsequent sale in the
4 ordinary course of business or for use solely outside this
5 state."

6 SECTION 2. Section 7-9-46 NMSA 1978 (being Laws 1969,
7 Chapter 144, Section 36, as amended) is amended to read:

8 "7-9-46. DEDUCTION--GROSS RECEIPTS--GOVERNMENTAL GROSS
9 RECEIPTS--SALES TO MANUFACTURERS AND MANUFACTURING SERVICE
10 PROVIDERS.--

11 A. Receipts from selling tangible personal
12 property may be deducted from gross receipts or from
13 governmental gross receipts if the sale is made to a person
14 engaged in the business of manufacturing who delivers a
15 nontaxable transaction certificate to the seller. The buyer
16 delivering the nontaxable transaction certificate must
17 incorporate the tangible personal property as an ingredient
18 or component part of the product that the buyer is in the
19 business of manufacturing.

20 B. Receipts from selling a manufacturing
21 consumable to a manufacturer or a manufacturing service
22 provider may be deducted from gross receipts or from
23 governmental gross receipts if the buyer delivers a
24 nontaxable transaction certificate to the seller.

25 C. Receipts from selling or leasing qualified

1 equipment may be deducted from gross receipts if the sale is
2 made to, or the lease is entered into with, a person engaged
3 in the business of manufacturing or a manufacturing service
4 provider who delivers a nontaxable transaction certificate to
5 the seller; provided that a manufacturer or manufacturing
6 service provider delivering a nontaxable transaction
7 certificate with respect to the qualified equipment shall not
8 claim an investment credit pursuant to the Investment Credit
9 Act for that same equipment.

10 D. The purpose of the deductions provided in this
11 section is to encourage manufacturing businesses to locate in
12 New Mexico and to reduce the tax burden, including reducing
13 pyramiding, on the tangible personal property that is
14 consumed in the manufacturing process and that is purchased
15 by manufacturing businesses in New Mexico.

16 E. The department shall annually report to the
17 revenue stabilization and tax policy committee the aggregate
18 amount of deductions taken pursuant to this section, the
19 number of taxpayers claiming each of the deductions and any
20 other information that is necessary to determine that the
21 deductions are performing the purposes for which they are
22 enacted.

23 F. A taxpayer deducting gross receipts pursuant to
24 this section shall report the amount deducted separately for
25 each deduction provided in this section and attribute the

1 amount of the deduction to the appropriate authorization
2 provided in this section in a manner required by the
3 department that facilitates the evaluation by the legislature
4 of the benefit to the state of these deductions.

5 G. As used in this section:

6 (1) "manufacturing consumable" means
7 tangible personal property, other than qualified equipment or
8 an ingredient or component part of a manufactured product,
9 that is incorporated into, destroyed, depleted or transformed
10 in the process of manufacturing a product, including
11 electricity, fuels, water, manufacturing aids and supplies,
12 chemicals, gases and other tangibles used to manufacture a
13 product;

14 (2) "manufacturing operation" means a plant
15 operated by a manufacturer or manufacturing service provider
16 that employs personnel to perform production tasks to produce
17 goods, in conjunction with machinery and equipment; and

18 (3) "qualified equipment" means machinery,
19 equipment and tools, including component, repair, replacement
20 and spare parts thereof, that are used directly in the
21 manufacturing process of a manufacturing operation.

22 "Qualified equipment" includes computer hardware and software
23 used directly in the manufacturing process of a manufacturing
24 operation but excludes any motor vehicle that is required to
25 be registered in this state pursuant to the Motor Vehicle

