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SENATE BILL 354

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Patrick H. Lyons

AN ACT

RELATING TO TAXATION; PROVIDING A CREDIT AGAINST STATE GROSS RECEIPTS FOR RECEIPTS FROM THE SALE OF FOOD TO RETAIL FOOD STORES.

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 read:

" [NEW MATERIAL] CREDIT--GROSS RECEIPTS TAX--RECEIPTS FROM SALE OF FOOD AT RETAIL FOOD STORES.--A credit shall be allowed for each reporting period against the gross receipts tax as follows:

A. for a taxpayer located in the unincorporated area of a county, an amount equal to five percent of taxable gross receipts from the sale of food at a retail food store for which the taxpayer is liable for that reporting period;

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1 and

2 B. for a taxpayer located in a municipality, an
3 amount equal to three and seven hundred seventy-five
4 thousandths percent of taxable gross receipts from the sale of
5 food at a retail food store for which the taxpayer is liable
6 for that reporting period. "

7 Section 2. Section 7-9-3 NMSA 1978 (being Laws 1978,
8 Chapter 46, Section 1, as amended by Laws 1998, Chapter 92,
9 Section 4 and by Laws 1998, Chapter 95, Section 1 and also by
10 Laws 1998, Chapter 99, Section 3) is amended to read:

11 "7-9-3. DEFINITIONS. --As used in the Gross Receipts and
12 Compensating Tax Act:

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

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

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

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

25 (2) building, stadium or other structure;

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- 1 (3) airport, subway or similar facility;
2 (4) park, trail, athletic field, golf course
3 or similar facility;
4 (5) dam, reservoir, canal, ditch or similar
5 facility;
6 (6) sewerage or water treatment facility,
7 power generating plant, pump station, natural gas compressing
8 station, gas processing plant, coal gasification plant,
9 refinery, distillery or similar facility;
10 (7) sewerage, water, gas or other pipeline;
11 (8) transmission line;
12 (9) radio, television or other tower;
13 (10) water, oil or other storage tank;
14 (11) shaft, tunnel or other mining
15 appurtenance;
16 (12) microwave station or similar facility;
17 or
18 (13) similar work;
19 "construction" also means:
20 (14) leveling or clearing land;
21 (15) excavating earth;
22 (16) drilling wells of any type, including
23 seismograph shot holes or core drilling; or
24 (17) similar work;

25 D. "financial corporation" means any savings and

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1 loan association or any incorporated savings and loan company,
2 trust company, mortgage banking company, consumer finance
3 company or other financial corporation;

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

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

20 (1) "Gross receipts" includes:

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

23 (b) the total commissions or fees
24 derived from the business of buying, selling or promoting the
25 purchase, sale or leasing, as an agent or broker on a

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1 commission or fee basis, of any property, service, stock, bond
2 or security;

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

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

10 (2) "Gross receipts" excludes:

11 (a) cash discounts allowed and taken;

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

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

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

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1 political subdivisions;

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

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

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

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

21 H. "person" means:

22 (1) any individual, estate, trust, receiver,
23 cooperative association, club, corporation, company, firm,
24 partnership, limited liability company, limited liability
25 partnership, joint venture, syndicate or other entity,

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1 including any gas, water or electric utility owned or operated
2 by a county, municipality or other political subdivision of
3 the state; or

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

7 I. "property" means real property, tangible
8 personal property, licenses, franchises, patents, trademarks
9 and copyrights. Tangible personal property includes
10 electricity and manufactured homes;

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

16 K. "service" means all activities engaged in for
17 other persons for a consideration, which activities involve
18 predominantly the performance of a service as distinguished
19 from selling or leasing property. "Service" includes
20 activities performed by a person for its members or
21 shareholders. In determining what is a service, the intended
22 use, principal objective or ultimate objective of the
23 contracting parties shall not be controlling. "Service"
24 includes construction activities and all tangible personal
25 property that will become an ingredient or component part of a

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1 construction project. Such tangible personal property retains
2 its character as tangible personal property until it is
3 installed as an ingredient or component part of a construction
4 project in New Mexico. However, sales of tangible personal
5 property that will become an ingredient or component part of a
6 construction project to persons engaged in the construction
7 business are sales of tangible personal property;

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

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

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

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

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

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

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

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

6 (5) similar activities;

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

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

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

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

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

24 (5) analytical or survey activities
25 incorporating technology review, application, trade-off study,

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1 modeling, simulation, conceptual design or similar activities,
2 whether or not offered for sale, lease or other transfer; or
3 (6) the design and development of prototypes
4 or the integration of systems incorporating advances,
5 developments or improvements included in Paragraphs (1)
6 through (5) of this subsection;

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

20 R. "prescription drugs" means insulin and
21 substances that are:
22 (1) dispensed by or under the supervision of
23 a licensed pharmacist or by a physician or other person
24 authorized under state law to do so;
25 (2) prescribed for a specified person by a

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1 person authorized under state law to prescribe the substance;
2 and

3 (3) subject to the restrictions on sale
4 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;

5 S. "food" means any food or food product for home
6 consumption that meets the definition of food in 7 USCA
7 2012(g)(1) for purposes of the federal food stamp program; and

8 T. "retail food store" means an establishment that
9 sells food for home preparation and consumption that meets the
10 definition of retail food store in 7 USCA 2012(k)(1) for
11 purposes of the federal food stamp program, whether or not the
12 establishment participates in the food stamp program."

13 Section 3. EFFECTIVE DATE. --The effective date of the
14 provisions of this act is July 1, 1999.