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HOUSE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; PROVIDING FOR ALTERNATIVE EVIDENCE OTHER THAN A NONTAXABLE TRANSACTION CERTIFICATE TO ENTITLE PERSONS TO A DEDUCTION FROM GROSS RECEIPTS.

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

SECTION 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS.--

~~[A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within~~

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1 ~~sixty days from the date that the notice requiring possession~~  
2 ~~of these nontaxable transaction certificates is given the~~  
3 ~~seller or lessor by the department, deductions claimed by the~~  
4 ~~seller or lessor that require delivery of these nontaxable~~  
5 ~~transaction certificates shall be disallowed except as provided~~  
6 ~~in Subsection E of this section. The nontaxable transaction~~  
7 ~~certificates shall contain the information and be in a form~~  
8 ~~prescribed by the department. The department by regulation may~~  
9 ~~deem to be nontaxable transaction certificates documents issued~~  
10 ~~by other states or the multistate tax commission to taxpayers~~  
11 ~~not required to be registered in New Mexico. Only buyers or~~  
12 ~~lessees who have a registration number or have applied for a~~  
13 ~~registration number and have not been refused one under~~  
14 ~~Subsection C of Section 7-1-12 NMSA 1978 shall execute~~  
15 ~~nontaxable transaction certificates issued by the department.~~  
16 ~~If the seller or lessor has been given an identification number~~  
17 ~~for tax purposes by the department, the seller or lessor shall~~  
18 ~~disclose that identification number to the buyer or lessee~~  
19 ~~prior to or upon acceptance of a nontaxable transaction~~  
20 ~~certificate.]~~

21 A. Except as provided in Subsection B of this  
22 section, a person may establish entitlement to a deduction from  
23 gross receipts allowed pursuant to the Gross Receipts and  
24 Compensating Tax Act by obtaining a properly executed  
25 nontaxable transaction certificate from the purchaser.

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1                   B. Except as provided in Subsection C of this  
2 section, a person who does not comply with Subsection A of this  
3 section may establish entitlement to a deduction from gross  
4 receipts by presenting alternative evidence that demonstrates  
5 the facts necessary to support entitlement to the deduction,  
6 but the burden of proof is on that person. Alternative evidence  
7 includes:

8                               (1) invoices or contracts that identify the  
9 nature of the transaction;

10                              (2) documentation as to the purchaser's use or  
11 disposition of the property or service;

12                              (3) a statement from the purchaser indicating  
13 that the purchaser sold or intends to resell the property or  
14 service purchased from the seller, either by itself or in  
15 combination with other property or services, in the ordinary  
16 course of business. The statement from the purchaser shall  
17 include:

18                                       (a) the seller's name;

19                                       (b) the date of the invoice or date of  
20 the transaction;

21                                       (c) the invoice number or a copy of the  
22 invoice;

23                                       (d) a copy of the purchase order, if  
24 available;

25                                       (e) the amount of purchase; and

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1                                    (f) a description of the property or  
2 service purchased or leased; or

3                                    (4) other evidence that demonstrates the facts  
4 necessary to establish entitlement to the deduction or  
5 specified by department rule or instruction.

6                                    C. Subsection B of this section does not apply to  
7 sellers of electricity or fuels that are parties to an  
8 agreement with the department pursuant to Section 7-1-21.1 NMSA  
9 1978 regarding the deduction pursuant to Subsection B of  
10 Section 7-9-46 NMSA 1978.

11                                    D. When [the seller or lessor] a person accepts in  
12 good faith a properly executed nontaxable transaction  
13 certificate [within the required time and in good faith that  
14 the buyer or lessee will employ the property or service  
15 transferred in a nontaxable manner] from the purchaser, the  
16 properly executed nontaxable transaction certificate shall be  
17 conclusive evidence [and the only material evidence] that the  
18 proceeds from the transaction are deductible from the [seller's  
19 or lessor's] person's gross receipts.

20                                    [B. Properly executed documents required to support  
21 the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74  
22 NMSA 1978 should be in the possession of the seller at the time  
23 the return is due for receipts from the transactions. If the  
24 seller is not in possession of these documents within sixty  
25 days from the date that the notice requiring possession of

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1 ~~these documents is given to the seller by the department,~~  
2 ~~deductions claimed by the seller or lessor that require~~  
3 ~~delivery of these documents shall be disallowed. These~~  
4 ~~documents shall contain the information and be in a form~~  
5 ~~prescribed by the department. When the seller accepts these~~  
6 ~~documents within the required time and in good faith that the~~  
7 ~~buyer will employ the property or service transferred in a~~  
8 ~~nontaxable manner, the properly executed documents shall be~~  
9 ~~conclusive evidence, and the only material evidence, that the~~  
10 ~~proceeds from the transaction are deductible from the seller's~~  
11 ~~gross receipts.~~

12 ~~G. Notice, as used in this section, is sufficient~~  
13 ~~if the notice is mailed or served as provided in Subsection A~~  
14 ~~of Section 7-1-9 NMSA 1978. Notice by the department under~~  
15 ~~this section shall not be given prior to the commencement of an~~  
16 ~~audit of the seller required to be in possession of the~~  
17 ~~documents.~~

18 ~~D. To exercise the privilege of executing~~  
19 ~~appropriate nontaxable transaction certificates, a buyer or~~  
20 ~~lessee shall apply to the department for permission to execute~~  
21 ~~nontaxable transaction certificates, except with respect to~~  
22 ~~documents issued by other states or the multistate tax~~  
23 ~~commission that the department has deemed to be nontaxable~~  
24 ~~transaction certificates. If a person is shown on the~~  
25 ~~department's records to be a delinquent taxpayer or to have a~~

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1 ~~non-filed period, the department may refuse to approve the~~  
2 ~~application of the person until the person has filed returns~~  
3 ~~for all non-filed periods and is no longer shown to be a~~  
4 ~~delinquent taxpayer, and the taxpayer may protest that refusal~~  
5 ~~pursuant to Section 7-1-24 NMSA 1978. Upon the department's~~  
6 ~~approval of the application, the buyer or lessee may request~~  
7 ~~appropriate nontaxable transaction certificates for execution~~  
8 ~~by the buyer or lessee; provided that if a person is shown on~~  
9 ~~the department's records to be a delinquent taxpayer or to have~~  
10 ~~a non-filed period, the department may refuse to issue~~  
11 ~~nontaxable transaction certificates to the person until the~~  
12 ~~person has filed returns for all non-filed periods and is no~~  
13 ~~longer shown to be a delinquent taxpayer. The taxpayer may~~  
14 ~~protest that refusal pursuant to Section 7-1-24 NMSA 1978. The~~  
15 ~~department may require a buyer or lessee requesting and~~  
16 ~~receiving nontaxable transaction certificates for execution by~~  
17 ~~that buyer or lessee to report to the department the names,~~  
18 ~~addresses and identification numbers assigned by the department~~  
19 ~~of the sellers and lessors to whom they have delivered~~  
20 ~~nontaxable transaction certificates. The department may~~  
21 ~~require a seller or lessor engaged in business in New Mexico to~~  
22 ~~report to the department the names, addresses and federal~~  
23 ~~employer identification numbers or state identification numbers~~  
24 ~~for tax purposes issued by the department of the buyers or~~  
25 ~~lessees from whom the seller or lessor has accepted nontaxable~~

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1 ~~transaction certificates.~~

2 ~~E. The secretary or secretary's delegate may accept~~  
3 ~~other evidence, as specified by rule, to support the deduction~~  
4 ~~provided pursuant to Section 7-9-47 NMSA 1978 for the sale of~~  
5 ~~tangible personal property if a taxpayer is unable to provide a~~  
6 ~~nontaxable transaction certificate within the sixty-day period~~  
7 ~~specified in Subsection A of this section:~~

8 ~~(1) prior to the issuance of an audit~~  
9 ~~assessment; or~~

10 ~~(2) if the audit assessment is protested,~~  
11 ~~prior to either the taxpayer's withdrawal of the protest or the~~  
12 ~~formal hearing of the protest; provided, however, that the~~  
13 ~~protest in this paragraph is acknowledged by the department~~  
14 ~~prior to December 31, 2011.]~~

15 E. If a person has accepted in good faith a  
16 properly executed nontaxable transaction certificate, but the  
17 purchaser has not employed the property or service purchased in  
18 the nontaxable manner or has provided false or inaccurate  
19 information on the nontaxable transaction certificate, the  
20 purchaser shall be liable for an amount equal to any tax,  
21 penalty and interest that the seller would have been required  
22 to pay if the seller had not complied with Subsection A of this  
23 section.

24 F. Any person who knowingly or willfully provides  
25 false or inaccurate information on a nontaxable transaction

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1 certificate may be subject to prosecution under Sections 7-1-72  
2 and 7-1-73 NMSA 1978."

3 SECTION 2. Section 7-9-44 NMSA 1978 (being Laws 1969,  
4 Chapter 144, Section 34, as amended) is amended to read:

5 "7-9-44. SUSPENSION OF THE RIGHT TO USE A NONTAXABLE  
6 TRANSACTION CERTIFICATE.--

7 A. The secretary may suspend for not more than one  
8 year the privilege of a person to execute nontaxable  
9 transaction certificates if that person [~~(1)~~] fails to pay,  
10 within one year of the date [~~the tax is due, the compensating~~  
11 ~~tax on the~~] on which the transaction subject to the nontaxable  
12 transaction certificate occurred, the amount required to be  
13 paid pursuant to Subsection E of Section 7-9-43 NMSA 1978 with  
14 respect to the person's subsequent use of property or services  
15 purchased through the execution of a nontaxable transaction  
16 certificate. [~~or~~

17 ~~(2) executes with the seller or lessor a~~  
18 ~~nontaxable transaction certificate inapplicable to the~~  
19 ~~transaction when no compensating tax is due on that buyer's or~~  
20 ~~lessee's use of the property or service.~~

21 ~~B. The secretary may suspend for not more than six~~  
22 ~~months the privilege of a person to execute nontaxable~~  
23 ~~transaction certificates to claim deductions on the basis of~~  
24 ~~nontaxable transaction certificates accepted by that person, or~~  
25 ~~both, if that person fails to account in the manner and time~~

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1 ~~required by the department, in accordance with Subsection E of~~  
2 ~~Section 7-9-43 NMSA 1978, for the certificates executed or~~  
3 ~~accepted by that person.~~

4 ~~E.]~~ B. A suspension under this section voids the  
5 department's approval of the person's application for the  
6 privilege of executing nontaxable transaction certificates and,  
7 prior to resumption of the privilege, the person whose  
8 privilege to execute nontaxable transaction certificates has  
9 been suspended shall reapply for the privilege of executing  
10 such certificates in accordance with Section 7-9-43 NMSA 1978.

11 ~~[D.]~~ C. Notwithstanding the provisions of Section  
12 7-1-8 NMSA 1978, the department may notify the public or  
13 provide for notice to the public of the suspension of a  
14 person's privilege to execute nontaxable transaction  
15 certificates."

16 **SECTION 3. EFFECTIVE DATE.**--The effective date of the  
17 provisions of this act is July 1, 2018.