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HOUSE BILL 1228

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN DEFINITIONS IN 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 employee of the department exercising authority lawfully delegated to that employee by the secretary;

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1 C. "financial corporation" means a savings and loan
2 association or an incorporated savings and loan company, trust
3 company, mortgage banking company, consumer finance company or
4 other financial corporation;

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

8 (1) observation of tests conducted by the
9 performer of services;

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

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

15 (4) inspection of preliminary prototypes
16 developed by the performer of services; or

17 (5) similar activities;

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

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

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1 receipts tax; "local option gross receipts tax" includes the
2 taxes imposed pursuant to the Municipal Local Option Gross
3 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
4 Act, County Local Option Gross Receipts Taxes Act, Local
5 Hospital Gross Receipts Tax Act, County Correctional Facility
6 Gross Receipts Tax Act and such other acts as may be enacted
7 authorizing counties or municipalities to impose taxes on gross
8 receipts, which taxes are to be collected by the department;

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

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

17 I. "person" means:

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

25 (2) a national, federal, state, Indian or

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1 other governmental unit or subdivision, or an agency,
2 department or instrumentality of any of the foregoing;

3 J. "property" means real property and tangible
4 personal property [~~licenses and franchises~~]. Tangible personal
5 property includes electricity and manufactured homes;

6 K. "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 recognized
10 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 other
17 transfer;

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

22 (5) developing analytical or survey activities
23 incorporating technology review, application, trade-off study,
24 modeling, simulation, conceptual design or similar activities,
25 whether or not offered for sale, lease or other transfer; or

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

5 L. "secretary" means the secretary of taxation and
6 revenue or the secretary's delegate;

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

24 N. "use" or "using" includes use, consumption or
25 storage other than storage for subsequent sale in the ordinary

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1 course of business or for use solely outside this state."

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

4 "7-9-3.5. DEFINITION--GROSS RECEIPTS.--

5 A. As used in the Gross Receipts and Compensating
6 Tax Act:

7 (1) "gross receipts" means the total amount of
8 money or the value of other consideration received from selling
9 property [~~located~~] in New Mexico, from leasing or licensing
10 property employed in New Mexico, from granting a right to use a
11 franchise employed in New Mexico, from selling services
12 performed outside New Mexico, the product of which is initially
13 used in New Mexico, or from performing services in New Mexico.
14 In an exchange in which the money or other consideration
15 received does not represent the value of the property or
16 service exchanged, "gross receipts" means the reasonable value
17 of the property or service exchanged;

18 (2) "gross receipts" includes:

19 (a) any receipts from sales of tangible
20 personal property handled on consignment;

21 (b) the total commissions or fees
22 derived from the business of buying, selling or promoting the
23 purchase, sale or lease, as an agent or broker on a commission
24 or fee basis, of any property, service, stock, bond or
25 security;

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

5 (d) amounts received from transmitting
6 messages or conversations by persons providing telephone or
7 telegraph services;

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

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

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- 1 (3) "gross receipts" excludes:
- 2 (a) cash discounts allowed and taken;
- 3 (b) New Mexico gross receipts tax,
- 4 governmental gross receipts tax and leased vehicle gross
- 5 receipts tax payable on transactions for the reporting period;
- 6 (c) taxes imposed pursuant to the
- 7 provisions of any local option gross receipts tax that is
- 8 payable on transactions for the reporting period;
- 9 (d) any gross receipts or sales taxes
- 10 imposed by an Indian nation, tribe or pueblo; provided that the
- 11 tax is approved, if approval is required by federal law or
- 12 regulation, by the secretary of the interior of the United
- 13 States; and provided further that the gross receipts or sales
- 14 tax imposed by the Indian nation, tribe or pueblo provides a
- 15 reciprocal exclusion for gross receipts, sales or gross
- 16 receipts-based excise taxes imposed by the state or its
- 17 political subdivisions;
- 18 (e) any type of time-price differential;
- 19 (f) amounts received solely on behalf of
- 20 another in a disclosed agency capacity; and
- 21 (g) amounts received by a New Mexico
- 22 florist from the sale of flowers, plants or other products that
- 23 are customarily sold by florists where the sale is made
- 24 pursuant to orders placed with an out-of-state florist for
- 25 filling and delivery in New Mexico by a New Mexico florist.

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B. When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers the seller's or lessor's interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential."