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SENATE BILL 452

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FROM GROSS RECEIPTS FOR SELLING OR LEASING COMMUNICATIONS EQUIPMENT TO A COMMUNICATIONS PROVIDER IN NEW MEXICO THAT IS USED TO PROVIDE RETAIL COMMUNICATIONS SERVICES; DEFINING TERMS; PROVIDING A DEDUCTION FROM THE CALCULATION OF COMPENSATING TAX FOR THE VALUE OF COMMUNICATIONS EQUIPMENT PURCHASED OR LEASED ON WHICH COMPENSATING TAX IS DUE.

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

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEFINITIONS--COMMUNICATIONS PROVIDERS.--As used in the Gross Receipts and Compensating Tax Act:

A. "ancillary services" means services that are associated with or incidental to the provision of

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1 communications services, including conference bridging service,
2 detailed telecommunications billing, directory assistance,
3 vertical service and voice mail services;

4 B. "communications equipment" means machinery,
5 equipment and fixtures that are used primarily in the provision
6 of communications services or ancillary services, including:

7 (1) transmitting machinery, equipment and
8 fixtures, such as computers, transformers, amplifiers, routers,
9 bridges, repeaters, multiplexers and other items performing
10 comparable functions, used in initiating, amplifying,
11 processing, coding, recording, switching, routing and receiving
12 communications services;

13 (2) transporting machinery, equipment and
14 fixtures, such as wire, cable, fiber, radio transmitters and
15 receivers, satellite equipment and microwave equipment, used in
16 transporting the signal to provide communications services;

17 (3) supporting machinery, equipment and
18 fixtures, such as auxiliary power supplies, test equipment,
19 tools, poles, towers and heating and air conditioning necessary
20 for providing communications services, to regulate, control,
21 protect, monitor or enable transmitting and transporting
22 machinery, equipment and fixtures; and

23 (4) inventory parts for machinery, equipment
24 or fixtures, such as accessories purchased as spare parts,
25 repair parts or to upgrade or modify transmitting, transporting

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1 or supporting machinery, equipment or fixtures;

2 C. "communications provider" means an individual or
3 entity that provides communications services and ancillary
4 services that are to be sold ultimately at retail;

5 D. "communications services" means:

6 (1) the electronic transmission, conveyance or
7 routing of voice, data, audio, video or any other information
8 or signal to a point or between or among points, including:

9 (a) transmission, conveyance or routing
10 in which computer processing applications are used to act on
11 the form, code or protocol of the content for purposes of
12 transmission, conveyance or routing without regard to whether
13 the service is referred to as voice over internet protocol
14 services or is classified by the federal communications
15 commission as enhanced or value-added; and

16 (b) services that are associated with or
17 incidental to the provision of the transmission, conveyance or
18 routing services described in this subsection, such as detailed
19 telecommunications billing, directory assistance, vertical
20 services and voice mail services; and

21 (2) "communications services" does not
22 include:

23 (a) data processing and information
24 services that allow data to be generated, acquired, stored,
25 processed or retrieved and delivered by an electronic

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1 transmission to a purchaser where the purchaser's primary
2 purpose for the underlying transaction is the processed data or
3 information;

4 (b) installation or maintenance of
5 wiring or equipment on a customer's premises;

6 (c) tangible personal property;

7 (d) advertising, including directory
8 advertising;

9 (e) billing and collection services
10 provided to third parties;

11 (f) radio and television audio and video
12 programming services, regardless of the medium, such as cable
13 service as defined in Subsection (6) of 42 U.S.C. 522 and audio
14 and video programming services delivered by commercial mobile
15 radio service providers as defined in 47 C.F.R. 20.3, including
16 the furnishing of transmission, conveyance and routing of the
17 services by the programming service provider; or

18 (g) digital products delivered
19 electronically, such as software, music, video, reading
20 materials or ring tones;

21 E. "conference bridging service" means an ancillary
22 service that links two or more participants of an audio or
23 video conference call and may include the provision of a
24 telephone number; "conference bridging service" does not
25 include the communications services used to reach the

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1 conference bridge;

2 F. "detailed telecommunications billing service"
3 means an ancillary service of separately stating information
4 pertaining to individual calls on a customer's billing
5 statement;

6 G. "directory assistance" means an ancillary
7 service of providing telephone number information or address
8 information;

9 H. "vertical service" means an ancillary service
10 that is offered in connection with one or more communications
11 services, that offers advanced calling features that allow
12 customers to identify callers and to manage multiple calls and
13 call connections, including conference bridging services; and

14 I. "voice mail service" means an ancillary service
15 that enables the customer to store, send or receive recorded
16 messages; "voice mail service" does not include vertical
17 services that the customer may be required to have in order to
18 utilize the voice mail service."

19 Section 2. A new section of the Gross Receipts and
20 Compensating Tax Act is enacted to read:

21 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--COMMUNICATIONS
22 EQUIPMENT.--

23 A. Receipts from the sale or lease of
24 communications equipment to a communications provider may be
25 deducted at the rates set forth in this section from gross

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1 receipts of a seller or lessor of communications equipment if
2 the communications provider that is the purchaser or lessee
3 delivers a nontaxable transaction certificate to the seller or
4 lessor.

5 B. A communications provider may only deliver a
6 nontaxable transaction certificate to a seller or lessor if the
7 communications equipment being purchased or leased enables the
8 communications provider to provide communications services
9 ultimately to retail customers.

10 C. The following amounts may be deducted from the
11 gross receipts of a seller or lessor providing communications
12 equipment to a communications provider:

13 (1) for fiscal year 2010, the deduction is an
14 amount equal to twenty percent of the gross receipts of the
15 seller or lessor from selling or leasing communications
16 equipment to a communications provider;

17 (2) for fiscal year 2011, the deduction is an
18 amount equal to forty percent of the gross receipts of the
19 seller or lessor from selling or leasing communications
20 equipment to a communications provider;

21 (3) for fiscal year 2012, the rate of the
22 deduction provided in this section shall equal sixty percent of
23 the gross receipts of the seller or lessor from selling or
24 leasing communications equipment to a communications provider;

25 (4) for fiscal year 2013, the rate of the

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1 deduction provided in this section shall equal eighty percent
2 of the gross receipts of the seller or lessor from selling or
3 leasing communications equipment to a communications provider;
4 and

5 (5) for fiscal year 2014 and each fiscal year
6 thereafter, the rate of the deduction provided in this section
7 shall equal one hundred percent of the gross receipts of the
8 seller or lessor from selling or leasing communications
9 equipment to a communications provider."

10 Section 3. A new section of the Gross Receipts and
11 Compensating Tax Act is enacted to read:

12 "[NEW MATERIAL] DEDUCTION--COMPENSATING TAX--
13 COMMUNICATIONS EQUIPMENT.--

14 A. The value of communications equipment purchased
15 or leased, on which compensating tax must be paid, may be
16 deducted in computing the compensating tax due.

17 B. In computing the compensating tax due, a
18 communications provider may deduct the following from the value
19 of the communications equipment purchased or leased:

20 (1) for fiscal year 2010, an amount equal to
21 twenty percent of the value of communications equipment
22 purchased or leased;

23 (2) for fiscal year 2011, an amount equal to
24 forty percent of the value of communications equipment
25 purchased or leased;

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1 (3) for fiscal year 2012, an amount equal to
2 sixty percent of the value of communications equipment
3 purchased or leased;

4 (4) for fiscal year 2013, an amount equal to
5 eighty percent of the value; and

6 (5) for fiscal year 2014 and each fiscal year
7 thereafter, an amount equal to one hundred percent of the
8 value."