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HOUSE BILL 339

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Roberto J. Gonzales

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO TAXATION; SETTING JANUARY 1, 2005 AS THE INITIATION
DATE OF THE NEXT SERIES OF NONTAXABLE TRANSACTION CERTIFICATES;
AMENDING SECTIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX
ACT; MAKING AN APPROPRIATION.**

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

**Section 1. Section 7-9-43 NMSA 1978 (being Laws 1966,
Chapter 47, Section 13, as amended) is amended to read:**

**"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER
EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS--
RENEWAL. --**

**A. All nontaxable transaction certificates of the
appropriate series executed by buyers or lessees should be in
the possession of the seller or lessor for nontaxable
transactions at the time the return is due for receipts from**

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1 the transactions. If the seller or lessor is not in possession
2 of the required nontaxable transaction certificates within
3 sixty days from the date that the notice requiring possession
4 of these nontaxable transaction certificates is given the
5 seller or lessor by the department, deductions claimed by the
6 seller or lessor that require delivery of these nontaxable
7 transaction certificates shall be disallowed. The nontaxable
8 transaction certificates shall contain the information and be
9 in a form prescribed by the department. The department by
10 regulation may deem to be nontaxable transaction certificates
11 documents issued by other states or the multistate tax
12 commission to taxpayers not required to be registered in New
13 Mexico. Only buyers or lessees who have a registration number
14 or have applied for a registration number and have not been
15 refused one under Subsection C of Section 7-1-12 NMSA 1978
16 shall execute nontaxable transaction certificates issued by the
17 department. If the seller or lessor has been given an
18 identification number for tax purposes by the department, the
19 seller or lessor shall disclose that identification number to
20 the buyer or lessee prior to or upon acceptance of a nontaxable
21 transaction certificate. When the seller or lessor accepts a
22 nontaxable transaction certificate within the required time and
23 in good faith that the buyer or lessee will employ the property
24 or service transferred in a nontaxable manner, the properly
25 executed nontaxable transaction certificate shall be conclusive

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1 evidence, and the only material evidence, that the proceeds
2 from the transaction are deductible from the seller's or
3 lessor's gross receipts.

4 B. Properly executed documents required to support
5 the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74
6 NMSA 1978 should be in the possession of the seller at the time
7 the return is due for receipts from the transactions. If the
8 seller is not in possession of these documents within sixty
9 days from the date that the notice requiring possession of
10 these documents is given to the seller by the department,
11 deductions claimed by the seller or lessor that require
12 delivery of these documents shall be disallowed. These
13 documents shall contain the information and be in a form
14 prescribed by the department. When the seller accepts these
15 documents within the required time and in good faith that the
16 buyer will employ the property or service transferred in a
17 nontaxable manner, the properly executed documents shall be
18 conclusive evidence, and the only material evidence, that the
19 proceeds from the transaction are deductible from the seller's
20 gross receipts.

21 C. Notice, as used in this section, is sufficient
22 if the notice is mailed or served as provided in Subsection A
23 of Section 7-1-9 NMSA 1978. Notice by the department under
24 this section shall not be given prior to the commencement of an
25 audit of the seller required to be in possession of the

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1 documents.

2 D. On [~~January 1, 1992~~] January 1, 2005, every
3 nontaxable transaction certificate, except for nontaxable
4 transaction certificates of the series applicable to the
5 twelve-year period beginning [~~January 1, 1992~~] January 1, 2005
6 and issued by the department prior to that date, is void with
7 respect to transactions after [~~December 31, 1991~~] December 31,
8 2004. The department shall issue separate series of nontaxable
9 transaction certificates for the twelve-year period beginning
10 [~~January 1, 1992~~] January 1, 2005 and for each twelve-year
11 period beginning on January 1 of every twelfth year succeeding
12 calendar year [~~1992~~] 2005. A series of nontaxable transaction
13 certificates issued by the department for any twelve-year
14 period may be executed by buyers or lessees for transactions
15 occurring within or prior to that twelve-year period but is not
16 valid for transactions occurring after that twelve-year period,
17 except the nontaxable transaction certificates issued by the
18 department for the period January 1, 1992 to December 31, 2001
19 may be executed by buyers or lessees for transactions occurring
20 prior to December 31, 2004. For administrative convenience,
21 the department may accept and approve qualifying applications
22 for the privilege of executing nontaxable transaction
23 certificates and pre-issue certificates of any series within
24 the six-month period immediately preceding the beginning of the
25 twelve-year period to which the series of nontaxable

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1 transaction certificates applies.

2 E. To exercise the privilege of executing
3 appropriate nontaxable transaction certificates, a buyer or
4 lessee shall apply to the department for permission to execute
5 nontaxable transaction certificates, except with respect to
6 documents issued by other states or the multistate tax
7 commission that the department has deemed to be nontaxable
8 transaction certificates. If a person is shown on the
9 department's records to be a delinquent taxpayer or to have a
10 non-filed period, the department may refuse to approve the
11 application of the person until the person has filed returns
12 for all non-filed periods and is no longer shown to be a
13 delinquent taxpayer, and the taxpayer may protest that refusal
14 pursuant to Section 7-1-24 NMSA 1978. Upon the department's
15 approval of the application, the buyer or lessee may request
16 appropriate nontaxable transaction certificates for execution
17 by the buyer or lessee; provided that if a person is shown on
18 the department's records to be a delinquent taxpayer or to have
19 a non-filed period, the department may refuse to issue
20 nontaxable transaction certificates to the person until the
21 person has filed returns for all non-filed periods and is no
22 longer shown to be a delinquent taxpayer [~~and~~]. The taxpayer
23 may protest that refusal pursuant to Section 7-1-24 NMSA 1978.
24 The department may require a buyer or lessee requesting and
25 receiving nontaxable transaction certificates for execution by

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1 that buyer or lessee to report to the department [~~annually~~] the
2 names, addresses and identification numbers assigned by the
3 department of the sellers and lessors to whom they have
4 delivered nontaxable transaction certificates. The department
5 may require a seller or lessor engaged in business in New
6 Mexico to report to the department [~~annually~~] the names,
7 addresses and federal employer identification numbers or state
8 identification numbers for tax purposes issued by the
9 department of the buyers or lessees from whom the seller or
10 lessor has accepted nontaxable transaction certificates. "

11 Section 2. Section 7-9-54 NMSA 1978 (being Laws 1969,
12 Chapter 144, Section 44, as amended) is amended to read:

13 "7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
14 GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

15 A. Receipts from selling tangible personal property
16 to the United States or New Mexico or any governmental unit or
17 subdivision, agency, department or instrumentality thereof may
18 be deducted from gross receipts or from governmental gross
19 receipts. Unless contrary to federal law, the deduction
20 provided by this subsection does not apply to:

21 (1) receipts from selling metalliferous
22 mineral ore;

23 (2) receipts from selling tangible personal
24 property that is or will be incorporated into a metropolitan
25 redevelopment project created under the Metropolitan

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1 Redevelopment Code;

2 (3) receipts from selling construction
3 material; or

4 (4) that portion of the receipts from
5 performing a "service" [~~as defined in Subsection K of Section~~
6 ~~7-9-3 NMSA 1978~~] that reflects the value of tangible personal
7 property utilized or produced in performance of such service.

8 B. Receipts from selling tangible personal property
9 for any purpose to an Indian tribe, nation or pueblo or any
10 governmental subdivision, agency, department or instrumentality
11 thereof for use on Indian reservations or pueblo grants may be
12 deducted from gross receipts or from governmental gross
13 receipts.

14 C. When a seller, in good faith, deducts receipts
15 for tangible personal property sold to the state or any
16 governmental unit, subdivision, agency, department or
17 instrumentality thereof, after receiving written assurances
18 from the buyer's representative that the property sold is not
19 construction material, the department [~~is precluded from~~
20 ~~asserting~~] shall not assert in a later assessment or audit that
21 the receipts are not deductible pursuant to Paragraph (3) of
22 Subsection A of this section. "

23 Section 3. APPROPRIATION. -- Five hundred thousand
24 dollars (\$500,000) is appropriated from the general fund to the
25 taxation and revenue department for expenditure in fiscal years
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1 2004 and 2005 to establish a system for the electronic issuance
2 and execution of nontaxable transaction certificates. Any
3 unexpended or unencumbered balance remaining at the end of
4 fiscal year 2005 shall revert to the general fund.

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