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HOUSE BILL 50

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Eleanor Chavez

AN ACT

RELATING TO TAXATION; ESTABLISHING A PRESUMPTION THAT CERTAIN  
INTERNET SALES OF GOODS AND SERVICES ARE SUBJECT TO GROSS  
RECEIPTS TAX; CLARIFYING NEXUS IN REGARD TO CERTAIN INTERNET  
SALES.

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

Section 1. Section 7-9-3.3 NMSA 1978 (being Laws 2003,  
Chapter 272, Section 4) is amended to read:

"7-9-3.3. DEFINITION--ENGAGING IN BUSINESS.--As used in  
the Gross Receipts and Compensating Tax Act, "engaging in  
business" means carrying on or causing to be carried on any  
activity with the purpose of direct or indirect benefit, except  
that

~~[A. "engaging in business" does not include having  
a worldwide web site as a third-party content provider on a~~

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1 ~~computer physically located in New Mexico but owned by another~~  
2 ~~nonaffiliated person; and~~

3 B.] "engaging in business" [~~does not include~~]  
4 excludes using a nonaffiliated third-party call center to  
5 accept and process telephone or electronic orders of tangible  
6 personal property or licenses primarily from non-New Mexico  
7 buyers, which orders are forwarded to a location outside New  
8 Mexico for filling, or to provide services primarily to non-New  
9 Mexico customers."

10 Section 2. Section 7-9-5 NMSA 1978 (being Laws 1966,  
11 Chapter 47, Section 5, as amended) is amended to read:

12 "7-9-5. PRESUMPTION OF TAXABILITY--AGGREGATED  
13 TELECOMMUNICATIONS SERVICES--CERTAIN INTERNET SALES.--

14 A. To prevent evasion of the gross receipts tax and  
15 to aid in its administration, it is presumed that all receipts  
16 of a person engaging in business are subject to the gross  
17 receipts tax. [~~Any~~] A person engaged solely in transactions  
18 specifically exempt under the provisions of the Gross Receipts  
19 and Compensating Tax Act shall not be required to register or  
20 file a return under that act.

21 B. If receipts from nontaxable charges for mobile  
22 telecommunications services are aggregated with and not  
23 separately stated from taxable charges for mobile  
24 telecommunications services, [~~then~~] the charges for nontaxable  
25 mobile telecommunications services shall be subject to gross

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1 receipts tax unless the home service provider can reasonably  
2 identify nontaxable charges in its books and records that are  
3 kept in the regular course of business. For the purposes of  
4 this subsection, "charges for mobile telecommunications  
5 services", "home service provider" and "mobile  
6 telecommunications services" have the meanings given in the  
7 federal Mobile Telecommunications Sourcing Act.

8 C. A person with a business with no physical  
9 presence in New Mexico is presumed to be engaging in business  
10 in New Mexico and has nexus with the state for purposes of due  
11 process and interstate commerce if:

12 (1) that person enters into an agreement with  
13 a resident of the state under which the resident, for a  
14 commission or other consideration, directly or indirectly  
15 refers potential customers, whether by link or an internet web  
16 site or otherwise, to that person; and

17 (2) the cumulative gross receipts from sales  
18 by that person to customers in the state who are referred to  
19 that person by all residents with an agreement described in  
20 this subsection are in excess of ten thousand dollars (\$10,000)  
21 during the preceding twelve-month period ending on June 30 of  
22 any year.

23 D. The presumption of nexus established in  
24 Subsection C of this section may be rebutted by proof that the  
25 resident made no solicitation in the state that would satisfy

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1 the nexus requirements of the United States constitution on  
2 behalf of the person presumed to be engaging in business in New  
3 Mexico."

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