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HOUSE BILL 175

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

DELORES C. WRIGHT

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FROM GROSS RECEIPTS AND GOVERNMENTAL GROSS RECEIPTS FOR RECEIPTS FROM THE SALE OF PRESCRIPTION DRUGS; ABOLISHING THE PRESCRIPTION DRUG TAX CREDIT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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) is amended to read:

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

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

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1 B. "buying" or "selling" means any transfer of
2 property for consideration or any performance of service for
3 consideration;

4 C. "construction" means building, altering,
5 repairing or demolishing in the ordinary course of business
6 any:

7 (1) road, highway, bridge, parking area or
8 related project;

9 (2) building, stadium or other structure;

10 (3) airport, subway or similar facility;

11 (4) park, trail, athletic field, golf course
12 or similar facility;

13 (5) dam, reservoir, canal, ditch or similar
14 facility;

15 (6) sewerage or water treatment facility,
16 power generating plant, pump station, natural gas compressing
17 station, gas processing plant, coal gasification plant,
18 refinery, distillery or similar facility;

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

20 (8) transmission line;

21 (9) radio, television or other tower;

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

23 (11) shaft, tunnel or other mining

24 appurtenance;

25 (12) microwave station or similar facility;

1 or

2 (13) similar work;

3 "construction" also means:

4 (14) leveling or clearing land;

5 (15) excavating earth;

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

8 (17) similar work;

9 D. "financial corporation" means any savings and
10 loan association or any incorporated savings and loan company,
11 trust company, mortgage banking company, consumer finance
12 company or other financial corporation;

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

16 F. "gross receipts" means the total amount of
17 money or the value of other consideration received from
18 selling property in New Mexico, from leasing property employed
19 in New Mexico, from selling services performed outside New
20 Mexico the product of which is initially used in New Mexico or
21 from performing services in New Mexico. In an exchange in
22 which the money or other consideration received does not
23 represent the value of the property or service exchanged,
24 "gross receipts" means the reasonable value of the property or
25 service exchanged.

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(1) "Gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

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

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo provided that the

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1 tax is approved, if approval is required by federal law or
2 regulation, by the secretary of the interior of the United
3 States and provided further that the gross receipts or sales
4 tax imposed by the Indian nation, tribe or pueblo provides a
5 reciprocal exclusion for gross receipts, sales or gross
6 receipts-based excise taxes imposed by the state or its
7 political subdivisions;

8 (e) any type of time-price
9 differential; and

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

12 (3) When the sale of property or service is
13 made under any type of charge, conditional or time-sales
14 contract or the leasing of property is made under a leasing
15 contract, the seller or lessor may elect to treat all
16 receipts, excluding any type of time-price differential, under
17 such contracts as gross receipts as and when the payments are
18 actually received. If the seller or lessor transfers his
19 interest in any such contract to a third person, the seller or
20 lessor shall pay the gross receipts tax upon the full sale or
21 leasing contract amount, excluding any type of time-price
22 differential;

23 G. "manufacturing" means combining or processing
24 components or materials to increase their value for sale in
25 the ordinary course of business, but does not include

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1 construction;

2 H. "person" means:

3 (1) any individual, estate, trust, receiver,
4 cooperative association, club, corporation, company, firm,
5 partnership, limited liability company, limited liability
6 partnership, joint venture, syndicate or other entity,
7 including any gas, water or electric utility owned or operated
8 by a county, municipality or other political subdivision of
9 the state; or

10 (2) any national, federal, state, Indian or
11 other governmental unit or subdivision, or any agency,
12 department or instrumentality of any of the foregoing;

13 I. "property" means real property, tangible
14 personal property, licenses, franchises, patents, trademarks
15 and copyrights. Tangible personal property includes
16 electricity and manufactured homes;

17 J. "leasing" means any arrangement whereby, for a
18 consideration, property is employed for or by any person other
19 than the owner of the property, except that the granting of a
20 license to use property is the sale of a license and not a
21 lease;

22 K. "service" means all activities engaged in for
23 other persons for a consideration, which activities involve
24 predominantly the performance of a service as distinguished
25 from selling or leasing property. "Service" includes

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1 activities performed by a person for its members or
2 shareholders. In determining what is a service, the intended
3 use, principal objective or ultimate objective of the
4 contracting parties shall not be controlling. "Service"
5 includes construction activities and all tangible personal
6 property that will become an ingredient or component part of a
7 construction project. Such tangible personal property retains
8 its character as tangible personal property until it is
9 installed as an ingredient or component part of a construction
10 project in New Mexico. However, sales of tangible personal
11 property that will become an ingredient or component part of a
12 construction project to persons engaged in the construction
13 business are sales of tangible personal property;

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

17 M "secretary" means the secretary of taxation and
18 revenue or the secretary's delegate;

19 N. "manufactured home" means a moveable or
20 portable housing structure for human occupancy that exceeds
21 either a width of eight feet or a length of forty feet
22 constructed to be towed on its own chassis and designed to be
23 installed with or without a permanent foundation;

24 O. "initial use" or "initially used" means the
25 first employment for the intended purpose and does not include

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1 the following activities:

2 (1) observation of tests conducted by the
3 performer of services;

4 (2) participation in progress reviews,
5 briefings, consultations and conferences conducted by the
6 performer of services;

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

9 (4) inspection of preliminary prototypes
10 developed by the performer of services; or

11 (5) similar activities;

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

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

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

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

24 (4) the development of new uses or
25 applications for an existing product, process or system,

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

4 (5) 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) the design and development of prototypes
9 or the integration of systems incorporating advances,
10 developments or improvements included in Paragraphs (1)
11 through (5) of this subsection; [~~and~~]

12 Q. "local option gross receipts tax" means a tax
13 authorized to be imposed by a county or municipality upon the
14 taxpayer's gross receipts and required to be collected by the
15 department at the same time and in the same manner as the
16 gross receipts tax; "local option gross receipts tax" includes
17 the taxes imposed pursuant to the Municipal Local Option Gross
18 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
19 Act, Special Municipal Gross Receipts Tax Act, County Local
20 Option Gross Receipts Taxes Act, Local Hospital Gross Receipts
21 Tax Act, County Correctional Facility Gross Receipts Tax Act
22 and such other acts as may be enacted authorizing counties or
23 municipalities to impose taxes on gross receipts, which taxes
24 are to be collected by the department; and

25 R. "prescription drugs" means insulin and

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substances that are:
(1) dispensed by or under the supervision of
a licensed pharmacist or by a physician or other person
authorized under state law to do so;
(2) prescribed for a specified person by a
person authorized under state law to prescribe the substance;
and
(3) subject to the restrictions on sale
contained in Subparagraph 1 of Subsection (b) of 21 USCA 353."

Section 2. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX AND
GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS.--Receipts
from the sale of prescription drugs may be deducted from gross
receipts and governmental gross receipts."

Section 3. REPEAL.--Section 7-2-18.3 NMSA 1978 (being
Laws 1994, Chapter 5, Section 17) is repealed.

Section 4. APPLICABILITY.--The provisions of Section 3
of this act apply to taxable years beginning on or after
January 1, 1999.

Section 5. EFFECTIVE DATE.--The effective date of the
provisions of this act is January 1, 1999.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
4
5
6 February 15, 1998

7
8 Mr. Speaker:

9
10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred

12
13 HOUSE BILLS 100, 15, 18 & 175

14
15 has had it under consideration and reports same with
16 recommendation that they DO NOT PASS, but that

17 HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
18 HOUSE BILLS 100, et al

19
20 DO PASS, and thence referred to the APPROPRIATIONS AND
21 FINANCE COMMITTEE.

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

3 HTRC/HB 100

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Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 12 For 0 Against

Yes: 12

Excused: None

Absent: LOVEJOY

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2 SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

3 HTRC/HB 100

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12 (Chief Clerk)

11 Not Adopted _____
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