

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 215

3 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

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10 AN ACT

11 RELATING TO TAXATION; CLARIFYING THE DEFINITION IN LAW OF
12 CONSTRUCTION MATERIAL, AS USED IN THE GROSS RECEIPTS AND
13 COMPENSATING TAX ACT; DECLARING AN EMERGENCY.

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

16 SECTION 1. Section 7-9-54 NMSA 1978 (being Laws 1969,
17 Chapter 144, Section 44, as amended by Laws 2003, Chapter 272,
18 Section 6 and by Laws 2003, Chapter 330, Section 2) is amended
19 to read:

20 "7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
21 GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

22 A. Receipts from selling tangible personal property
23 to the United States or New Mexico or a governmental unit,
24 subdivision, agency, department or instrumentality thereof may
25 be deducted from gross receipts or from governmental gross

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1 receipts. Unless contrary to federal law, the deduction
2 provided by this subsection does not apply to:

3 (1) receipts from selling metalliferous
4 mineral ore;

5 (2) receipts from selling tangible personal
6 property that is or will be incorporated into a metropolitan
7 redevelopment project created under the Metropolitan
8 Redevelopment Code;

9 (3) receipts from selling construction
10 material, excluding tangible personal property, whether
11 removable or non-removable, that is or would be classified for
12 depreciation purposes as three-year property, five-year
13 property, seven-year property or ten-year property, including
14 indirect costs related to the asset basis, by Section 168 of
15 the Internal Revenue Code of 1986, as that section may be
16 amended or renumbered; or

17 (4) that portion of the receipts from
18 performing a "service" that reflects the value of tangible
19 personal property utilized or produced in performance of such
20 service.

21 B. Receipts from selling tangible personal property
22 for any purpose to an Indian tribe, nation or pueblo or a
23 governmental unit, subdivision, agency, department or
24 instrumentality thereof for use on Indian reservations or
25 pueblo grants may be deducted from gross receipts or from

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1 governmental gross receipts.

2 C. When a seller, in good faith, deducts receipts
3 for tangible personal property sold to the state or a
4 governmental unit, subdivision, agency, department or
5 instrumentality thereof, after receiving written assurances
6 from the buyer's representative that the property sold is not
7 construction material, the department shall not assert in a
8 later assessment or audit of the seller that the receipts are
9 not deductible pursuant to Paragraph (3) of Subsection A of
10 this section."

11 SECTION 2. Section 7-9-60 NMSA 1978 (being Laws 1970,
12 Chapter 12, Section 4, as amended) is amended to read:

13 "7-9-60. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
14 GROSS RECEIPTS TAX--SALES TO CERTAIN ORGANIZATIONS.--

15 A. Except as provided otherwise in Subsection B of
16 this section, receipts from selling tangible personal property
17 to 501(c)(3) organizations may be deducted from gross receipts
18 or from governmental gross receipts if the sale is made to an
19 organization that delivers a nontaxable transaction certificate
20 to the seller. The buyer delivering the nontaxable transaction
21 certificate shall employ the tangible personal property in the
22 conduct of functions described in Section 501(c)(3) and shall
23 not employ the tangible personal property in the conduct of an
24 unrelated trade or business as defined in Section 513 of the
25 United States Internal Revenue Code of 1986, as amended or

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1 renumbered.

2 B. The deduction provided by this section does not
3 apply to receipts from selling construction material, excluding
4 tangible personal property, whether removable or non-removable,
5 that is or would be classified for depreciation purposes as
6 three-year property, five-year property, seven-year property or
7 ten-year property, including indirect costs related to the
8 asset basis, by Section 168 of the Internal Revenue Code of
9 1986, as that section may be amended or renumbered, or from
10 selling metalliferous mineral ore; except that receipts from
11 selling construction material or from selling metalliferous
12 mineral ore to a 501(c)(3) organization that is organized for
13 the purpose of providing homeownership opportunities to low-
14 income families may be deducted from gross receipts. Receipts
15 may be deducted under this subsection only if the buyer
16 delivers a nontaxable transaction certificate to the seller.
17 The buyer shall use the property in the conduct of functions
18 described in Section 501(c)(3) of the Internal Revenue Code of
19 1986, as amended, and shall not employ the tangible personal
20 property in the conduct of an unrelated trade or business, as
21 defined in Section 513 of that code.

22 C. For the purposes of this section, "501(c)(3)
23 organization" means an organization that has been granted
24 exemption from the federal income tax by the United States
25 commissioner of internal revenue as an organization described

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1 in Section 501(c)(3) of the United States Internal Revenue Code
2 of 1986, as amended or renumbered."

3 SECTION 3. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

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