

HOUSE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 377

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
ALLOWING EVIDENCE OTHER THAN A NONTAXABLE TRANSACTION  
CERTIFICATE TO PROVE THAT PROCEEDS FROM A TRANSACTION ARE  
DEDUCTIBLE FROM GROSS RECEIPTS.

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  
the transactions. If the seller or lessor is not in possession

.203620.5

underscored material = new  
[bracketed material] = delete

1 of the required nontaxable transaction certificates within  
2 sixty days from the date that the notice requiring possession  
3 of these nontaxable transaction certificates is given the  
4 seller or lessor by the department, deductions claimed by the  
5 seller or lessor that require delivery of these nontaxable  
6 transaction certificates shall be disallowed except as provided  
7 in Subsection [E] D of this section. The nontaxable  
8 transaction certificates shall contain the information and be  
9 in a form prescribed by the department. The department by  
10 [~~regulation~~] rule may deem to be nontaxable transaction  
11 certificates documents issued by other states or the multistate  
12 tax commission to taxpayers not required to be registered in  
13 New Mexico. Only buyers or lessees who have a registration  
14 number or have applied for a registration number and have not  
15 been 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

.203620.5

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

4 ~~[B. Properly executed documents required to support~~  
5 ~~the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74~~  
6 ~~NMSA 1978 should be in the possession of the seller at the time~~  
7 ~~the return is due for receipts from the transactions. If the~~  
8 ~~seller is not in possession of these documents within sixty~~  
9 ~~days from the date that the notice requiring possession of~~  
10 ~~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 G.] B. Notice, as used in this section, is  
22 sufficient if the notice is mailed or served as provided in  
23 Subsection A of Section 7-1-9 NMSA 1978. Notice by the  
24 department under this section shall not be given prior to the  
25 commencement of an audit of the seller required to be in

.203620.5

1 possession of the documents.

2           ~~[D-]~~ C. 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

.203620.5

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 ~~[E. The secretary or secretary's delegate may~~  
 12 ~~accept other evidence, as specified by rule, to support the~~  
 13 ~~deduction provided pursuant to Section 7-9-47 NMSA 1978 for the~~  
 14 ~~sale of tangible personal property if a taxpayer is unable to~~  
 15 ~~provide a nontaxable transaction certificate within the sixty-~~  
 16 ~~day period specified in Subsection A of this section:~~

17 ~~(1) prior to the issuance of an audit~~  
 18 ~~assessment; or~~

19 ~~(2) if the audit assessment is protested,~~  
 20 ~~prior to either the taxpayer's withdrawal of the protest or the~~  
 21 ~~formal hearing of the protest; provided, however, that the~~  
 22 ~~protest in this paragraph is acknowledged by the department~~  
 23 ~~prior to December 31, 2011.]~~

24 D. A seller or lessor that claims a deduction for a  
 25 transaction, but is not in possession of a nontaxable

.203620.5

1 transaction certificate as required by Subsection A of this  
2 section, may be allowed the deduction if the seller or lessor  
3 can demonstrate, by a preponderance of the evidence, the facts  
4 necessary to establish entitlement to the deduction; provided  
5 that the seller or lessor is under audit by the department or  
6 is pursuing an administrative appeal relating to the  
7 transaction. The provisions of this subsection shall not apply  
8 to a deduction claimed pursuant to Section 7-9-46 NMSA 1978."

underscored material = new  
[bracketed material] = delete

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25