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Bill

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE TAX  
ADMINISTRATION ACT AND GROSS RECEIPTS AND COMPENSATING TAX ACT.

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

Introduction: The proposals below are divided into three topic areas (and a bonus section) in no particular order. Issue area #1, however, concerns law already in place; the others are mainly concerned with the scheduled 2021 changes. Note: **Appropriate effective dates will have to be added to the draft if provisions are agreed to.**

**ISSUE AREA #1 - EXEMPTIONS FOR USE OF SERVICES**

**SECTION \_\_.** Section 7-9-14 NMSA 1978 (being Laws 1969, Chapter 144, Section 7, as amended) is amended to read:

**“7-9-14. EXEMPTION--COMPENSATING TAX--GOVERNMENTAL AGENCIES--INDIANS.--**

A. Except as otherwise provided in this subsection, there is exempted from the compensating tax the use of property or

1 services by the United States or the state of New Mexico or any  
2 governmental unit or subdivision, agency, department or  
3 instrumentality thereof. The exemption provided by this subsection  
4 does not apply to the use of:

5 (1) [~~the use of~~] property that is or will be  
6 incorporated into a metropolitan redevelopment project under the  
7 Metropolitan Redevelopment Code; [~~or~~]

8 (2) [~~the use of~~] construction material;

9 (3) construction services; or

10 (4) construction-related services.

11 B. Exempted from the compensating tax is the use of  
12 property or services by any Indian nation, tribe or pueblo or any  
13 governmental unit, subdivision, agency, department or  
14 instrumentality thereof on Indian reservations or pueblo grants.”

15 **SECTION** \_\_. Section 7-9-15 NMSA 1978 (being Laws 1970,  
16 Chapter 12, Section 1, as amended) is amended to read:

17 “7-9-15. EXEMPTION--COMPENSATING TAX--CERTAIN  
18 ORGANIZATIONS. --Exempted from the compensating tax is the use of  
19 property or services by organizations that demonstrate to the  
20 department that they have been granted exemption from the federal  
21 income tax by the United States commissioner of internal revenue  
22 as organizations described in Section 501(c)(3) of the United  
23 States Internal Revenue Code of 1954, as amended or renumbered, in  
24 the conduct of functions described in Section 501(c)(3). The use  
25 of property as an ingredient or component part of a construction

1 project or construction services or construction-related services  
2 in connection with a construction project is not a use in the  
3 conduct of functions described in Section 501(c)(3). This section  
4 does not apply to the use of property or services in an unrelated  
5 trade or business as defined in Section 513 of the United States  
6 Internal Revenue Code of 1954, as amended or renumbered.”

7  
8 Discussion: This is intended to extend to services the governmental immunity from  
9 tax. It also seems to me that construction and construction-related materials ought to be  
10 excepted, as construction materials are presently.

11  
12 **ISSUE AREA #2 - SOURCING RULES**

13 **SECTION \_\_.** Section 7-1-14 NMSA 1978 (being Laws 2019,  
14 Chapter 270, Section 14) is amended to read:

15 "7-1-14. LOCATION WHERE CERTAIN GROSS RECEIPTS ARE TO BE  
16 REPORTED. --

17 A. Gross receipts and deductions required to be  
18 reported pursuant to the Gross Receipts and Compensating Tax Act  
19 or any other act that imposes a state or local gross receipts tax  
20 shall be reported as follows:

21 (1) gross receipts and deductions from the sale,  
22 lease or licensing of tangible personal property shall be reported  
23 to the location of delivery of that tangible personal property to  
24 the customer; provided that the reporting location for receipts  
25 from leasing a vehicle is the location where the customer first  
26 makes use of the vehicle;

27 (2) except as otherwise provided in this section,

1 a seller of services shall report the seller's gross receipts and  
2 deductions, as follows:

3 (a) professional services, other than  
4 architectural, design and engineering services performed in  
5 connection with a construction project, will be reported to the  
6 seller's place of business;

7 (b) for a person engaged in the  
8 construction business and a person performing architectural,  
9 design or engineering services in connection with a construction  
10 project, the location where the construction project is performed  
11 is the "place of business", and all gross receipts and deductions  
12 from that project are to be reported from that place of business;  
13 and

14 (c) for a person engaged in the business of  
15 providing services with respect to the selling of real estate, the  
16 location of the real property is the "place of business", and all  
17 gross receipts and deductions from that sale are to be reported  
18 from that place of business;

19 (d) services other than those described in  
20 Paragraphs (a) through (c) of this subsection are to be reported  
21 at the location where the service is performed; for purposes of  
22 this paragraph, the place where the service is performed is a  
23 "place of business";

24 (3) gross receipts and deductions from the sale,  
25 lease or granting of a license to use real property shall be

1 reported to the location of the real property; and

2 (4) the reporting location for gross receipts and  
3 deductions from a customer for services provided by:

4 (a) a transportation network company  
5 pursuant to the Transportation Network Company Services Act shall  
6 be the location where the [~~customer~~] transportation network  
7 company rider enters the vehicle offered for a prearranged ride;  
8 or

9 (b) a person who is not a network  
10 transportation company and who provides transportation services by  
11 motor vehicle, rail or air shall be the location where the  
12 passenger or freight is boarded.

13 B. The secretary may, by rule, provide for the  
14 reporting of gross receipts and deductions by taxpayers having  
15 more than one place of business and from transactions not  
16 otherwise specified in this section from transactions consistent  
17 with this section and for reporting the tax imposed by taxing  
18 jurisdictions at that location, including the reporting of  
19 receipts from locations:

20 (1) outside a municipal boundary but within  
21 property owned by the municipality;

22 (2) within an Indian reservation or pueblo grant;  
23 and

24 (3) within a tax increment development district  
25 or other taxing jurisdiction.

1           C. For the purposes of this section, "professional  
2 services" means the services of architects, archeologists,  
3 engineers, surveyors, landscape architects, medical arts  
4 practitioners, scientists, management and systems analysts,  
5 certified public accountants, registered public accountants,  
6 lawyers, psychologists, planners, researchers, construction  
7 managers and other persons or businesses providing similar  
8 professional services, which may be designated as such by a  
9 determination issued by the state purchasing agent. "

10  
11           Discussion: (1) Transportation is not dealt well within the GR&CTA. Altho HB6  
12 established in 7-9-14A(4) the location for reporting gross receipts for Uber and Lyft, it  
13 addressed no other form of transportation. Yet it also eliminated the screwball exemptions  
14 from local option gross receipts taxes. So what is NM's reporting rule? How do we tell  
15 which local jurisdictions have authority to impose their tax? There are 3 main choices;  
16 gross receipts and deductions may be reported from the place of boarding, place of  
17 disembarkation or apportioned over the route. Given that the last option is also the most  
18 record-keeping-intense and costly, it should not be considered. The new Uber/Lyft rule  
19 selects the place of boarding, so this proposal simply extends that rule to all other forms of  
20 transportation for both passenger and freight.

21           (2) By assigning gross receipts/deductions from professional services associated  
22 with construction to the construction site, in-state service-providers will face exactly the  
23 same tax regimes as their out-of-state competitors.

24           (3) Defining "professional services" in itself is a major task. The definition  
25 presented here is a slightly modified version of the Procurement Code definition (at 13-1-  
26 76).

27           (4) Some services, such as radio and television broadcasting, are provided  
28 simultaneously to multiple jurisdictions. Some non-transportation services, such as GPS  
29 tracking, are mobile and provided from multiple jurisdictions. Nothing in HB-6 addresses  
30 these situations. Rules are needed on what is exactly is taxable in NM and, when  
31 apportionment is the reasonable approach, how is apportionment to be done? Legislation  
32 may be necessary to set broad guidelines but none are proposed here.

33           **SECTION \_\_.** A new Section 7-9-38.3 NMSA 1978 is enacted to  
34 read:

35           "7-9-38.3. [NEW MATERIAL] EXEMPTION- - CERTAIN INTERSTATE OR

1 INTERNATIONAL TRANSPORTATION SERVICES. -- Exempted from the gross  
 2 receipts tax are receipts from transporting persons or property in  
 3 interstate or international commerce under a single contract from  
 4 a point outside this state to a point in this state or through  
 5 this state to a point outside this state.”

6  
 7 Discussion: The above has always been sort of implicit in 7-9-55 and 7-9-56 but  
 8 now that NM is reaching out to out-of-service providers, an explicit rule seems called for.  
 9

10 **SECTION \_\_.** Section 7-9-55 NMSA 1978 (being Laws 1969,  
 11 Chapter 144, Section 45, as amended) is amended to read:

12 “7-9-55. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS  
 13 RECEIPTS TAX--TRANSACTION IN INTERSTATE OR INTERNATIONAL  
 14 COMMERCE. --

15 A. Receipts from transactions in interstate or  
 16 international commerce may be deducted from gross receipts or  
 17 governmental gross receipts tax to the extent that the imposition  
 18 of the [~~gross receipts~~] tax would be unlawful under the United  
 19 States constitution.

20 B. [~~Receipts from transactions in interstate commerce~~  
 21 ~~may be deducted from governmental gross receipts.~~] When imposition  
 22 of the gross receipts on a transaction in interstate or  
 23 international commerce would not be unlawful under the United  
 24 States constitution, receipts from the following transactions may  
 25 be deducted from gross receipts:

26 (1) exports of tangible personal property from

1 this state when delivery of the property is made to a location  
2 outside this state and the person to whom the delivery is  
3 ultimately made is not a resident of, or commercially domiciled  
4 in, this state:

5 (2) use of licenses or franchises employed  
6 outside this state; or

7 (3) other than services subject to the Interstate  
8 Telecommunications Services Gross Receipts Tax Act or services  
9 specified in Section 7-9-56 NMSA 1978, performance of service in  
10 this state for an out-of-state buyer unless the buyer of the  
11 service or any of the buyer's employees or agents makes initial  
12 use of the product of the service in New Mexico or takes delivery  
13 of the product of the service in New Mexico.

14 ~~[C.—Receipts from transmitting messages or~~  
15 ~~conversations by radio other than from one point in this state to~~  
16 ~~another point in this state and receipts from the sale of radio or~~  
17 ~~television broadcast time when the advertising message is supplied~~  
18 ~~by or on behalf of a national or regional seller or advertiser not~~  
19 ~~having its principal place of business in or being incorporated~~  
20 ~~under the laws of this state, may be deducted from gross receipts.~~  
21 ~~Commissions of advertising agencies from performing services in~~  
22 ~~this state may not be deducted from gross receipts under this~~  
23 ~~section.]”~~

24  
25 Discussion: (1) The present form of 7-9-55 has never been really useful. It requires  
26 the taxpayer to be sufficiently conversant with federal law (particularly in determining when



1 a transaction is in interstate commerce) to figure out when New Mexico tax applies or  
2 doesn't. NM law should be clear on its own.

3 The proposed new language proposes rules for transactions not covered by  
4 federal restrictions. It attempts to state all the major rules for exports in one place. For  
5 tangible property at least, our courts have embraced the delivery principle [*Dell*  
6 *Catalogue Sales, L.P. v. Taxation and Revenue Department of New Mexico* (CtApp  
7 No. 26,843) June 3, 2008; cert. denied S.Ct. No. 31,181, July 2008), 199 P.3d 863] for  
8 imports. So this proposal does too--for exports. It may be prudent to examine the rules of  
9 California and other states with long experience in explicitly spelling out in law tax  
10 treatment of exports and imports to make sure we get this right. Also, the sooner the "title  
11 and risk of loss" rule in 3.2.213.12B NMAC is withdrawn, the better.

12 7-1-14 and the suggested exemption {below} seem clear enough for imports.

13 (2) Technically B(2) may not be necessary since these receipts are not defined to  
14 be "gross receipts" under 7-9-3.5 but reinforcement of the idea is probably useful.

15 (3) Existing Subsection C is moved to 7-9-56D to place provisions regarding  
16 services together.

17 (4) Possible additions: Define "out-of-state buyer" and "product of the service".

18 Once upon a time, I floated a rule that allowed the federal government and large interstate  
19 businesses to be "out-of-state buyers" when their in-state units had nothing to do with the  
20 sale by a NM business to an out-of-state federal or big business unit. Altho the proposed  
21 rule was misunderstood at the time and consequently not adopted I believe that this is  
22 how TRD has actually behaved for the last 20 years. This hidden rule ought to be made  
23 explicit.

24 **SECTION \_\_.** Section 7-9-56 NMSA 1978 (being Laws 1994,  
25 Chapter 112, Section 2) is amended to read:

26 "7-9-56. DEDUCTION--GROSS RECEIPTS TAX--INTRASTATE  
27 TRANSPORTATION AND SERVICES IN INTERSTATE OR INTERNATIONAL  
28 COMMERCE. --

29 A. Receipts from transporting persons or property from  
30 one point to another in this state may be deducted from gross  
31 receipts when such persons or property, including any special or  
32 extra service reasonably necessary in connection therewith is  
33 being transported in interstate or [~~foreign~~] international  
34 commerce under a single contract.

35 B. Receipts from handling, storage, drayage or packing

1 of property or any other accessorial services on property, which  
2 property has moved or will move in interstate or [~~foreign~~  
3 international commerce, when such services are performed by a  
4 local agent for a carrier or by a carrier and when such services  
5 are performed under a single contract in relation to  
6 transportation services, may be deducted from gross receipts.

7 C. Receipts from providing telephone or telegraph  
8 services in this state that will be used by other persons in  
9 providing telephone or telegraph services to the final user may be  
10 deducted from gross receipts.

11 D. Receipts from transmitting messages or  
12 conversations by radio other than from one point in this state to  
13 another point in this state and receipts from the sale of radio or  
14 television broadcast time when the advertising message is supplied  
15 by or on behalf of a national or regional seller or advertiser not  
16 having its principal place of business in or being incorporated  
17 under the laws of this state, may be deducted from gross receipts.

18 Commissions of advertising agencies from performing services in  
19 this state may not be deducted from gross receipts under this  
20 section.”

21  
22 Discussion: This gathers all the provisions on interstate services into one place.  
23 “International” replaces “foreign” both for consistency among sections and to eliminate any  
24 possible confusion since “foreign” can sometimes be used to indicate other states of the  
25 United States.

26 Note: A major function of 7-9-56 is to provide a way around 7-9-48’s “resale must  
27 be taxable” rule, thereby making life lots easier for cross-border business.

28 **SECTION \_\_.** REPEAL-- Section 7-9-57 NMSA 1978 (being Laws

1 1969, Chapter 144, Section 47, as amended) is repealed.

2 Discussion: Substance of this section is moved to 7-9-55B(3).

3  
4 **ISSUE AREA #3 – CREDIT FOR OTHER STATE/LOCAL TAXES**

5 **SECTION \_\_.** Section 7-9-79 NMSA 1978 (being Laws 1966, Chapter  
6 47, section 16, as amended) is amended to read:

7 “7-9-79. CREDIT-- [~~COMPENSATING TAX~~] TAXES PAID--PROPERTY. --

8 A. If on property bought outside this state prior to  
9 July 1, 2021, a gross receipts, sales, compensating or similar tax  
10 has been levied by another state, [~~or~~] a political subdivision  
11 thereof or both on the transaction by which the person using the  
12 property in New Mexico acquired the property or a compensating,  
13 use or similar tax has been levied by another state on the use of  
14 the property subsequent to its acquisition by the person using the  
15 property in New Mexico and such tax has been paid, the amount of  
16 such tax paid may be credited against any compensating tax due  
17 this state on the same property. The amount credited shall not  
18 exceed the compensating tax due this state.

19 B. If on property bought outside this state on or  
20 after July 1, 2021, a gross receipts, sales, compensating or  
21 similar tax has been levied by another state, a political  
22 subdivision thereof or both on the transaction by which the person  
23 using the property in New Mexico acquired the property or a  
24 compensating, use or similar tax has been levied by another state  
25 on the use of the property subsequent to its acquisition by the

1 person using the property in New Mexico and such tax has been  
2 paid, the amount of such tax paid may be credited against any  
3 compensating tax due this state on the same property. The amount  
4 credited shall not exceed the sum of compensating tax and local  
5 option compensating tax due this state and its local governments  
6 on the use of the property and shall be apportioned against  
7 compensating tax liability and local option compensating tax  
8 liability in the ratio of each to the total tax liability due to  
9 this state and its local governments.

10           C. When the receipts from the sale of real property  
11 constructed by a person in the ordinary course of [his] the  
12 person's construction business are subject to the gross receipts  
13 tax, the amount of compensating tax previously paid by the person  
14 prior to July 1, 2021, on materials which became an ingredient or  
15 component part of the construction project and on construction  
16 services or construction-related services performed upon the  
17 construction project may be credited against the gross receipts  
18 tax due on the sale. The amount credited shall not exceed the  
19 gross receipt tax due on the sale of the real property.

20           D. When the receipts from the sale of real property  
21 constructed by a person in the ordinary course of the person's  
22 construction business are subject to the gross receipts tax, the  
23 sum of compensating tax plus local option compensating tax  
24 previously paid by the person on or after July 1, 2021, on  
25 materials which became an ingredient or component part of the

1 construction project and on construction services or construction-  
2 related services performed upon the construction project may be  
3 credited against the gross receipts tax and local option gross  
4 receipts tax due on the sale. The amount credited shall not exceed  
5 the total of gross receipt tax and local option gross receipts tax  
6 on the sale of the real property due this state and its local  
7 governments and shall be apportioned against the respective tax  
8 liabilities in the ratio that each bears to their sum.”

9       **SECTION \_\_.** Section 7-9-79.1 NMSA 1978 (being Laws 1989,  
10 Chapter 262, Section 8, as amended) is amended to read:

11       “7-9-79.1. CREDIT-- ~~[GROSS RECEIPTS TAX]~~ TAXES PAID--  
12 SERVICES. --

13       A. If, during the period July 1, 2019 through June 30,  
14 2021, on services performed outside the state a gross receipts,  
15 sales, compensating or similar tax has been levied by another  
16 state, ~~[or]~~ a political subdivision thereof or both and such tax  
17 has been paid, the amount of the tax paid may be credited against  
18 any gross receipts tax and local option gross receipts tax due  
19 this state and its local governments on the receipts ~~[after July~~  
20 ~~1, 1989]~~ from the sale in New Mexico of the product of the  
21 services performed outside this state. The amount of credit shall  
22 not exceed an amount equal to the combined rate of tax imposed  
23 under Section 7-9-4 NMSA 1978 and the applicable local option  
24 gross receipts taxes multiplied by the amount subject to tax by  
25 both New Mexico and the other state, ~~[or]~~ political subdivision of

1 that state or both. The amount credited shall not exceed the total  
2 gross receipts and local option gross receipts tax due this state  
3 and its local governments on the sale of the sale of the services  
4 or product of the services and shall be apportioned against the  
5 respective tax liabilities in the ratio that the gross receipts  
6 tax and local option gross receipts tax liability bears to their  
7 sum.

8 B. If, on or after July 1, 2021, a gross receipts,  
9 sales or similar tax has been levied by another state, a political  
10 subdivision thereof or both on services performed outside the  
11 state or a compensating or similar tax on use of the services or  
12 product of the services subsequent to its acquisition by the  
13 person using the services in New Mexico and such tax has been  
14 paid, the amount of the tax paid may be credited against any gross  
15 receipts, compensating or local option gross receipts or local  
16 option compensating tax due this state and its local governments  
17 on the receipts from the sale or use in New Mexico of the services  
18 or the product of the services performed outside this state. The  
19 amount credited shall not exceed the total gross receipts and  
20 local option gross receipts tax or total compensating tax and  
21 local option compensating tax due this state and its local  
22 governments on the sale of the sale of the services or use of the  
23 services or product of the services and shall be apportioned  
24 against the respective tax liabilities in the ratio that, as  
25 applicable, the gross receipts tax and local option gross receipts

1 tax liability bears to their sum or the compensating tax and local  
2 option compensating tax bear to their sum.”

3  
4 Discussion: (1) These two credits are necessary under federal interstate  
5 commerce rules to fairly apportion taxing authority among states. (The need for these two  
6 sections may have been diminished by the (partial) adoption of streamlined sales tax  
7 rules.)

8 (2) Until now, the state has been bearing the entire burden of these credits  
9 because only the state could tax such transactions. Once local govts are empowered to  
10 levy local taxes on imported tangibles, licenses, franchises and services, they should  
11 share proportionately in the cost.

12 (3) The split between state and local responsibility is meant to be as simple and  
13 administrable as possible. The taxpayer (and the taxpayer’s elected representatives) don’t  
14 care whether the amount of credit the state is responsible for is less than, equal to or  
15 greater than the other state’s take—as long as we don’t give credit for more than our  
16 combined state and local tax. Any fine-tuning would not be worth the aggravation.

17  
18  
19 **BONUS SECTION: MISCELLANEOUS CLARIFICATIONS, CLEAN-UPS & IMPROVEMENTS**

20 **SECTION \_\_\_\_.** Section 7-9-18.1 NMSA 1978 (being Laws 1987, Chapter  
21 264, Section 13 and also by Laws 1987, Chapter 304, Section 1) is amended to  
22 read:

23 “7-9-18.1. EXEMPTION--GROSS RECEIPTS TAX [~~FOOD STAMPS~~]--SNAP  
24 PROGRAM.--Exempted from the gross receipts tax are the receipts of a taxpayer  
25 who is approved for participation in the [~~food stamp~~] supplemental nutrition  
26 assistance program authorized by U.S.C. Title 7, Chapter 51, as that chapter  
27 may be amended or renumbered, from the lawful acceptance and deposit with a  
28 financial institution of [~~food stamps~~] of electronic benefit transfers or other  
29 authorized payments issued by the United States department of agriculture  
30 pursuant to the [~~food stamp~~] program.”

31  
32 DISCUSSION: The name of the federal food stamp program was changed to the  
33 supplemental nutrition assistance program (SNAP) in **2008**.

1           **SECTION** \_\_\_. Section 7-9-40 NMSA 1978 (being Laws 1970, Chapter 60,  
2 Section 2, as amended) is amended to read:

3           "7-9-40. EXEMPTION--GROSS RECEIPTS TAX--PURSES AND JOCKEY  
4 REMUNERATION AT NEW MEXICO RACETRACKS--RECEIPTS FROM GROSS  
5 AMOUNTS WAGERED.--

6           A. Exempted from the gross receipts tax are the receipts of  
7 horsemen, jockeys and trainers from race purses at New Mexico horse  
8 racetracks subject to the jurisdiction of the state racing commission.

9           B. Exempted from the gross receipts tax are the receipts of a race  
10 track from the ~~[commissions and other amounts authorized by Section 60-1-10]~~  
11 amounts subject to the pari-mutuel tax and amounts authorized pursuant to  
12 Section 60-1A-19 NMSA 1978 NMSA 1978 to be retained by a racetrack  
13 conducting horse races under the authority of a license from the state racing  
14 commission."

15           DISCUSSION: Section 60-1-10 was replaced by Section 60-1A-19 in **2007**.

16           **SECTION** \_\_\_. REPEAL.--Sections 7-9-99, 7-9-100 and 7-9-105 NMSA (being  
17 Laws 2006, Chapter 35, Sections 1 and 2 and Laws 2007, Chapter 45, Section 6) are  
18 repealed.

19           DISCUSSION: The federal law on which 7-9-99 & 7-9-100 rely has expired; these  
20 hospitals are being taken care in other ways. 7-9-105 expired in 2010.