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SENATE BILL 103

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Sue F. Wilson

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE
GROSS RECEIPTS AND COMPENSATING TAX ACT REGARDING
CONSTRUCTION AND PERFORMING SERVICES.

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

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;

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

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

6 (2) building, stadium or other structure;

7 (3) airport, subway or similar facility;

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

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

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

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

17 (8) transmission line;

18 (9) radio, television or other tower;

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

20 (11) shaft, tunnel or other mining
21 appurtenance;

22 (12) microwave station or similar facility;

23 [~~or~~]

24 (13) retaining wall, wall, fence gate or
25 similar structure; or

[~~(13)~~] (14) similar work;

"construction" also means:

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- 1 [~~(14)~~] (15) leveling or clearing land;
- 2 [~~(15)~~] (16) excavating earth;
- 3 [~~(16)~~] (17) drilling wells of any type,
- 4 including seismograph shot holes or core drilling; or
- 5 [~~(17)~~] (18) similar work;

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

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

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

- (1) "Gross receipts" includes:
 - (a) any receipts from sales of tangible

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1 personal property handled on consignment;
2 (b) the total commissions or fees
3 derived from the business of buying, selling or promoting the
4 purchase, sale or leasing, as an agent or broker on a
5 commission or fee basis, of any property, service, stock,
6 bond or security;
7 (c) amounts paid by members of any
8 cooperative association or similar organization for sales or
9 leases of personal property or performance of services by
10 such organization; and
11 (d) amounts received from transmitting
12 messages or conversations by persons providing telephone or
13 telegraph services.
14 (2) "Gross receipts" excludes:
15 (a) cash discounts allowed and taken;
16 (b) New Mexico gross receipts tax,
17 governmental gross receipts tax and leased vehicle gross
18 receipts tax payable on transactions for the reporting
19 period;
20 (c) taxes imposed pursuant to the
21 provisions of any local option gross receipts tax that is
22 payable on transactions for the reporting period;
23 (d) any gross receipts or sales taxes
24 imposed by an Indian nation, tribe or pueblo; provided that
25 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

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1 tax imposed by the Indian nation, tribe or pueblo provides a
2 reciprocal exclusion for gross receipts, sales or gross
3 receipts-based excise taxes imposed by the state or its
4 political subdivisions;

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

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

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

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

24 H. "person" means:

25 (1) [~~any~~] an individual, estate, trust,
receiver, cooperative association, club, corporation,
company, firm, partnership, limited liability company,

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1 limited liability partnership, joint venture, syndicate or
2 other entity, including any gas, water or electric utility
3 owned or operated by a county, municipality or other
4 political subdivision of the state; or

5 (2) ~~[any]~~ a national, federal, state, Indian
6 or other governmental unit or subdivision, or ~~[any]~~ an
7 agency, department or instrumentality of any of the
8 foregoing;

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

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

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

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

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

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

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

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

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

25 (2) participation in progress reviews,
briefings, consultations and conferences conducted by the
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 an activity engaged in for other persons for consideration,
9 for one or more of the following purposes:

10 (1) advancing basic knowledge in a
11 recognized 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
17 or improved product, process or system is offered for sale,
18 lease 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, modeling, simulation, conceptual design or similar
activities, whether or not offered for sale, lease or other

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1 transfer; or

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

6 Q. "local option gross receipts tax" means a tax
7 authorized to be imposed by a county or municipality upon the
8 taxpayer's gross receipts and required to be collected by the
9 department at the same time and in the same manner as the
10 gross receipts tax; "local option gross receipts tax"
11 includes the taxes imposed pursuant to the Municipal Local
12 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
13 Receipts Tax Act, [~~Special Municipal Gross Receipts Tax Act~~]
14 County Local Option Gross Receipts Taxes Act, Local Hospital
15 Gross Receipts Tax Act, County Correctional Facility Gross
16 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
person authorized under state law to prescribe the substance;
and

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

Section 2. Section 7-9-48 NMSA 1978 (being Laws 1969, Chapter 144, Section 38, as amended) is amended to read:

"7-9-48. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS--SALE OF A SERVICE FOR RESALE.--Receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must ~~[separately state the value of the service purchased in his charge for the service on its subsequent sale, and the subsequent sale must be]~~ resell the service in the ordinary course of business and the resale must be subject to the gross receipts tax or governmental gross receipts tax."

Section 3. Section 7-9-51 NMSA 1978 (being Laws 1969, Chapter 144, Section 41) is amended to read:

"7-9-51. DEDUCTION--GROSS RECEIPTS TAX--SALE OF TANGIBLE PERSONAL PROPERTY TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

A. Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller.

B. The buyer delivering the nontaxable transaction

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1 certificate must incorporate the tangible personal property
2 as:

3 (1) an ingredient or component part of a
4 construction project which is subject to the gross receipts
5 tax upon its completion or upon the completion of the overall
6 construction project of which it is a part; ~~[or]~~

7 (2) an ingredient or component part of a
8 construction project which is subject to the gross receipts
9 tax upon the sale in the ordinary course of business of the
10 real property upon which it was constructed; or

11 (3) an ingredient or component part of a
12 construction project that is located on the tribal territory
13 of an Indian nation, tribe or pueblo."

14 Section 4. Section 7-9-52 NMSA 1978 (being Laws 1969,
15 Chapter 144, Section 42) is amended to read:

16 "7-9-52. DEDUCTION--GROSS RECEIPTS TAX--SALE OF
17 CONSTRUCTION SERVICES TO PERSONS ENGAGED IN THE CONSTRUCTION
18 BUSINESS.--

19 A. Receipts from selling a construction service
20 may be deducted from gross receipts if the sale is made to a
21 person engaged in the construction business who delivers a
22 nontaxable transaction certificate to the person performing
23 the construction service.

24 B. The buyer delivering the nontaxable transaction
25 certificate must have the construction services performed
upon:

(1) a construction project which is subject

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1 to the gross receipts tax upon its completion or upon the
2 completion of the overall construction project of which it is
3 a part; ~~[or]~~

4 (2) a construction project which is subject
5 to the gross receipts tax upon the sale in the ordinary
6 course of business of the real property upon which it was
7 constructed; or

8 (3) a construction project that is located
9 on the tribal territory of an Indian nation, tribe or
10 pueblo."

11 Section 5. Section 7-9-56.1 NMSA 1978 (being Laws 1998,
12 Chapter 92, Section 1) is amended to read:

13 "7-9-56.1. DEDUCTION--GROSS RECEIPTS TAX--INTERNET
14 SERVICES.--~~[During the period]~~ On and after July 1, 1998,
15 ~~[through June 30, 2000]~~ receipts from providing leased
16 telephone lines, telecommunications services, internet
17 services, internet access services or computer programming
18 that will be used by other persons in providing internet
19 access and related services to the final user may be deducted
20 from gross receipts if the sale is made to a person who is
21 subject to the gross receipts tax or the interstate
22 telecommunications gross receipts tax."

23 Section 6. Section 7-9-57 NMSA 1978 (being Laws 1969,
24 Chapter 144, Section 47, as amended) is amended to read:

25 "7-9-57. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CERTAIN
SERVICES TO AN OUT-OF-STATE BUYER.--

A. Receipts from performing a service may be

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1 deducted from gross receipts if the sale of the service is
2 made to [a] an out-of-state buyer who delivers to the seller
3 either an appropriate nontaxable transaction certificate or
4 other evidence acceptable to the secretary unless the buyer
5 of the service or any of the buyer's employees or agents
6 makes initial use of the product of the service in New Mexico
7 or takes delivery of the product of the service in New
8 Mexico.

9 B. Receipts from performing a service that
10 initially qualified for the deduction provided in this
11 section but that no longer meets the criteria set forth in
12 Subsection A of this section shall be deductible for the
13 period prior to the disqualification."

14 Section 7. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2000.