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SENATE BILL 47

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

INTRODUCED BY

PHILLIP J. MALOOF

AN ACT

RELATING TO TAXATION; INCREASING THE PRESCRIPTION DRUG TAX
CREDIT.

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

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

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

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

B. The amount of the credit that may be claimed
pursuant to this section shall be [~~three~~] six percent of the

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1 taxpayer's actual unreimbursed expenditures for prescription
2 drugs purchased in New Mexico during the taxable year for
3 which the return is filed [~~but the amount of the credit~~
4 ~~claimed shall not exceed one hundred fifty dollars (\$150) per~~
5 ~~exemption allowable for federal income tax purposes for each~~
6 ~~individual included in the return or three hundred dollars~~
7 ~~(\$300) per return, whichever is less]. As used in this~~

8 subsection, the term "drugs purchased in New Mexico" excludes
9 drugs purchased from any out-of-state source unless the New
10 Mexico compensating tax has been paid on the purchase.

11 C. The credit provided under this section may be
12 deducted from the taxpayer's New Mexico income tax liability
13 for the taxable year. If the credit exceeds the taxpayer's
14 income tax liability for the taxable year, the excess shall be
15 refunded to the taxpayer.

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

21 E. No claim for the credit provided under this
22 section shall be filed by a resident who was an inmate of a
23 public institution for more than six months during the taxable
24 year for which the credit could be claimed or who was not
25 physically present in New Mexico for at least six months

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1 during the taxable year for which the credit could be claimed.

2 F. As used in this section:

3 (1) "dependent" means "dependent" as defined
4 by Section 152 of the Internal Revenue Code, but also includes
5 a minor child or stepchild of the resident who would be a
6 dependent for federal income tax purposes if the public
7 assistance contributing to the support of the child or
8 stepchild was considered to have been contributed by the
9 resident; and

10 (2) "prescription drugs" means insulin and
11 substances that are:

12 (a) dispensed by or under the
13 supervision of a licensed pharmacist or other person
14 authorized under state law to dispense the substance;

15 (b) prescribed for a specified
16 individual by a person authorized under state law to prescribe
17 the substance; and

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

20 Section 2. APPLICABILITY. --The provisions of this act
21 apply to taxable years beginning on or after January 1, 1998.

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
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5
6 January 22, 1998

7
8 Mr. President:

9
10 Your COMMITTEES' COMMITTEE, to whom has been referred

11
12 SENATE BILL 47

13
14 has had it under consideration and finds same to be GERMANE, in
15 accordance with constitutional provisions, and thence referred to
16 the WAYS & MEANS COMMITTEE.
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19 Respectfully submitted,

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24 _____
25 Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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4
5 February 7, 1998

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7 Mr. President:

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

10
11 SENATE BILL 47

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13 has had it under consideration and reports same with recommendation
14 that it DO PASS, and thence referred to the FINANCE COMMITTEE.

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16 Respectfully submitted,

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22 Carlos R. Cisneros, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Duran, Kidd, Leavell, Wilson

Absent: None

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6 February 15, 1998

8 Mr. President:

10 Your FINANCE COMMITTEE, to whom has been referred

12 SENATE BILL 47

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

17
18 1. On page 1, line 11, strike "INCREASING" and insert in lieu
19 thereof "ABOLISHING".

20
21 2. On page 1, line 12, after "CREDIT" insert "; PROVIDING A
22 DEDUCTION FROM GROSS RECEIPTS AND GOVERNMENTAL GROSS RECEIPTS FOR
23 RECEIPTS FROM THE SALE OF PRESCRIPTION DRUGS".

24
25 3. On page 1, strike lines 15 through 25, strike all of pages 2

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and 3 and insert in lieu thereof the following new sections:

"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;

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

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

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

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[bracketed material] = delete

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(2) building, stadium or other structure;

(3) airport, subway or similar facility;

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

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

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

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

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

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(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility; or

(13) similar work;

"construction" also means:

(14) leveling or clearing land;

(15) excavating earth;

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

(17) similar work;

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

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

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

(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

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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;

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

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

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

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

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lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential;

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

H. "person" means:

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

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

I. "property" means real property, tangible personal

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property, licenses, franchises, patents, trademarks and copyrights.

Tangible personal property includes electricity and manufactured homes;

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

K. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of

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tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;

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

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

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

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

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

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

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

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

(5) similar activities;

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

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

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

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

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

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

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

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

R. "prescription drugs" means insulin and 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

. 120552. 1

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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."

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FORTY-THIRD LEGISLATURE
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. 120552. 1

FORTY-THIRD LEGISLATURE
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Respectfully submitted,

Ben D. Altamirano, Chairman

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

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Carraro, Ingle, Lyons, McKibben

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FORTY-THIRD LEGISLATURE
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Absent: None

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1 FORTY- THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 18, 1998
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8 Mr. Speaker:
9

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

12
13 SENATE BILL 47, as amended
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

17 Respectfully submitted,
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21 _____
22 Jerry W. Sandel, Chair man
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HTRC/SB 47/a

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4 Adopted _____ Not Adopted _____

5 (Chief Clerk)

(Chief Clerk)

7 Date _____

9 The roll call vote was 11 For 0 Against

10 Yes: 11

11 Excused: Lovejoy, Russell

12 Absent: None

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