

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

HOUSE BILL 345

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

INTRODUCED BY

J. "ANDY" KISSNER

AN ACT

RELATING TO TAXATION; ALLOWING GROSS RECEIPTS AND INTERSTATE
TELECOMMUNICATIONS GROSS RECEIPTS DEDUCTIONS FOR RECEIPTS FROM
PROVIDING CERTAIN INTERNET SERVICES AND ALLOWING GROSS
RECEIPTS DEDUCTIONS FOR RECEIPTS FROM CERTAIN WORLD WIDE WEB
ACTIVITIES; AMENDING AND ENACTING SECTIONS OF THE NMSA.

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-- GROSS RECEIPTS TAX-- INTERNET
SERVICES.-- During the period July 1, 1998 through June 30,
2000, receipts from providing leased telephone lines,
telecommunications services, internet services, internet
access services or computer programming that will be used by
other persons in providing internet access and related

Underscored material = new
[bracketed material] = delete

Underscored material = new
[bracketed material] = delete

1 services to the final user may be deducted from gross receipts
2 if the sale is made to a person who is subject to the gross
3 receipts tax or the interstate telecommunications gross
4 receipts tax. "

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

7 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--HOSTING
8 WORLD WIDE WEB SITES.--Receipts from hosting world wide web
9 sites may be deducted from gross receipts. For purposes of
10 this section, "hosting" means storing information on computers
11 attached to the internet. "

12 Section 3. A new section of the Gross Receipts and
13 Compensating Tax Act is enacted to read:

14 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--SALES
15 THROUGH WORLD WIDE WEB SITES.--Receipts of any person derived
16 from the sale of a service or property made through a world
17 wide web site to a person with a billing address outside New
18 Mexico may be deducted from gross receipts. "

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

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

23 A. "department" means the taxation and revenue
24 department, the secretary of taxation and revenue or any
25 employee of the department exercising authority lawfully

Underscored material = new
[bracketed material] = delete

1 delegated to that employee by the secretary;

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

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

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

10 (2) building, stadium or other structure;

11 (3) airport, subway or similar facility;

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

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

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

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

21 (8) transmission line;

22 (9) radio, television or other tower;

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

24 (11) shaft, tunnel or other mining

25 appurtenance;

Underscored material = new
[bracketed material] = delete

1 (12) microwave station or similar facility;

2 or

3 (13) similar work;

4 "construction" also means:

5 (14) leveling or clearing land;

6 (15) excavating earth;

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

9 (17) similar work;

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

14 E. "engaging in business" means carrying on or
15 causing to be carried on any activity with the purpose of
16 direct or indirect benefit, except that "engaging in business"
17 does not include having a world wide web site as a third-party
18 content provider on a computer physically located in New
19 Mexico but owned by another person;

20 F. "gross receipts" means the total amount of
21 money or the value of other consideration received from
22 selling property in New Mexico, from leasing property employed
23 in New Mexico, from selling services performed outside New
24 Mexico the product of which is initially used in New Mexico or
25 from performing services in New Mexico. In an exchange in

Underscored material = new
[bracketed material] = delete

1 which the money or other consideration received does not
2 represent the value of the property or service exchanged,
3 "gross receipts" means the reasonable value of the property or
4 service exchanged.

5 (1) "Gross receipts" includes:

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

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

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

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

20 (2) "Gross receipts" excludes:

21 (a) cash discounts allowed and taken;

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

25 (c) taxes imposed pursuant to the

Underscored material = new
[bracketed material] = del ete

1 provisions of any local option gross receipts tax that is
2 payable on transactions for the reporting period;

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

12 (e) any type of time-price
13 differential; and

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

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

. 119924. 1

Underscored material = new
[bracketed material] = delete

1 differential;

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

6 H. "person" means:

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

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

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

21 J. "leasing" means any arrangement whereby, for a
22 consideration, property is employed for or by [any] a person
23 other than the owner of the property, except that the granting
24 of a license to use property is the sale of a license and not
25 a lease;

. 119924. 1

Underscored material = new
[bracketed material] = del ete

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

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

21 M "secretary" means the secretary of taxation and
22 revenue or the secretary's delegate;

23 N. "manufactured home" means a moveable or
24 portable housing structure for human occupancy that exceeds
25 either a width of eight feet or a length of forty feet

Underscored material = new
[bracketed material] = delete

1 constructed to be towed on its own chassis and designed to be
2 installed with or without a permanent foundation;

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

6 (1) observation of tests conducted by the
7 performer of services;

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

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

13 (4) inspection of preliminary prototypes
14 developed by the performer of services; or

15 (5) similar activities;

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

19 (1) advancing basic knowledge in a recognized
20 field of natural science;

21 (2) advancing technology in a field of
22 technical endeavor;

23 (3) the development of a new or improved
24 product, process or system with new or improved function,
25 performance, reliability or quality, whether or not the new or

. 119924. 1

Underscored material = new
[bracketed material] = delete

1 improved product, process or system is offered for sale, lease
2 or other transfer;

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

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

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

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

. 119924. 1

Underscored material = new
[bracketed material] = delete

1 and such other acts as may be enacted authorizing counties or
2 municipalities to impose taxes on gross receipts, which taxes
3 are to be collected by the department. "

4 Section 5. Section 7-9-10 NMSA 1978 (being Laws 1966,
5 Chapter 47, Section 10, as amended) is amended to read:

6 "7-9-10. AGENTS FOR COLLECTION OF COMPENSATING TAX--
7 DUTIES. --

8 A. Every person carrying on or causing to be
9 carried on any activity within this state attempting to
10 exploit New Mexico's markets who sells property or sells
11 property and service for use in this state and who is not
12 subject to the gross receipts tax on receipts from these sales
13 shall collect the compensating tax from the buyer and pay the
14 tax collected to the department. "Activity", for the purposes
15 of this section, includes, but is not limited to, engaging in
16 any of the following in New Mexico: maintaining an office or
17 other place of business, soliciting orders through employees
18 or independent contractors, soliciting orders through
19 advertisements placed in newspapers or magazines published in
20 New Mexico or advertisements broadcast by New Mexico radio or
21 television stations, soliciting orders through programs
22 broadcast by New Mexico radio or television stations or
23 transmitted by cable systems in New Mexico, canvassing,
24 demonstrating, collecting money, warehousing or storing
25 merchandise or delivering or distributing products as a

Underscored material = new
[bracketed material] = delete

1 consequence of an advertising or other sales program directed
2 at potential customers, but "activity" does not include having
3 a world wide web site as a third-party provider on a computer
4 physically located in New Mexico but owned by another person.

5 B. To insure orderly and efficient collection of
6 the public revenue, if any application of this section is held
7 invalid, the section's application to other situations or
8 persons shall not be affected. "

9 Section 6. Section 7-9C-7 NMSA 1978 (being Laws 1992,
10 Chapter 50, Section 7 and also Laws 1992, Chapter 67, Section
11 7) is amended to read:

12 "7-9C-7. DEDUCTION--SALE OF A SERVICE FOR RESALE. --

13 A. Receipts from providing an interstate
14 telecommunications service in this state that will be used by
15 other persons in providing telephone or telegraph services to
16 the final user may be deducted from interstate
17 telecommunications gross receipts if the sale is made to a
18 person who is subject to the interstate telecommunications
19 gross receipts tax or to the gross receipts tax or the
20 compensating tax.

21 B. Receipts during the period July 1, 1998 through
22 June 30, 2000 from providing leased telephone lines,
23 telecommunications services, internet access services or
24 computer programming that will be used by other persons in
25 providing internet access and related services to the final

. 119924. 1

Underscored material = new
[bracketed material] = delete

1 user may be deducted from interstate telecommunications gross
2 receipts if the sale is made to a person who is subject to the
3 interstate telecommunications gross receipts tax, the gross
4 receipts tax or the compensating tax. "

5 Section 7. EFFECTIVE DATE. --The effective date of the
6 provisions of this act is July 1, 1998.

7 - 13 -

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 February 10, 1998
7

8 Mr. Speaker:
9

10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 345
14

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

17 1. On page 4, line 19, after "another", insert
18 "nonaffiliated".
19

20 2. On page 12, line 4, after "another", insert
21 "nonaffiliated".
22
23
24
25

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HTRC/HB 345

Page 15

4
5 Respectfully submitted,
6
7
8 _____

9
10 Jerry W. Sandel, Chairman
11

12 Adopted _____

Not Adopted _____

13
14 (Chief Clerk)

(Chief Clerk)

15
16 Date _____

17 The roll call vote was 11 For 1 Against

18 Yes: 11

19 No: Sandoval

20 Excused: Lovejoy

21 Absent: None
22
23
24

25 G:\BILLTEXT\BILLW_98\H0345

. 119924. 1

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HTRC/HB 345

Page 16

2

3

4

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

5

6

7

February 16, 1998

8

9

Mr. President:

10

11

Your WAYS AND MEANS COMMITTEE, to whom has been

12

referred

13

14

HOUSE BILL 345, as amended

15

has had it under consideration and reports same with

16

recommendation that it DO PASS, and thence referred to the

17

FINANCE COMMITTEE.

18

19

Respectfully submitted,

20

21

22

23

24

Carlos R. Cisneros, Chairman

25

. 119924. 1

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HTRC/HB 345

Page 17

2

3

4 Adopted _____ Not

5 Adopted _____

6 (Chief Clerk)

(Chief Clerk)

7

8

Date _____

9

10

11 The roll call vote was 7 For 0 Against

12 Yes: 7

13 No: 0

14 Excused: McSorley, Nava

15 Absent: None

16

17

H0345WM1

18

19

20

21

22

23

24

25

. 119924. 1

Underscored material = new
[bracketed material] = delete