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SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Gay G. Kernan

AN ACT

RELATING TO TAXATION; CHANGING SOURCING RULES FOR REPORTING OIL AND GAS MINING SERVICES TO ORIGIN-BASED BUSINESS LOCATIONS.

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

SECTION 1. Section 7-1-14 NMSA 1978 (being Laws 2020, Chapter 80, Section 1) is amended to read:

"7-1-14. [~~BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF~~] SOURCING RULES FOR REPORTING GROSS RECEIPTS AND USE--LOCATION-CODE DATABASE AND LOCATION-RATE DATABASE.--

A. For purposes of the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts or compensating tax, a [~~person~~] taxpayer that has gross receipts and a [~~person~~] taxpayer using property or services in

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1 New Mexico in a taxable manner shall report the gross receipts
2 and use to the proper business location as provided in this
3 section.

4 B. The business location for gross receipts from
5 the sale, lease or granting of a license to use real property
6 located in New Mexico, and any related deductions, shall be the
7 location of the property.

8 C. The business location for gross receipts from
9 the sale or license of tangible personal property, and any
10 related deductions, shall be at the following locations:

11 (1) if the property is received by the
12 purchaser at the New Mexico [~~business~~] location of the seller,
13 the location of the seller;

14 (2) if the property is not received by the
15 purchaser at [~~a business~~] the location of the seller, the
16 location indicated by instructions for delivery to the
17 purchaser, or the purchaser's donee, when known to the seller;

18 (3) if Paragraphs (1) and (2) of this
19 subsection do not apply, the location indicated by an address
20 for the purchaser available from the business records of the
21 seller that are maintained in the ordinary course of business;
22 provided that use of the address does not constitute bad faith;

23 (4) if Paragraphs (1) through (3) of this
24 subsection do not apply, the location for the purchaser
25 obtained during consummation of the sale, including the address

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1 of a purchaser's payment instrument, if no other address is
2 available; provided that use of this address does not
3 constitute bad faith; or

4 (5) if Paragraphs (1) through (4) of this
5 subsection do not apply, including a circumstance in which the
6 seller is without sufficient information to apply those
7 standards, the location from which the property was shipped or
8 transmitted.

9 D. The business location for gross receipts from
10 the lease of tangible personal property, including vehicles,
11 other transportation equipment and other mobile tangible
12 personal property, and any related deductions, shall be the
13 location of primary use of the property, as indicated by the
14 address for the property provided by the lessee that is
15 available to the lessor from the lessor's records maintained in
16 the ordinary course of business; provided that use of this
17 address does not constitute bad faith. The location of primary
18 ~~[business location]~~ use shall not be altered by intermittent
19 use at different locations, such as use of business property
20 that accompanies employees on business trips and service calls.

21 E. The business location for gross receipts from
22 the sale, lease or license of franchises, and any related
23 deductions, shall be where the franchise is used.

24 F. The business location for gross receipts from
25 the performance or sale of the following services, and any

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1 related deductions, shall be at the following locations:

2 (1) for professional and oil and gas mining
3 services performed in New Mexico, other than construction-
4 related services, or performed outside New Mexico when the
5 product of the service is initially used in New Mexico, the
6 location of the performer of the service or seller of the
7 product of the service, as appropriate;

8 (2) for construction services and
9 construction-related services performed for a construction
10 project in New Mexico, the location of the construction site;

11 (3) for services with respect to the selling
12 of real estate located in New Mexico, the location of the real
13 estate;

14 (4) for transportation of persons or property
15 in, into or from New Mexico, the location where the person or
16 property enters the vehicle; and

17 (5) for oil and gas mining services and
18 services other than those described in Paragraphs (1) through
19 (4) of this subsection, the location where the product of the
20 service is delivered.

21 G. Except as provided in Subsection H of this
22 section, the business location for uses of property or services
23 subject to the compensating tax shall be [~~reported at~~] the
24 [~~business~~] location at which gross receipts would have been
25 required to be reported had the transaction been subject to the

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1 gross receipts tax.

2 H. If a ~~[person]~~ taxpayer subject to the
3 compensating tax can demonstrate that the first use upon which
4 compensating tax is imposed occurred at a time and place
5 different from the time and place of the purchase, then the
6 business location for the compensating tax shall be ~~[reported~~
7 ~~at]~~ the ~~[business]~~ location of the first use.

8 ~~[I. The secretary shall designate codes to identify~~
9 ~~the business locations for a person's gross receipts, or use~~
10 ~~for purchases subject to the compensating tax, and deductions~~
11 ~~related to those receipts or that use shall be reported.~~

12 ~~J.]~~ I. The secretary shall develop a location-code
13 database that provides the business location codes and place of
14 business location codes designated ~~[pursuant to Subsection I of~~
15 ~~this section]~~ by the secretary. The secretary shall also
16 develop and provide to taxpayers a location-rate database that
17 sets out the tax rates applicable to business locations within
18 the state, by address, and sellers who properly rely on this
19 database shall not be liable for any additional tax due to the
20 use of an incorrect rate.

21 ~~[K.]~~ J. As used in this section:

22 ~~[(1) "business location" means the code~~
23 ~~designated by the department to identify business locations and~~
24 ~~required to be used to report the gross receipts, or use for~~
25 ~~purchases subject to the compensating tax, and deductions~~

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1 ~~related to those receipts or that use;~~

2 ~~(2)]~~ (1) "gross receipts" means, as
3 applicable, "gross receipts" as used in the Gross Receipts and
4 Compensating Tax Act and the Leased Vehicle Gross Receipts Tax
5 Act and "interstate telecommunications gross receipts" in the
6 Interstate Telecommunications Gross Receipts Tax Act;

7 ~~(3)]~~ (2) "in-person service" means a service
8 physically provided in person by the service provider, where
9 the customer or the customer's real or tangible personal
10 property upon which the service is performed is in the same
11 location as the service provider at the time the service is
12 performed; ~~[and]~~

13 (3) "oil and gas mining services" means
14 services related to the mining of oil and gas products. For
15 purposes of this paragraph, "oil and gas products" means
16 "products" as defined in the Oil and Gas Emergency School Tax
17 Act; and

18 (4) "professional service" means a service,
19 other than an in-person service, that requires either an
20 advanced degree from an accredited post-secondary educational
21 institution or a license from the state to perform."

22 SECTION 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2023.