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SENATE BILL 372

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

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO TAXATION; PHASING OUT A GROSS RECEIPTS DEDUCTION
FOR CERTAIN HEALTH CARE SERVICES OVER A CERTAIN PERIOD;
CREATING AND IMPOSING THE MEDICAID SERVICE TAX; PROVIDING FOR A
DISTRIBUTION; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. Section 7-1-2 NMSA 1978 (being Laws 1965,
Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY. -- The Tax Administration Act
applies to and governs:

A. the administration and enforcement of the
following taxes or tax acts as they now exist or may hereafter
be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;

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- 1 (3) Venture Capital Investment Act;
- 2 (4) Gross Receipts and Compensating Tax Act
- 3 and any state gross receipts tax;
- 4 (5) Liquor Excise Tax Act;
- 5 (6) Local Liquor Excise Tax Act;
- 6 (7) any municipal local option gross receipts
- 7 tax;
- 8 (8) any county local option gross receipts
- 9 tax;
- 10 (9) Special Fuels Supplier Tax Act;
- 11 (10) Gasoline Tax Act;
- 12 (11) petroleum products loading fee, which fee
- 13 shall be considered a tax for the purpose of the Tax
- 14 Administration Act;
- 15 (12) Alternative Fuel Tax Act;
- 16 (13) Cigarette Tax Act;
- 17 (14) Estate Tax Act;
- 18 (15) Railroad Car Company Tax Act;
- 19 (16) Investment Credit Act, Capital Equipment
- 20 Tax Credit Act, rural job tax credit, Laboratory Partnership
- 21 with Small Business Tax Credit Act and Technology Jobs Tax
- 22 Credit Act;
- 23 (17) Corporate Income and Franchise Tax Act;
- 24 (18) Uniform Division of Income for Tax
- 25 Purposes Act;

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- 1 (19) Multistate Tax Compact;
- 2 (20) Tobacco Products Tax Act;
- 3 (21) the telecommunications relay service
- 4 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 5 surcharge shall be considered a tax for the purposes of the Tax
- 6 Administration Act; ~~and~~

7 (22) the daily bed surcharge imposed on

8 licensed nursing homes, intermediate care facilities for the

9 mentally retarded and residential treatment centers, which

10 surcharge shall be considered a tax for purposes of the Tax

11 Administration Act until June 30, 2007; and

12 (23) the medicaid service tax;

13 B. the administration and enforcement of the

14 following taxes, surtaxes, advanced payments or tax acts as

15 they now exist or may hereafter be amended:

- 16 (1) Resources Excise Tax Act;
- 17 (2) Severance Tax Act;
- 18 (3) any severance surtax;
- 19 (4) Oil and Gas Severance Tax Act;
- 20 (5) Oil and Gas Conservation Tax Act;
- 21 (6) Oil and Gas Emergency School Tax Act;
- 22 (7) Oil and Gas Ad Valorem Production Tax Act;
- 23 (8) Natural Gas Processors Tax Act;
- 24 (9) Oil and Gas Production Equipment Ad

25 Valorem Tax Act;

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1 (10) Copper Production Ad Valorem Tax Act;

2 (11) any advance payment required to be made
3 by any act specified in this subsection, which advance payment
4 shall be considered a tax for the purposes of the Tax

5 Administration Act;

6 (12) Enhanced Oil Recovery Act;

7 (13) Natural Gas and Crude Oil Production
8 Incentive Act; and

9 (14) intergovernmental production tax credit
10 and intergovernmental production equipment tax credit;

11 C. the administration and enforcement of the
12 following taxes, surcharges, fees or acts as they now exist or
13 may hereafter be amended:

14 (1) Weight Distance Tax Act;

15 (2) the workers' compensation fee authorized
16 by Section 52-5-19 NMSA 1978, which fee shall be considered a
17 tax for purposes of the Tax Administration Act;

18 (3) Uniform Unclaimed Property Act;

19 (4) 911 emergency surcharge and the network
20 and database surcharge, which surcharges shall be considered
21 taxes for purposes of the Tax Administration Act;

22 (5) the solid waste assessment fee authorized
23 by the Solid Waste Act, which fee shall be considered a tax for
24 purposes of the Tax Administration Act;

25 (6) the water conservation fee imposed by

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1 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
2 for the purposes of the Tax Administration Act; and

3 (7) the gaming tax imposed pursuant to the
4 Gaming Control Act; and

5 D. the administration and enforcement of all other
6 laws, with respect to which the department is charged with
7 responsibilities pursuant to the Tax Administration Act, but
8 only to the extent that the other laws do not conflict with the
9 Tax Administration Act. "

10 Section 2. A new section of the Tax Administration Act is
11 enacted to read:

12 "[NEW MATERIAL] DISTRIBUTION--MEDICAID SERVICE TAX--
13 MEDICAID PROGRAM --A distribution pursuant to Section 7-1-6.1
14 NMSA 1978 shall be made to the general fund to be used solely
15 for the medicaid program in an amount equal to the net receipts
16 attributable to the medicaid service tax. "

17 Section 3. Section 7-9-93 NMSA 1978 (being Laws 2004,
18 Chapter 116, Section 6) is amended to read:

19 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR
20 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER. --

21 A. Receipts from payments by a managed health care
22 provider or health care insurer for commercial contract
23 services or medicare part C services provided by a health care
24 practitioner that are not otherwise deductible pursuant to
25 another provision of the Gross Receipts and Compensating Tax

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1 Act may be deducted from gross receipts, provided that the
2 services are within the scope of practice of the person
3 providing the service, in the following amounts:

4 (1) one hundred percent of those receipts from
5 payments by a managed health care provider or health care
6 insurer for commercial contract services or medicare part C
7 services until December 31, 2005;

8 (2) eighty percent of those receipts from
9 payments by a managed health care provider or health care
10 insurer for commercial contract services or medicare part C
11 services until December 31, 2006;

12 (3) sixty percent of those receipts from
13 payments by a managed health care provider or health care
14 insurer for commercial contract services or medicare part C
15 services until December 31, 2007;

16 (4) forty percent of those receipts from
17 payments by a managed health care provider or health care
18 insurer for commercial contract services or medicare part C
19 services until December 31, 2008; and

20 (5) twenty percent of those receipts from
21 payments by a managed health care provider or health care
22 insurer for commercial contract services or medicare part C
23 services until December 31, 2009.

24 B. Receipts from fee-for-service payments by a
25 health care insurer may not be deducted from gross receipts.

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1 ~~[The]~~ C. A deduction provided by this section shall
2 be separately stated by the taxpayer.

3 ~~[B.]~~ D. For the purposes of this section:

4 (1) "commercial contract services" means
5 health care services performed by a health care practitioner
6 pursuant to a contract with a managed health care provider or
7 health care insurer other than those health care services
8 provided for medicare patients pursuant to Title 18 of the
9 federal Social Security Act or for medicaid patients pursuant
10 to Title 19 or Title 21 of the federal Social Security Act;

11 (2) "health care insurer" means a person that:

12 (a) has a valid certificate of authority
13 in good standing pursuant to the New Mexico Insurance Code to
14 act as an insurer, health maintenance organization or nonprofit
15 health care plan or prepaid dental plan; and

16 (b) contracts to reimburse licensed
17 health care practitioners for providing basic health services
18 to enrollees at negotiated fee rates;

19 (3) "health care practitioner" means:

20 (a) a chiropractic physician licensed
21 pursuant to the provisions of the Chiropractic Physician
22 Practice Act;

23 (b) a dentist or dental hygienist
24 licensed pursuant to the Dental Health Care Act;

25 (c) a doctor of oriental medicine

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1 licensed pursuant to the provisions of the Acupuncture and
2 Oriental Medicine Practice Act;

3 (d) an optometrist licensed pursuant to
4 the provisions of the Optometry Act;

5 (e) an osteopathic physician licensed
6 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
7 or an osteopathic physician's assistant licensed pursuant to
8 the provisions of the Osteopathic Physicians' Assistants Act;

9 (f) a physical therapist licensed
10 pursuant to the provisions of the Physical Therapy Act;

11 (g) a physician or physician assistant
12 licensed pursuant to the provisions of Chapter 61, Article 6
13 NMSA 1978;

14 (h) a podiatrist licensed pursuant to
15 the provisions of the Podiatry Act;

16 (i) a psychologist licensed pursuant to
17 the provisions of the Professional Psychologist Act;

18 (j) a registered lay midwife registered
19 by the department of health;

20 (k) a registered nurse or licensed
21 practical nurse licensed pursuant to the provisions of the
22 Nursing Practice Act;

23 (l) a registered occupational therapist
24 licensed pursuant to the provisions of the Occupational Therapy
25 Act;

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1 (m) a respiratory care practitioner
2 licensed pursuant to the provisions of the Respiratory Care
3 Act; and

4 (n) a speech-language pathologist or
5 audiologist licensed pursuant to the Speech-Language Pathology,
6 Audiology and Hearing Aid Dispensing Practices Act;

7 (4) "managed health care provider" means a
8 person that provides for the delivery of comprehensive basic
9 health care services and medically necessary services to
10 individuals enrolled in a plan through its own employed health
11 care providers or by contracting with selected or participating
12 health care providers. "Managed health care provider" includes
13 only those persons that provide comprehensive basic health care
14 services to enrollees on a contract basis, including the
15 following:

- 16 (a) health maintenance organizations;
17 (b) preferred provider organizations;
18 (c) individual practice associations;
19 (d) competitive medical plans;
20 (e) exclusive provider organizations;
21 (f) integrated delivery systems;
22 (g) independent physician-provider
23 organizations;
24 (h) physician hospital-provider
25 organizations; and

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1 (i) managed care services organizations;
2 and

3 (5) "medicare part C services" means services
4 performed pursuant to a contract with a managed health care
5 provider for medicare patients pursuant to Title 18 of the
6 federal Social Security Act. "

7 Section 4. [NEW MATERIAL] MEDICAID SERVICE TAX--
8 IMPOSITION-- COLLECTION-- ADMINISTRATION-- ENFORCEMENT. --

9 A. During a calendar year in which exactly twenty
10 percent of receipts from payments by a managed health care
11 provider or health care insurer for commercial contract
12 services or medicare part C services may be deducted from gross
13 receipts pursuant to Section 7-9-93 NMSA 1978, a tax equal to
14 one percent of those receipts is imposed.

15 B. During a calendar year in which gross receipts
16 from payments by a managed health care provider or health care
17 insurer for commercial contract services or medicare part C
18 services are not deductible pursuant to Section 7-9-93 NMSA
19 1978 and during which those receipts are not otherwise
20 deductible pursuant to another provision of the Gross Receipts
21 and Compensating Tax Act, a tax equal to two percent of those
22 receipts is imposed.

23 C. Any tax imposed pursuant to this section shall
24 be known as the "medicaid service tax". The medicaid service
25 tax shall be imposed and collected by the taxation and revenue

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1 department at the same time and in the same manner as the gross
2 receipts tax. The taxation and revenue department shall
3 administer and enforce the collection of the medicaid service
4 tax pursuant to the provisions of the Tax Administration Act.

5 Section 5. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect immediately.

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