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SENATE BILL 369

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Pete Campos

AN ACT

**RELATING TO TAXATION; PROVIDING FOR A GROSS RECEIPTS TAX
DEDUCTION OR GOVERNMENTAL GROSS RECEIPTS TAX DEDUCTION FOR
RECEIPTS FROM THE SALE OF SERVICES FOR RESALE IN THE ORDINARY
COURSE OF BUSINESS THAT ARE NOT OTHERWISE DEDUCTIBLE; PROVIDING
FOR AND ESTABLISHING REQUIREMENTS FOR CERTIFICATION THAT A
SERVICE PURCHASED IS FOR RESALE; ELIMINATING NONTAXABLE
TRANSACTION CERTIFICATE REISSUANCE REQUIREMENTS; DECLARING AN
EMERGENCY.**

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--
RENEWAL. --**

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1 A. All nontaxable transaction certificates of the
2 appropriate series executed by buyers or lessees should be in
3 the possession of the seller or lessor for nontaxable
4 transactions at the time the return is due for receipts from
5 the transactions. If the seller or lessor is not in possession
6 of the required nontaxable transaction certificates within
7 sixty days from the date that the notice requiring possession
8 of these nontaxable transaction certificates is given the
9 seller or lessor by the department, deductions claimed by the
10 seller or lessor that require delivery of these nontaxable
11 transaction certificates shall be disallowed. The nontaxable
12 transaction certificates shall contain the information and be
13 in a form prescribed by the department. The department by
14 regulation may deem to be nontaxable transaction certificates
15 documents issued by other states or the multistate tax
16 commission to taxpayers not required to be registered in New
17 Mexico. Only buyers or lessees who have a registration number
18 or have applied for a registration number and have not been
19 refused one under Subsection C of Section 7-1-12 NMSA 1978
20 shall execute nontaxable transaction certificates issued by the
21 department. If the seller or lessor has been given an
22 identification number for tax purposes by the department, the
23 seller or lessor shall disclose that identification number to
24 the buyer or lessee prior to or upon acceptance of a nontaxable
25 transaction certificate. When the seller or lessor accepts a
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1 nontaxable transaction certificate within the required time and
2 in good faith that the buyer or lessee will employ the property
3 or service transferred in a nontaxable manner, the properly
4 executed nontaxable transaction certificate shall be conclusive
5 evidence, and the only material evidence, that the proceeds
6 from the transaction are deductible from the seller's or
7 lessor's gross receipts.

8 B. Properly executed documents required to support
9 the deductions provided in Subsection B of Section 7-9-48 NMSA
10 1978 or in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should
11 be in the possession of the seller at the time the return is
12 due for receipts from the transactions. If the seller is not
13 in possession of these documents within sixty days from the
14 date that the notice requiring possession of these documents is
15 given to the seller by the department, deductions claimed by
16 the seller or lessor that require delivery of these documents
17 shall be disallowed. These documents shall contain the
18 information and be in a form prescribed by the department.
19 When the seller accepts these documents within the required
20 time and in good faith that the buyer will employ the property
21 or service transferred in a nontaxable manner, the properly
22 executed documents shall be conclusive evidence, and the only
23 material evidence, that the proceeds from the transaction are
24 deductible from the seller's gross receipts.

25 C. Notice, as used in this section, is sufficient

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1 if the notice is mailed or served as provided in Subsection A
2 of Section 7-1-9 NMSA 1978. Notice by the department under
3 this section shall not be given prior to the commencement of an
4 audit of the seller required to be in possession of the
5 documents.

6 ~~[D. On January 1, 2005, every nontaxable~~
7 ~~transaction certificate, except for nontaxable transaction~~
8 ~~certificates of the series applicable to the twelve-year period~~
9 ~~beginning January 1, 2005 and issued by the department prior to~~
10 ~~that date, is void with respect to transactions after December~~
11 ~~31, 2004. The department shall issue separate series of~~
12 ~~nontaxable transaction certificates for the twelve-year period~~
13 ~~beginning January 1, 2005 and for each twelve-year period~~
14 ~~beginning on January 1 of every twelfth year succeeding~~
15 ~~calendar year 2005. A series of nontaxable transaction~~
16 ~~certificates issued by the department for any twelve-year~~
17 ~~period may be executed by buyers or lessees for transactions~~
18 ~~occurring within or prior to that twelve-year period but is not~~
19 ~~valid for transactions occurring after that twelve-year period,~~
20 ~~except the nontaxable transaction certificates issued by the~~
21 ~~department for the period January 1, 1992 to December 31, 2001~~
22 ~~may be executed by buyers or lessees for transactions occurring~~
23 ~~prior to December 31, 2004. For administrative convenience,~~
24 ~~the department may accept and approve qualifying applications~~
25 ~~for the privilege of executing nontaxable transaction~~

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1 ~~certificates and pre-issue certificates of any series within~~
2 ~~the six month period immediately preceding the beginning of the~~
3 ~~twelve year period to which the series of nontaxable~~
4 ~~transaction certificates applies.~~

5 ~~E.]~~ D. To exercise the privilege of executing
6 appropriate nontaxable transaction certificates, a buyer or
7 lessee shall apply to the department for permission to execute
8 nontaxable transaction certificates, except with respect to
9 documents issued by other states or the multistate tax
10 commission that the department has deemed to be nontaxable
11 transaction certificates. If a person is shown on the
12 department's records to be a delinquent taxpayer or to have a
13 non-filed period, the department may refuse to approve the
14 application of the person until the person has filed returns
15 for all non-filed periods and is no longer shown to be a
16 delinquent taxpayer, and the taxpayer may protest that refusal
17 pursuant to Section 7-1-24 NMSA 1978. Upon the department's
18 approval of the application, the buyer or lessee may request
19 appropriate nontaxable transaction certificates for execution
20 by the buyer or lessee; provided that if a person is shown on
21 the department's records to be a delinquent taxpayer or to have
22 a non-filed period, the department may refuse to issue
23 nontaxable transaction certificates to the person until the
24 person has filed returns for all non-filed periods and is no
25 longer shown to be a delinquent taxpayer. The taxpayer may

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1 protest that refusal pursuant to Section 7-1-24 NMSA 1978. The
2 department may require a buyer or lessee requesting and
3 receiving nontaxable transaction certificates for execution by
4 that buyer or lessee to report to the department the names,
5 addresses and identification numbers assigned by the department
6 of the sellers and lessors to whom they have delivered
7 nontaxable transaction certificates. The department may
8 require a seller or lessor engaged in business in New Mexico to
9 report to the department the names, addresses and federal
10 employer identification numbers or state identification numbers
11 for tax purposes issued by the department of the buyers or
12 lessees from whom the seller or lessor has accepted nontaxable
13 transaction certificates. "

14 Section 2. Section 7-9-48 NMSA 1978 (being Laws 1969,
15 Chapter 144, Section 38, as amended) is amended to read:

16 "7-9-48. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
17 GROSS RECEIPTS--SALE OF A SERVICE FOR RESALE. --

18 A. Receipts from selling a service for resale may
19 be deducted from gross receipts or from governmental gross
20 receipts if the sale is made to a person who delivers a
21 nontaxable transaction certificate to the seller. The buyer
22 delivering the nontaxable transaction certificate must resell
23 the service in the ordinary course of business and the resale
24 must be subject to the gross receipts tax or governmental gross
25 receipts tax.

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B. Fifteen percent of receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if:

(1) the buyer resells the service in the ordinary course of business;

(2) pursuant to Subsection A of this section, the resale is not subject to the gross receipts tax or to the governmental gross receipts tax; and

(3) the buyer delivers to the seller in a form prescribed by the department certification that the service purchased is for resale by the buyer in the ordinary course of business. "

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this take effect immediately.