

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 848

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DON KIDD

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FROM GROSS RECEIPTS FOR RECEIPTS FROM THE SALE OF PRESCRIPTION DRUGS TO PERSONS SIXTY-FIVE YEARS OF AGE OR OLDER; AMENDING THE INCOME TAX CREDIT FOR PRESCRIPTION DRUGS.

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

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"~~[NEW MATERIAL]~~ DEDUCTION--SALES OF PRESCRIPTION DRUGS TO PERSONS SIXTY-FIVE YEARS OF AGE OR OLDER.--Receipts from selling prescription drugs prescribed for persons sixty-five years of age or older may be deducted from gross receipts, provided that the person to whom the drugs are sold furnishes to the seller proof acceptable to the department that the person for whom the drugs are prescribed is sixty-five years of age or older."

Underscored material = new
[bracketed material] = delete

1 Section 2. Section 7-2-18.3 NMSA 1978 (being Laws 1994,
2 Chapter 5, Section 17) is amended to read:

3 "7-2-18.3. CREDIT--PRESCRIPTION DRUGS. --

4 A. Except as otherwise provided in Subsection E of
5 this section, any resident under the age of sixty-five who files
6 an individual New Mexico income tax return and who is not a
7 dependent of another individual may claim a credit for state and
8 local gross receipts taxes imposed on the receipts from the sale
9 of prescription drugs to the resident in New Mexico.

10 B. The amount of the credit that may be claimed
11 pursuant to this section shall be three percent of the
12 taxpayer's actual unreimbursed expenditures for prescription
13 drugs purchased in New Mexico during the taxable year for which
14 the return is filed, but the amount of the credit claimed shall
15 not exceed one hundred fifty dollars (\$150) per exemption
16 allowable for federal income tax purposes for each individual
17 included in the return or three hundred dollars (\$300) per
18 return, whichever is less. As used in this subsection, the term
19 "drugs purchased in New Mexico" excludes drugs purchased from
20 any out-of-state source unless the New Mexico compensating tax
21 has been paid on the purchase.

22 C. The credit provided under this section may be
23 deducted from the taxpayer's New Mexico income tax liability for
24 the taxable year. If the credit exceeds the taxpayer's income
25 tax liability for the taxable year, the excess shall be refunded

. 115726. 1

Underscored material = new
[bracketed material] = delete

1 to the taxpayer.

2 D. A husband and wife who file separate returns for
3 a taxable year in which they could have filed a joint return may
4 each claim only one-half of the credit provided under this
5 section that would have been allowed on a joint return.

6 E. No claim for the credit provided under this
7 section shall be filed by a resident who was an inmate of a
8 public institution for more than six months during the taxable
9 year for which the credit could be claimed or who was not
10 physically present in New Mexico for at least six months during
11 the taxable year for which the credit could be claimed.

12 F. As used in this section:

13 (1) "dependent" means "dependent" as defined by
14 Section 152 of the Internal Revenue Code, but also includes a
15 minor child or stepchild of the resident who would be a
16 dependent for federal income tax purposes if the public
17 assistance contributing to the support of the child or stepchild
18 was considered to have been contributed by the resident; and

19 (2) "prescription drugs" means insulin and
20 substances that are:

21 (a) dispensed by or under the supervision
22 of a licensed pharmacist or other person authorized under state
23 law to dispense the substance;

24 (b) prescribed for a specified individual
25 by a person authorized under state law to prescribe the

. 115726. 1

Underscored material = new
[bracketed material] = delete

1 substance; and

2 (c) subject to the restrictions on sale
3 contained in 21 U.S.C. 353(b)(1). "

4 Section 3. Section 7-9-3 NMSA 1978 (being Laws 1978,
5 Chapter 46, Section 1, as amended) is amended to read:

6 "7-9-3. DEFINITIONS. --As used in the Gross Receipts and
7 Compensating Tax Act:

8 A. "department" means the taxation and revenue
9 department, the secretary of taxation and revenue or any
10 employee of the department exercising authority lawfully
11 delegated to that employee by the secretary;

12 B. "buying" or "selling" means any transfer of
13 property for consideration or any performance of service for
14 consideration;

15 C. "construction" means building, altering,
16 repairing or demolishing in the ordinary course of business any:

17 (1) road, highway, bridge, parking area or
18 related project;

19 (2) building, stadium or other structure;

20 (3) airport, subway or similar facility;

21 (4) park, trail, athletic field, golf course or
22 similar facility;

23 (5) dam, reservoir, canal, ditch or similar
24 facility;

25 (6) sewerage or water treatment facility, power

. 115726. 1

1 generating plant, pump station, natural gas compressing station,
2 gas processing plant, coal gasification plant, refinery,
3 distillery or similar facility;

4 (7) sewerage, water, gas or other pipeline;

5 (8) transmission line;

6 (9) radio, television or other tower;

7 (10) water, oil or other storage tank;

8 (11) shaft, tunnel or other mining

9 appurtenance;

10 (12) microwave station or similar facility; or

11 (13) similar work;

12 "construction" also means:

13 (14) leveling or clearing land;

14 (15) excavating earth;

15 (16) drilling wells of any type, including
16 seismograph shot holes or core drilling; or

17 (17) similar work;

18 D. "financial corporation" means any savings and
19 loan association or any incorporated savings and loan company,
20 trust company, mortgage banking company, consumer finance
21 company or other financial corporation;

22 E. "engaging in business" means carrying on or
23 causing to be carried on any activity with the purpose of direct
24 or indirect benefit;

25 F. "gross receipts" means the total amount of money

1 or the value of other consideration received from selling
2 property in New Mexico, from leasing property employed in New
3 Mexico, from selling services performed outside New Mexico the
4 product of which is initially used in New Mexico or from
5 performing services in New Mexico. In an exchange in which the
6 money or other consideration received does not represent the
7 value of the property or service exchanged, "gross receipts"
8 means the reasonable value of the property or service exchanged.

9 (1) "Gross receipts" includes:

- 10 (a) any receipts from sales of tangible
11 personal property handled on consignment;
- 12 (b) the total commissions or fees derived
13 from the business of buying, selling or promoting the purchase,
14 sale or leasing, as an agent or broker on a commission or fee
15 basis, of any property, service, stock, bond or security;
- 16 (c) amounts paid by members of any
17 cooperative association or similar organization for sales or
18 leases of personal property or performance of services by such
19 organization; and
- 20 (d) amounts received from transmitting
21 messages or conversations by persons providing telephone or
22 telegraph services.

23 (2) "Gross receipts" excludes:

- 24 (a) cash discounts allowed and taken;
- 25 (b) New Mexico gross receipts tax,

Underscored material = new
[bracketed material] = delete

1 governmental gross receipts tax and leased vehicle gross
2 receipts tax payable on transactions for the reporting period;

3 (c) taxes imposed pursuant to the
4 provisions of any local option gross receipts tax that is
5 payable on transactions for the reporting period;

6 (d) any gross receipts or sales taxes
7 imposed by an Indian nation, tribe or pueblo provided that the
8 tax is approved, if approval is required by federal law or
9 regulation, by the secretary of the interior of the United
10 States and provided further that the gross receipts or sales tax
11 imposed by the Indian nation, tribe or pueblo provides a
12 reciprocal exclusion for gross receipts, sales or gross
13 receipts-based excise taxes imposed by the state or its
14 political subdivisions;

15 (e) any type of time-price differential;
16 and

17 (f) amounts received solely on behalf of
18 another in a disclosed agency capacity.

19 (3) When the sale of property or service is
20 made under any type of charge, conditional or time-sales
21 contract or the leasing of property is made under a leasing
22 contract, the seller or lessor may elect to treat all receipts,
23 excluding any type of time-price differential, under such
24 contracts as gross receipts as and when the payments are
25 actually received. If the seller or lessor transfers his

1 interest in any such contract to a third person, the seller or
2 lessor shall pay the gross receipts tax upon the full sale or
3 leasing contract amount, excluding any type of time-price
4 differential;

5 G. "manufacturing" means combining or processing
6 components or materials to increase their value for sale in the
7 ordinary course of business, but does not include construction;

8 H. "person" means:

9 (1) any individual, estate, trust, receiver,
10 cooperative association, club, corporation, company, firm,
11 partnership, limited liability company, limited liability
12 partnership, joint venture, syndicate or other entity, including
13 any gas, water or electric utility owned or operated by a
14 county, municipality or other political subdivision of the
15 state; or

16 (2) any national, federal, state, Indian or
17 other governmental unit or subdivision, or any agency,
18 department or instrumentality of any of the foregoing;

19 I. "property" means real property, tangible personal
20 property, licenses, franchises, patents, trademarks and
21 copyrights. Tangible personal property includes electricity and
22 manufactured homes;

23 J. "leasing" means any arrangement whereby, for a
24 consideration, property is employed for or by any person other
25 than the owner of the property, except that the granting of a

Underscored material = new
[bracketed material] = delete

1 license to use property is the sale of a license and not a
2 lease;

3 K. "service" means all activities engaged in for
4 other persons for a consideration, which activities involve
5 predominantly the performance of a service as distinguished from
6 selling or leasing property. "Service" includes activities
7 performed by a person for its members or shareholders. In
8 determining what is a service, the intended use, principal
9 objective or ultimate objective of the contracting parties shall
10 not be controlling. "Service" includes construction activities
11 and all tangible personal property that will become an
12 ingredient or component part of a construction project. Such
13 tangible personal property retains its character as tangible
14 personal property until it is installed as an ingredient or
15 component part of a construction project in New Mexico.
16 However, sales of tangible personal property that will become an
17 ingredient or component part of a construction project to
18 persons engaged in the construction business are sales of
19 tangible personal property;

20 L. "use" or "using" includes use, consumption or
21 storage other than storage for subsequent sale in the ordinary
22 course of business or for use solely outside this state;

23 M. "secretary" means the secretary of taxation and
24 revenue or the secretary's delegate;

25 N. "manufactured home" means a moveable or portable

1 housing structure for human occupancy that exceeds either a
2 width of eight feet or a length of forty feet constructed to be
3 towed on its own chassis and designed to be installed with or
4 without a permanent foundation;

5 0. "initial use" or "initially used" means the first
6 employment for the intended purpose and does not include the
7 following activities:

8 (1) observation of tests conducted by the
9 performer of services;

10 (2) participation in progress reviews,
11 briefings, consultations and conferences conducted by the
12 performer of services;

13 (3) review of preliminary drafts, drawings and
14 other materials prepared by the performer of the services;

15 (4) inspection of preliminary prototypes
16 developed by the performer of services; or

17 (5) similar activities;

18 P. "research and development services" means any
19 activity engaged in for other persons for consideration, for one
20 or more of the following purposes:

21 (1) advancing basic knowledge in a recognized
22 field of natural science;

23 (2) advancing technology in a field of
24 technical endeavor;

25 (3) the development of a new or improved

Underscored material = new
[bracketed material] = delete

1 product, process or system with new or improved function,
2 performance, reliability or quality, whether or not the new or
3 improved product, process or system is offered for sale, lease
4 or other transfer;

5 (4) the development of new uses or applications
6 for an existing product, process or system, whether or not the
7 new use or application is offered as the rationale for purchase,
8 lease or other transfer of the product, process or system;

9 (5) analytical or survey activities
10 incorporating technology review, application, trade-off study,
11 modeling, simulation, conceptual design or similar activities,
12 whether or not offered for sale, lease or other transfer; or

13 (6) the design and development of prototypes or
14 the integration of systems incorporating advances, developments
15 or improvements included in Paragraphs (1) through (5) of this
16 subsection; [~~and~~]

17 Q. "local option gross receipts tax" means a tax
18 authorized to be imposed by a county or municipality upon the
19 taxpayer's gross receipts and required to be collected by the
20 department at the same time and in the same manner as the gross
21 receipts tax; "local option gross receipts tax" includes the
22 taxes imposed pursuant to the Municipal Local Option Gross
23 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
24 Act, Special Municipal Gross Receipts Tax Act, County Local
25 Option Gross Receipts Taxes Act, Local Hospital Gross Receipts

. 115726. 1

Underscored material = new
[bracketed material] = delete

1 Tax Act, County Correctional Facility Gross Receipts Tax Act and
2 such other acts as may be enacted authorizing counties or
3 municipalities to impose taxes on gross receipts, which taxes
4 are to be collected by the department; and

5 R. "prescription drugs" means insulin and substances
6 that are:

7 (1) dispensed by or under the supervision of a
8 licensed pharmacist or other person authorized under state law
9 to dispense the substance;

10 (2) prescribed for a specified individual by a
11 person authorized under state law to prescribe the substance;

12 and

13 (3) subject to the restrictions on sale
14 contained in 21 U. S. C. 353(b)(1). "

15 Section 4. APPLICABILITY. --The provisions of Section 2 of
16 this act apply to taxable years beginning on or after January 1,
17 1998.

18 Section 5. EFFECTIVE DATE. --The effective date of the
19 provisions of this act is July 1, 1997.

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

3
4
5
6 February 26, 1997

7
8 Mr. President:

9
10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
11 whom has been referred

12
13 SENATE BILL 848

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the WAYS
17 & MEANS COMMITTEE.
18

19
20 Respectfully submitted,

21
22
23
24
25 _____
Roman M. Maes, III, Chairman

Underscored material = new
[bracketed material] = delete

Adopted _____ Not Adopted _____

1 (Chief Clerk)

(Chief Clerk)

2

3

4 Date _____

5

6

7 The roll call vote was 7 For 0 Against

8 Yes: 7

9 No: 0

10 Excused: Fidel, Robinson, Wilson

11 Absent: None

12

13

14 S0848CT1

15

16

17

18

19

20

21

22

23

24

25

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

SB 848/a

3
4
5
6 March 14, 1997

7
8 Mr. President:

9
10 Your WAYS AND MEANS COMMITTEE, to whom has been
11 referred

12
13 SENATE BILL 848

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17
18
19 1. On page 12, line 19 strike "July 1, 1997" and insert in
20 lieu thereof "January 1, 1998".,

21
22 and thence referred to the FINANCE COMMITTEE.

23
24 Respectfully submitted,

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

%%%

Carlos R. Cisneros, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: Nava

Excused: Duran, Jennings, McSorley

Absent: None

S0848WMI

Underscored material = new
[bracketed material] = delete