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HOUSE BILL 281

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Candy Spence Ezzell

AN ACT

RELATING TO TAXATION; PROVIDING THAT THE SECRETARY OF TAXATION AND REVENUE IN CERTAIN TRANSACTIONS PURSUANT TO THE GROSS RECEIPTS AND COMPENSATING TAX ACT MAY APPROVE SATISFACTORY EVIDENCE OF DEDUCTIBILITY OTHER THAN NONTAXABLE TRANSACTION CERTIFICATES.

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

**SECTION 1.** Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS.--

A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from

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1 the transactions. If the seller or lessor is not in possession  
2 of the required nontaxable transaction certificates within  
3 sixty days from the date that the notice requiring possession  
4 of these nontaxable transaction certificates is given the  
5 seller or lessor by the department, deductions claimed by the  
6 seller or lessor that require delivery of these nontaxable  
7 transaction certificates shall be disallowed. The nontaxable  
8 transaction certificates shall contain the information and be  
9 in a form prescribed by the department. The department by  
10 regulation may deem to be nontaxable transaction certificates  
11 documents issued by other states or the multistate tax  
12 commission to taxpayers not required to be registered in New  
13 Mexico. Only buyers or lessees who have a registration number  
14 or have applied for a registration number and have not been  
15 refused one under Subsection C of Section 7-1-12 NMSA 1978  
16 shall execute nontaxable transaction certificates issued by the  
17 department. If the seller or lessor has been given an  
18 identification number for tax purposes by the department, the  
19 seller or lessor shall disclose that identification number to  
20 the buyer or lessee prior to or upon acceptance of a nontaxable  
21 transaction certificate. When the seller or lessor accepts a  
22 nontaxable transaction certificate within the required time and  
23 in good faith that the buyer or lessee will employ the property  
24 or service transferred in a nontaxable manner, the properly  
25 executed nontaxable transaction certificate shall be conclusive

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1 evidence, and the only material evidence, that the proceeds  
2 from the transaction are deductible from the seller's or  
3 lessor's gross receipts.

4 B. Properly executed documents required to support  
5 the deductions provided in Sections 7-9-47, 7-9-57, 7-9-58 and  
6 7-9-74 NMSA 1978 should be in the possession of the seller at  
7 the time the return is due for receipts from the transactions.  
8 If the seller is not in possession of these documents within  
9 sixty days from the date that the notice requiring possession  
10 of these documents is given to the seller by the department,  
11 deductions claimed by the seller or lessor that require  
12 delivery of these documents shall be disallowed. These  
13 documents shall contain the information and be in a form  
14 prescribed by the department. When the seller accepts these  
15 documents within the required time and in good faith that the  
16 buyer will employ the property or service transferred in a  
17 nontaxable manner, the properly executed documents shall be  
18 conclusive evidence, and the only material evidence, that the  
19 proceeds from the transaction are deductible from the seller's  
20 gross receipts.

21 C. Notice, as used in this section, is sufficient  
22 if the notice is mailed or served as provided in Subsection A  
23 of Section 7-1-9 NMSA 1978. Notice by the department under  
24 this section shall not be given prior to the commencement of an  
25 audit of the seller required to be in possession of the

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1 documents.

2 D. To exercise the privilege of executing  
3 appropriate nontaxable transaction certificates, a buyer or  
4 lessee shall apply to the department for permission to execute  
5 nontaxable transaction certificates, except with respect to  
6 documents issued by other states or the multistate tax  
7 commission that the department has deemed to be nontaxable  
8 transaction certificates. If a person is shown on the  
9 department's records to be a delinquent taxpayer or to have a  
10 non-filed period, the department may refuse to approve the  
11 application of the person until the person has filed returns  
12 for all non-filed periods and is no longer shown to be a  
13 delinquent taxpayer, and the taxpayer may protest that refusal  
14 pursuant to Section 7-1-24 NMSA 1978. Upon the department's  
15 approval of the application, the buyer or lessee may request  
16 appropriate nontaxable transaction certificates for execution  
17 by the buyer or lessee; provided that if a person is shown on  
18 the department's records to be a delinquent taxpayer or to have  
19 a non-filed period, the department may refuse to issue  
20 nontaxable transaction certificates to the person until the  
21 person has filed returns for all non-filed periods and is no  
22 longer shown to be a delinquent taxpayer. The taxpayer may  
23 protest that refusal pursuant to Section 7-1-24 NMSA 1978. The  
24 department may require a buyer or lessee requesting and  
25 receiving nontaxable transaction certificates for execution by

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1 that buyer or lessee to report to the department the names,  
2 addresses and identification numbers assigned by the department  
3 of the sellers and lessors to whom they have delivered  
4 nontaxable transaction certificates. The department may  
5 require a seller or lessor engaged in business in New Mexico to  
6 report to the department the names, addresses and federal  
7 employer identification numbers or state identification numbers  
8 for tax purposes issued by the department of the buyers or  
9 lessees from whom the seller or lessor has accepted nontaxable  
10 transaction certificates."

11 SECTION 2. Section 7-9-47 NMSA 1978 (being Laws 1969,  
12 Chapter 144, Section 37, as amended) is amended to read:

13 "7-9-47. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL  
14 GROSS RECEIPTS TAX--SALE OF TANGIBLE PERSONAL PROPERTY OR  
15 LICENSES FOR RESALE.--

16 A. Receipts from selling tangible personal property  
17 or licenses may be deducted from gross receipts or from  
18 governmental gross receipts if the sale is made to a person who  
19 delivers a nontaxable transaction certificate or other evidence  
20 approved by the secretary to the seller. The buyer delivering  
21 the nontaxable transaction certificate or other evidence  
22 approved by the secretary must resell the tangible personal  
23 property or license either by itself or in combination with  
24 other tangible personal property or licenses in the ordinary  
25 course of business.

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1                    B. As used in this section, "other evidence  
2 approved the secretary" means evidence approved by the  
3 secretary of deductibility of receipts from transactions as to  
4 which a taxpayer's administrative and judicial remedies have  
5 not been exhausted prior to July 1, 2011."

6                    SECTION 3. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2011.

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