

1 HOUSE BILL 278

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; ADDING MANUFACTURING SERVICE PROVIDERS TO
12 A GROSS RECEIPTS TAX DEDUCTION FOR MANUFACTURERS; PROVIDING A
13 GROSS RECEIPTS TAX DEDUCTION FOR CERTAIN BUSINESS SERVICES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 7-9-3 NMSA 1978 (being Laws 1978,
17 Chapter 46, Section 1, as amended by Laws 2019, Chapter 270,
18 Section 23 and by Laws 2019, Chapter 274, Section 11) is
19 amended to read:

20 "7-9-3. DEFINITIONS.--As used in the Gross Receipts and
21 Compensating Tax Act:

22 A. "buying" or "selling" means a transfer of
23 property for consideration or the performance of service for
24 consideration;

25 B. "department" means the taxation and revenue

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1 department, the secretary of taxation and revenue or an
2 employee of the department exercising authority lawfully
3 delegated to that employee by the secretary;

4 C. "digital good" means a digital product delivered
5 electronically, including software, music, photography, video,
6 reading material, an application and a ringtone;

7 D. "financial corporation" means a savings and loan
8 association or an incorporated savings and loan company, trust
9 company, mortgage banking company, consumer finance company or
10 other financial corporation;

11 E. "initial use" or "initially used" means the
12 first employment for the intended purpose and does not include
13 the following activities:

14 (1) observation of tests conducted by the
15 performer of services;

16 (2) participation in progress reviews,
17 briefings, consultations and conferences conducted by the
18 performer of services;

19 (3) review of preliminary drafts, drawings and
20 other materials prepared by the performer of [the] services;

21 (4) inspection of preliminary prototypes
22 developed by the performer of services; or

23 (5) similar activities;

24 F. "leasing" means an arrangement whereby, for a
25 consideration, property is employed for or by any person other

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1 than the owner of the property, except that the granting of a
2 license to use property is licensing and is not a lease;

3 G. "local option gross receipts tax" means a tax
4 authorized to be imposed by a county or municipality upon a
5 taxpayer's gross receipts and required to be collected by the
6 department at the same time and in the same manner as the gross
7 receipts tax;

8 H. "manufactured home" means a movable or portable
9 housing structure for human occupancy that exceeds either a
10 width of eight feet or a length of forty feet constructed to be
11 towed on its own chassis and designed to be installed with or
12 without a permanent foundation;

13 I. "manufacturing" means combining or processing
14 components or materials to increase their value for sale in the
15 ordinary course of business, but does not include construction
16 services; farming; electric power generation; processing of
17 natural resources, including hydrocarbons; or the processing or
18 preparation of meals for immediate consumption;

19 J. "manufacturing service" means the service of
20 combining or processing components or materials owned by
21 another, but does not include construction services; farming;
22 electric power generation; processing of natural resources,
23 including hydrocarbons; or the processing or preparation of
24 meals for immediate consumption;

25 [~~J.~~] K. "marketplace provider" means a person who

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1 facilitates the sale, lease or license of tangible personal
2 property or services or licenses for use of real property on a
3 marketplace seller's behalf, or on the marketplace provider's
4 own behalf, by:

5 (1) listing or advertising the sale, lease or
6 license, by any means, whether physical or electronic,
7 including by catalog, internet website or television or radio
8 broadcast; and

9 (2) either directly or indirectly, through
10 agreements or arrangements with third parties collecting
11 payment from the customer and transmitting that payment to the
12 seller, regardless of whether the marketplace provider receives
13 compensation or other consideration in exchange for the
14 marketplace provider's services;

15 ~~[K-]~~ L. "marketplace seller" means a person who
16 sells, leases or licenses tangible personal property or
17 services or who licenses the use of real property through a
18 marketplace provider;

19 ~~[L-]~~ M. "person" means:

20 (1) an individual, estate, trust, receiver,
21 cooperative association, club, corporation, company, firm,
22 partnership, limited liability company, limited liability
23 partnership, joint venture, syndicate or other entity,
24 including any gas, water or electric utility owned or operated
25 by a county, municipality or other political subdivision of the

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1 state; or

2 (2) a national, federal, state, Indian or
3 other governmental unit or subdivision, or an agency,
4 department or instrumentality of any of the foregoing;

5 ~~[M.]~~ N. "property" means:

6 (1) real property;

7 (2) tangible personal property, including
8 electricity and manufactured homes;

9 (3) licenses, including licenses of digital
10 goods, but not including the licenses of copyrights, trademarks
11 or patents; and

12 (4) franchises;

13 ~~[N.]~~ O. "research and development services" means
14 an activity engaged in for other persons for consideration, for
15 one or more of the following purposes:

16 (1) advancing basic knowledge in a recognized
17 field of natural science;

18 (2) advancing technology in a field of
19 technical endeavor;

20 (3) developing a new or improved product,
21 process or system with new or improved function, performance,
22 reliability or quality, whether or not the new or improved
23 product, process or system is offered for sale, lease or other
24 transfer;

25 (4) developing new uses or applications for an

1 existing product, process or system, whether or not the new use
2 or application is offered as the rationale for purchase, lease
3 or other transfer of the product, process or system;

4 (5) developing analytical or survey activities
5 incorporating technology review, application, trade-off study,
6 modeling, simulation, conceptual design or similar activities,
7 whether or not offered for sale, lease or other transfer; or

8 (6) designing and developing prototypes or
9 integrating systems incorporating the advances, developments or
10 improvements included in Paragraphs (1) through (5) of this
11 subsection;

12 [Ø-] P. "secretary" means the secretary of taxation
13 and revenue or the secretary's delegate;

14 [P-] Q. "service" means all activities engaged in
15 for other persons for a consideration, which activities involve
16 predominantly the performance of a service as distinguished
17 from selling or leasing property. "Service" includes
18 activities performed by a person for its members or
19 shareholders. In determining what is a service, the intended
20 use, principal objective or ultimate objective of the
21 contracting parties shall not be controlling. "Service"
22 includes construction activities and all tangible personal
23 property that will become an ingredient or component part of a
24 construction project. That tangible personal property retains
25 its character as tangible personal property until it is

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1 installed as an ingredient or component part of a construction
2 project in New Mexico. Sales of tangible personal property
3 that will become an ingredient or component part of a
4 construction project to persons engaged in the construction
5 business are sales of tangible personal property; and

6 [Q.] R. "use" or "using" includes use, consumption
7 or storage other than storage for subsequent sale in the
8 ordinary course of business or for use solely outside this
9 state."

10 SECTION 2. Section 7-9-46 NMSA 1978 (being Laws 1969,
11 Chapter 144, Section 36, as amended) is amended to read:

12 "7-9-46. DEDUCTION--GROSS RECEIPTS [TAX]--GOVERNMENTAL
13 GROSS RECEIPTS--SALES TO MANUFACTURERS AND MANUFACTURING
14 SERVICE PROVIDERS.--

15 A. Receipts from selling tangible personal property
16 may be deducted from gross receipts or from governmental gross
17 receipts if the sale is made to a person engaged in the
18 business of manufacturing who delivers a nontaxable transaction
19 certificate to the seller. The buyer delivering the nontaxable
20 transaction certificate must incorporate the tangible personal
21 property as an ingredient or component part of the product that
22 the buyer is in the business of manufacturing.

23 B. Receipts from selling [~~tangible personal~~
24 ~~property that is~~] a manufacturing consumable [~~and used in such~~
25 ~~a way that it is consumed in the manufacturing process of a~~

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1 ~~product, provided that the tangible personal property is not a~~
2 ~~tool or equipment used to create the manufactured product, to a~~
3 ~~person engaged in the business of manufacturing that product~~
4 ~~and who delivers a nontaxable transaction certificate to the~~
5 ~~seller] to a manufacturer or a manufacturing service provider~~
6 may be deducted [in the following percentages] from gross
7 receipts or from governmental gross receipts

8 ~~(1) twenty percent of receipts received prior~~
9 ~~to January 1, 2014;~~

10 ~~(2) forty percent of receipts received in~~
11 ~~calendar year 2014;~~

12 ~~(3) sixty percent of receipts received in~~
13 ~~calendar year 2015;~~

14 ~~(4) eighty percent of receipts received in~~
15 ~~calendar year 2016; and~~

16 ~~(5) one hundred percent of receipts received~~
17 ~~on or after January 1, 2017] if the buyer delivers a nontaxable~~
18 ~~transaction certificate to the seller.~~

19 C. Receipts from selling or leasing qualified
20 equipment may be deducted from gross receipts if the sale is
21 made to, or the lease is entered into with, a person engaged in
22 the business of manufacturing or a manufacturing service
23 provider who delivers a nontaxable transaction certificate to
24 the seller; provided that a manufacturer or manufacturing
25 service provider delivering a nontaxable transaction

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1 certificate with respect to the qualified equipment shall not
2 claim an investment credit pursuant to the Investment Credit
3 Act for that same equipment.

4 [~~G.~~] D. The purpose of the deductions provided in
5 this section is to encourage manufacturing businesses to locate
6 in New Mexico and to reduce the tax burden, including reducing
7 pyramiding, on the tangible personal property that is consumed
8 in the manufacturing process and that is purchased by
9 manufacturing businesses in New Mexico.

10 [~~D.~~] E. The department shall annually report to the
11 revenue stabilization and tax policy committee the aggregate
12 amount of deductions taken pursuant to this section, the number
13 of taxpayers claiming each of the deductions and any other
14 information that is necessary to determine that the deductions
15 are performing the purposes for which they are enacted.

16 [~~E.~~] F. A taxpayer deducting gross receipts
17 pursuant to this section shall report the amount deducted
18 separately for each deduction provided in this section and
19 attribute the amount of the deduction to the appropriate
20 authorization provided in this section in a manner required by
21 the department that facilitates the evaluation by the
22 legislature of the benefit to the state of these deductions.

23 [~~F.~~] G. As used in [~~Subsection B of~~] this section:

24 (1) "manufacturing consumable" means tangible
25 personal property, other than qualified equipment or an

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1 ingredient or component part of a manufactured product, that is
2 incorporated into, destroyed, depleted or transformed in the
3 process of manufacturing a product, [~~(1)~~] including
4 electricity, fuels, water, manufacturing aids and supplies,
5 chemicals, gases [~~repair parts, spares~~] and other tangibles
6 used to manufacture a product [~~but (2) excluding tangible~~
7 ~~personal property used in (a) the generation of power; (b) the~~
8 ~~processing of natural resources, including hydrocarbons; and~~
9 ~~(c) the preparation of meals for immediate consumption on or~~
10 ~~off-premises~~];

11 (2) "manufacturing operation" means a plant
12 operated by a manufacturer or manufacturing service provider
13 that employs personnel to perform production tasks to produce
14 goods, in conjunction with machinery and equipment; and

15 (3) "qualified equipment" means machinery,
16 equipment and tools, including component, repair, replacement
17 and spare parts thereof, that are used directly in the
18 manufacturing process of a manufacturing operation. "Qualified
19 equipment" includes computer hardware and software used
20 directly in the manufacturing process of a manufacturing
21 operation but excludes any motor vehicle that is required to be
22 registered in this state pursuant to the Motor Vehicle Code."

23 SECTION 3. A new section of the Gross Receipts and
24 Compensating Tax Act is enacted to read:

25 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--CERTAIN

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1 BUSINESS SERVICES.--

2 A. Receipts from the sale of accounting services,
3 engineering services, financial management services,
4 information technology services, human resources services,
5 legal services and temporary services may be deducted from
6 gross receipts if:

7 (1) the sale is made to a sole proprietorship,
8 a limited liability company, a partnership or a corporation;

9 (2) the sale is made to an entity with a New
10 Mexico tax identification number or an equivalent tax
11 identification number from another state; or

12 (3) the purchaser presents to the seller a
13 nontaxable transaction certificate or alternative evidence
14 entitling a person to a deduction pursuant to Section 7-9-43
15 NMSA 1978.

16 B. A taxpayer allowed a deduction pursuant to this
17 section shall report the amount of the deduction separately in
18 a manner required by the department.

19 C. As used in this section:

20 (1) "accounting services" means the systematic
21 and comprehensive recording of financial transactions
22 pertaining to a business entity and the process of summarizing,
23 analyzing and reporting these transactions to oversight
24 agencies or tax collection entities, including certified public
25 auditing, attest services and preparing financial statements,

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1 bookkeeping, tax return preparation, advice and consulting and,
2 where applicable, representing taxpayers before tax collection
3 agencies. "Accounting services" does not include, except as
4 provided with respect to financial management services,
5 investment advice, wealth management advice or consulting or
6 any tax return preparation, advice, counseling or
7 representation for individuals, regardless of whether those
8 individuals are owners of pass-through entities, such as
9 partnerships, limited liability companies or S-corporations;

10 (2) "engineering services" means consultation,
11 the production of a creative work, investigation, evaluation,
12 planning and design, the performance of studies and reviewing
13 planning documents when performed by, or under the supervision
14 of, a licensed engineer, including the design, development and
15 testing of mechanical, electrical, hydraulic, chemical,
16 pneumatic or thermal machinery or equipment, industrial or
17 commercial work systems or processes and military equipment.
18 "Engineering services" does not include medical or medical
19 laboratory services, any engineering performed in connection
20 with a construction service or the design and installation of
21 computer or computer network infrastructure;

22 (3) "financial management services" means
23 managing and directing the investments of, or providing
24 investment advisory services to, a hedge fund, mutual fund or
25 non-captive real estate investment trust;

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1 (4) "hedge fund" means a private investment
2 fund or pool, the assets of which are managed by a professional
3 management firm that:

4 (a) trades or invests, through public
5 market or private transactions, in securities, commodities,
6 currencies, derivatives or similar classes of financial assets;
7 or

8 (b) that is not an investment company
9 under 15 USC 80a-3(c)(1) or 15 USC 80a-3(c)(7);

10 (5) "human resources services" means managing
11 and overseeing the recruitment, management or termination of a
12 business's employees, including employee recruitment; managing
13 employee relations; maintaining employment files; setting
14 personnel policies; managing and administering employee
15 payroll, benefits and compensation, including employee
16 withholding; overseeing employee discipline and termination;
17 and ensuring compliance with labor and antidiscrimination laws.
18 "Human resources services" does not include training or
19 providing required certification to a business's employees or
20 employee efficiency consulting;

21 (6) "information technology services" means
22 separately stated services for installing and maintaining a
23 business's computers and computer network, including performing
24 computer network design; installing, repairing, maintaining or
25 restoring computer networks, hardware or software; and

1 performing custom software programming or making custom
2 modifications to existing software programming. "Information
3 technology services" does not include:

4 (a) software maintenance and update
5 agreements, unless made in conjunction with custom programming;

6 (b) computers, servers, chilling
7 equipment and pre-programmed software;

8 (c) data processing services or the
9 processing or storage of information to compile and produce
10 records of transactions for retrieval or use, including data
11 entry, data retrieval, data searches and information
12 compilation; or

13 (d) access to telecommunications or
14 internet;

15 (7) "legal services" means services performed
16 by a licensed attorney or under the supervision of a licensed
17 attorney for a client, regardless of the attorney's form of
18 business entity or whether the services are prepaid, including
19 legal representation before courts or administrative agencies;
20 drafting legal documents, such as contracts or patent
21 applications; legal research; advising and counseling;
22 arbitration; mediation; and notary public and other ancillary
23 legal services performed for a client in conjunction with and
24 under the supervision of a licensed attorney. "Legal services"
25 does not include lobbying or government relations services,

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1 title insurance agent services, licensing or selling legal
2 software or legal document templates, insurance investigation
3 services or any legal representation involving financial crimes
4 or tax evasion in New Mexico;

5 (8) "mutual fund" means an entity registered
6 pursuant to the federal Investment Company Act of 1940;

7 (9) "real estate investment trust" means an
8 entity described in Section 856(a) of the Internal Revenue Code
9 of 1986, as that section may be amended or renumbered, the
10 investments of which are limited to interest in mortgages on
11 real property and shares of or transferable certificates of
12 beneficial interest in an entity described in Section 856(a);
13 provided that a real estate investment trust does not include a
14 captive real estate investment trust as defined in the
15 Corporate Income and Franchise Tax Act; and

16 (10) "temporary service" means an employment
17 situation in which an employee is expected to remain in a
18 position for a specified period of time. Temporary employees
19 may have the opportunity to achieve permanent employment status
20 after the time period has lapsed and may be referred to as
21 seasonal employees or temps. "Temporary service" includes
22 services performed by a skilled or unskilled person replacing
23 or supporting client company staff for business purposes.
24 "Temporary service" does not include services performed by a
25 temporary service provider that is not licensed as such by the

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1 state or subcontracted services."

2 SECTION 4. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2021.

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