

SENATE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; REQUIRING ORIGIN-BASED SOURCING RULES FOR SERVICES IF THE PERFORMER OF THE SERVICE OR SELLER OF THE PRODUCT OF THE SERVICE HAS A BUSINESS LOCATION IN THE STATE.

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

SECTION 1. Section 7-1-14 NMSA 1978 (being Laws 2020, Chapter 80, Section 1) is amended to read:

"7-1-14. [~~BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF~~] SOURCING RULES--REPORTING GROSS RECEIPTS AND USE--LOCATION-CODE DATABASE AND LOCATION-RATE DATABASE.--

A. For purposes of the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts or compensating tax, a person that has gross receipts and a

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1 person using property or services in New Mexico in a taxable
2 manner shall report the gross receipts or use to the proper
3 business location as provided in this section.

4 B. The business location for gross receipts from
5 the sale, lease or granting of a license to use real property
6 located in New Mexico, and any related deductions, shall be the
7 location of the property.

8 C. The business location for gross receipts from
9 the sale or license of tangible personal property, and any
10 related deductions, shall be at the following locations:

11 (1) if the property is received by the
12 purchaser at the New Mexico ~~[business]~~ location of the seller,
13 the location of the seller;

14 (2) if the property is not received by the
15 purchaser at ~~[a-business]~~ the location of the seller, the
16 location indicated by instructions for delivery to the
17 purchaser, or the purchaser's donee, when known to the seller;

18 (3) if Paragraphs (1) and (2) of this
19 subsection do not apply, the location indicated by an address
20 for the purchaser available from the business records of the
21 seller that are maintained in the ordinary course of business;
22 provided that use of the address does not constitute bad faith;

23 (4) if Paragraphs (1) through (3) of this
24 subsection do not apply, the location for the purchaser
25 obtained during consummation of the sale, including the address

1 of a purchaser's payment instrument, if no other address is
2 available; provided that use of this address does not
3 constitute bad faith; or

4 (5) if Paragraphs (1) through (4) of this
5 subsection do not apply, including a circumstance in which the
6 seller is without sufficient information to apply those
7 standards, the location from which the property was shipped or
8 transmitted.

9 D. The business location for gross receipts from
10 the lease of tangible personal property, including vehicles,
11 other transportation equipment and other mobile tangible
12 personal property, and any related deductions, shall be the
13 location of primary use of the property, as indicated by the
14 address for the property provided by the lessee that is
15 available to the lessor from the lessor's records maintained in
16 the ordinary course of business; provided that use of this
17 address does not constitute bad faith. The location of primary
18 [~~business location~~] use shall not be altered by intermittent
19 use at different locations, such as use of business property
20 that accompanies employees on business trips and service calls.

21 E. The business location for gross receipts from
22 the sale, lease or license of franchises, and any related
23 deductions, shall be where the franchise is used.

24 F. The business location for gross receipts from
25 the performance or sale of the following services, and any

1 related deductions, shall be at the following locations:

2 (1) for professional services performed in New
3 Mexico, other than construction-related services, or performed
4 outside New Mexico when the product of the service is initially
5 used in New Mexico, the location of the performer of the
6 service or seller of the product of the service, as
7 appropriate;

8 (2) for construction services and
9 construction-related services performed for a construction
10 project in New Mexico, the location of the construction site;

11 (3) for services with respect to the selling
12 of real estate located in New Mexico, the location of the real
13 estate;

14 (4) for transportation of persons or property
15 in, into or from New Mexico, the location where the person or
16 property enters the vehicle; and

17 (5) for services other than those described in
18 Paragraphs (1) through (4) of this subsection:

19 (a) the location of the performer of the
20 service or seller of the product of the service, as applicable,
21 if the performer of the service or seller of the product of the
22 service has a business location in the state; or

23 (b) the location where the product of
24 the service is delivered.

25 G. Except as provided in Subsection H of this

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1 section, the business location for uses of property or services
2 subject to the compensating tax shall be ~~[reported at]~~ the
3 ~~[business]~~ location at which gross receipts would have been
4 required to be reported had the transaction been subject to the
5 gross receipts tax.

6 H. If a person subject to the compensating tax can
7 demonstrate that the first use upon which compensating tax is
8 imposed occurred at a time and place different from the time
9 and place of the purchase, then the business location for the
10 compensating tax shall be ~~[reported at]~~ the ~~[business]~~ location
11 of the first use.

12 ~~[I. The secretary shall designate codes to identify~~
13 ~~the business locations for a person's gross receipts, or use~~
14 ~~for purchases subject to the compensating tax, and deductions~~
15 ~~related to those receipts or that use shall be reported.~~

16 ~~J.]~~ I. The secretary shall develop a location-code
17 database that provides the business location codes designated
18 by the secretary for purposes of reporting pursuant to
19 ~~[Subsection I of]~~ this section. The secretary shall also
20 develop and provide to taxpayers a location-rate database that
21 sets out the tax rates applicable to business locations within
22 the state, by address, and sellers who properly rely on this
23 database shall not be liable for any additional tax due to the
24 use of an incorrect rate.

25 ~~[K.]~~ J. As used in this section:

1 ~~[(1)] "business location" means the code~~
2 ~~designated by the department to identify business locations and~~
3 ~~required to be used to report the gross receipts, or use for~~
4 ~~purchases subject to the compensating tax, and deductions~~
5 ~~related to those receipts or that use;~~

6 ~~(2)]~~ (1) "gross receipts" means, as
7 applicable, "gross receipts" as used in the Gross Receipts and
8 Compensating Tax Act and the Leased Vehicle Gross Receipts Tax
9 Act and "interstate telecommunications gross receipts" in the
10 Interstate Telecommunications Gross Receipts Tax Act;

11 ~~[(3)]~~ (2) "in-person service" means a service
12 physically provided in person by the service provider, where
13 the customer or the customer's real or tangible personal
14 property upon which the service is performed is in the same
15 location as the service provider at the time the service is
16 performed; and

17 ~~[(4)]~~ (3) "professional service" means a
18 service, other than an in-person service, that requires either
19 an advanced degree from an accredited post-secondary
20 educational institution or a license from the state to
21 perform."

22 SECTION 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2023.