

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 278

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

AN ACT

RELATING TO TAXATION; ADDING MANUFACTURING SERVICE PROVIDERS TO  
A GROSS RECEIPTS TAX DEDUCTION FOR MANUFACTURERS; PROVIDING A  
GROSS RECEIPTS TAX DEDUCTION FOR ACCOUNTING SERVICES.

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

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

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

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

B. "department" means the taxation and revenue

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

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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 [~~θ~~] 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



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           ~~[D.]~~ 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

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--ACCOUNTING

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1 SERVICES.--

2 A. Receipts from the sale of accounting services  
3 may be deducted from gross receipts if:

4 (1) the sale is made to a business that has a  
5 New Mexico tax identification number or an equivalent tax  
6 identification number from another state; and

7 (2) the purchaser presents to the seller a  
8 nontaxable transaction certificate or alternative evidence  
9 entitling a person to a deduction pursuant to Section 7-9-43  
10 NMSA 1978.

11 B. A taxpayer allowed a deduction pursuant to this  
12 section shall report the amount of the deduction separately in  
13 a manner required by the department.

14 C. As used in this section:

15 (1) "accounting services" means the systematic  
16 and comprehensive recording of financial transactions  
17 pertaining to a business entity and the process of summarizing,  
18 analyzing and reporting these transactions to oversight  
19 agencies or tax collection entities, including certified public  
20 auditing, attest services and preparing financial statements,  
21 bookkeeping, tax return preparation, advice and consulting and,  
22 where applicable, representing taxpayers before tax collection  
23 agencies. "Accounting services" does not include, except as  
24 provided with respect to financial management services,  
25 investment advice, wealth management advice or consulting or

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1 any tax return preparation, advice, counseling or  
2 representation for individuals, regardless of whether those  
3 individuals are owners of pass-through entities, such as  
4 partnerships, limited liability companies or S-corporations;

5 (2) "financial management services" means  
6 managing and directing the investments of, or providing  
7 investment advisory services to, a hedge fund, mutual fund or  
8 non-captive real estate investment trust;

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

12 (a) trades or invests, through public  
13 market or private transactions, in securities, commodities,  
14 currencies, derivatives or similar classes of financial assets;  
15 or

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

18 (4) "mutual fund" means an entity registered  
19 pursuant to the federal Investment Company Act of 1940; and

20 (5) "non-captive real estate investment trust"  
21 means an entity described in Section 856(a) of the Internal  
22 Revenue Code of 1986, as that section may be amended or  
23 renumbered, the investments of which are limited to interest in  
24 mortgages on real property and shares of or transferable  
25 certificates of beneficial interest in an entity described in

1 Section 856(a). "Non-captive real estate investment trust"  
2 does not mean a captive real estate investment trust as defined  
3 in the Corporate Income and Franchise Tax Act."

4 SECTION 4. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is January 1, 2022.

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