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HOUSE BILL 583

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO TAXATION; CLARIFYING THE TREATMENT OF RECEIPTS FROM THE SALE OR LICENSING OF PROPERTY IN THE DEFINITION OF "GROSS RECEIPTS" PURSUANT TO THE GROSS RECEIPTS AND COMPENSATING TAX ACT.

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) 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

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1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

3 C. "financial corporation" means [~~any~~] a savings
4 and loan association or [~~any~~] an incorporated savings and loan
5 company, trust company, mortgage banking company, consumer
6 finance company or other financial corporation;

7 D. "initial use" or "initially used" means the
8 first employment for the intended purpose and does not include
9 the following activities:

10 (1) observation of tests conducted by the
11 performer of services;

12 (2) participation in progress reviews,
13 briefings, consultations and conferences conducted by the
14 performer of services;

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

17 (4) inspection of preliminary prototypes
18 developed by the performer of services; or

19 (5) similar activities;

20 E. "leasing" means an arrangement whereby, for a
21 consideration, property is employed for or by any person other
22 than the owner of the property, except that the granting of a
23 license to use property is [~~the sale of a license and~~] not a
24 lease;

25 F. "local option gross receipts tax" means a tax

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1 authorized to be imposed by a county or municipality upon the
2 taxpayer's gross receipts and required to be collected by the
3 department at the same time and in the same manner as the gross
4 receipts tax; "local option gross receipts tax" includes the
5 taxes imposed pursuant to the Municipal Local Option Gross
6 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
7 Act, County Local Option Gross Receipts Taxes Act, Local
8 Hospital Gross Receipts Tax Act, County Correctional Facility
9 Gross Receipts Tax Act and such other acts as may be enacted
10 authorizing counties or municipalities to impose taxes on gross
11 receipts, which taxes are to be collected by the department;

12 G. "manufactured home" means a movable or portable
13 housing structure for human occupancy that exceeds either a
14 width of eight feet or a length of forty feet constructed to be
15 towed on its own chassis and designed to be installed with or
16 without a permanent foundation;

17 H. "manufacturing" means combining or processing
18 components or materials to increase their value for sale in the
19 ordinary course of business, but does not include construction;

20 I. "person" means:

21 (1) an individual, estate, trust, receiver,
22 cooperative association, club, corporation, company, firm,
23 partnership, limited liability company, limited liability
24 partnership, joint venture, syndicate or other entity,
25 including any gas, water or electric utility owned or operated

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1 by a county, municipality or other political subdivision of the
2 state; or

3 (2) a national, federal, state, Indian or
4 other governmental unit or subdivision, or an agency,
5 department or instrumentality of any of the foregoing;

6 J. "property" means real property, tangible
7 personal property, licenses, franchises, patents, trademarks
8 and copyrights. Tangible personal property includes
9 electricity and manufactured homes;

10 K. "research and development services" means an
11 activity engaged in for other persons for consideration, for
12 one or more of the following purposes:

13 (1) advancing basic knowledge in a recognized
14 field of natural science;

15 (2) advancing technology in a field of
16 technical endeavor;

17 (3) developing a new or improved product,
18 process or system with new or improved function, performance,
19 reliability or quality, whether or not the new or improved
20 product, process or system is offered for sale, lease or other
21 transfer;

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

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1 (5) developing analytical or survey activities
2 incorporating technology review, application, trade-off study,
3 modeling, simulation, conceptual design or similar activities,
4 whether or not offered for sale, lease or other transfer; or

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

9 L. "secretary" means the secretary of taxation and
10 revenue or the secretary's delegate;

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

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1 construction project to persons engaged in the construction
2 business are sales of tangible personal property; and

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

6 Section 2. Section 7-9-3.5 NMSA 1978 (being Laws 2003,
7 Chapter 272, Section 3) is amended to read:

8 "7-9-3.5. DEFINITION--GROSS RECEIPTS.--

9 A. As used in the Gross Receipts and Compensating
10 Tax Act:

11 (1) "gross receipts" means the total amount of
12 money or the value of other consideration received from selling
13 property located in New Mexico, from leasing or licensing
14 property employed in New Mexico, from selling services
15 performed outside New Mexico, the product of which is initially
16 used in New Mexico, or from performing services in New Mexico.
17 In an exchange in which the money or other consideration
18 received does not represent the value of the property or
19 service exchanged, "gross receipts" means the reasonable value
20 of the property or service exchanged;

21 (2) "gross receipts" includes:

22 (a) any receipts from sales of tangible
23 personal property handled on consignment;

24 (b) the total commissions or fees
25 derived from the business of buying, selling or promoting the

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1 purchase, sale or lease, as an agent or broker on a commission
2 or fee basis, of any property, service, stock, bond or
3 security;

4 (c) amounts paid by members of any
5 cooperative association or similar organization for sales or
6 leases of personal property or performance of services by such
7 organization;

8 (d) amounts received from transmitting
9 messages or conversations by persons providing telephone or
10 telegraph services;

11 (e) amounts received by a New Mexico
12 florist from the sale of flowers, plants or other products that
13 are customarily sold by florists where the sale is made
14 pursuant to orders placed with the New Mexico florist that are
15 filled and delivered outside New Mexico by an out-of-state
16 florist; and

17 (f) the receipts of a home service
18 provider from providing mobile telecommunications services to
19 customers whose place of primary use is in New Mexico if: 1)
20 the mobile telecommunications services originate and terminate
21 in the same state, regardless of where the services originate,
22 terminate or pass through; and 2) the charges for mobile
23 telecommunications services are billed by or for a customer's
24 home service provider and are deemed provided by the home
25 service provider. For the purposes of this section, "home

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1 service provider", "mobile telecommunications services",
2 "customer" and "place of primary use" have the meanings given
3 in the federal Mobile Telecommunications Sourcing Act; and

4 (3) "gross receipts" excludes:

5 (a) cash discounts allowed and taken;

6 (b) New Mexico gross receipts tax,
7 governmental gross receipts tax and leased vehicle gross
8 receipts tax payable on transactions for the reporting period;

9 (c) taxes imposed pursuant to the
10 provisions of any local option gross receipts tax that is
11 payable on transactions for the reporting period;

12 (d) any gross receipts or sales taxes
13 imposed by an Indian nation, tribe or pueblo; provided that the
14 tax is approved, if approval is required by federal law or
15 regulation, by the secretary of the interior of the United
16 States; and provided further that the gross receipts or sales
17 tax imposed by the Indian nation, tribe or pueblo provides a
18 reciprocal exclusion for gross receipts, sales or gross
19 receipts-based excise taxes imposed by the state or its
20 political subdivisions;

21 (e) any type of time-price differential;

22 (f) amounts received solely on behalf of
23 another in a disclosed agency capacity; and

24 (g) amounts received by a New Mexico
25 florist from the sale of flowers, plants or other products that

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1 are customarily sold by florists where the sale is made
2 pursuant to orders placed with an out-of-state florist for
3 filling and delivery in New Mexico by a New Mexico florist.

4 B. When the sale of property or service is made
5 under any type of charge, conditional or time-sales contract or
6 the leasing of property is made under a leasing contract, the
7 seller or lessor may elect to treat all receipts, excluding any
8 type of time-price differential, under such contracts as gross
9 receipts as and when the payments are actually received. If
10 the seller or lessor transfers [~~his~~] the seller's or lessor's
11 interest in any such contract to a third person, the seller or
12 lessor shall pay the gross receipts tax upon the full sale or
13 leasing contract amount, excluding any type of time-price
14 differential."

15 Section 3. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2006.