

FIFTY-THIRD LEGISLATURE  
FIRST SESSION

March 16, 2017

SENATE FLOOR AMENDMENT number \_\_\_1\_\_\_ to HOUSE BILL 191, as amended

Amendment sponsored by Senator Cliff R. Pirtle

1. Strike all senate finance committee amendments.

2. On page 1, line 13, after the first semicolon, insert "AMENDING THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT TO DETERMINE IN-STATE SALES OF INTANGIBLES AND SERVICES BASED ON MARKET SOURCING RATHER THAN COST OF PERFORMANCE; CLARIFYING THAT A CERTAIN EXEMPTION FROM GROSS RECEIPTS FOR WAGES ONLY APPLIES TO CERTAIN RECEIPTS OF PARTNERS; REQUIRING SEPARATE REPORTING FOR CERTAIN DEDUCTIONS FROM GROSS RECEIPTS; REQUIRING THE LEGISLATIVE INTERIM REVENUE STABILIZATION AND TAX POLICY COMMITTEE TO CONTINUE STUDYING TAX REFORM, TO MAKE RECOMMENDATIONS TO THE LEGISLATURE TO REDUCE THE EFFECTS OF PYRAMIDING OF THE GROSS RECEIPTS TAX AND TO MAKE RECOMMENDATIONS ON THE REPEAL OF CERTAIN GROSS RECEIPTS AND COMPENSATING TAX CREDITS, DEDUCTIONS AND EXEMPTIONS; PROVIDING DELAYED REPEALS OF THOSE CREDITS, DEDUCTIONS AND EXEMPTIONS;".

3. On page 4, lines 9 through 12, strike Sections 4 and 5 in their entirety and insert in lieu thereof the following new sections:

"SECTION 4. Section 7-4-18 NMSA 1978 (being Laws 1965, Chapter 203, Section 18) is amended to read:

"7-4-18. DETERMINATION OF SALES IN THIS STATE OF SERVICES AND OTHER [~~THAN TANGIBLE PERSONAL~~] PROPERTY FOR INCLUSION IN SALES FACTOR.--

A. Sales, other than sales [of tangible personal property] described in Section 7-4-17 NMSA 1978, are in this state [if

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~~A. the income-producing activity is performed in this state; or~~

~~B. the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state based on costs of performance]:~~

(1) in the case of sale, rental, lease or license of real property, if and to the extent that the real property is located in this state;

(2) in the case of rental, lease or license of tangible personal property, if and to the extent that the tangible personal property is located in this state;

(3) in the case of sale of a service, except a communication service sold by a qualified group, if and to the extent that the service is delivered to a location in this state; and

(4) in the case of sale, rental, lease or license of intangible property, if and to the extent that the intangible property is used in this state.

B. Fifty percent of sales of communication services sold by a qualified group are in this state if and to the extent that the services are delivered to a location in this state, and fifty percent of sales of communication services shall not be assigned to a location in this state. A member of a qualified group that owns an interest in an entity treated as a partnership for federal income tax purposes shall be treated as providing its share of the partnership's communication services, incurring its share of the partnership's qualifying expenditures and making its share of the partnership's sales subject to the gross receipts tax. A partner's share of a partnership shall equal the percentage of income or loss allocated to it for the taxable year.

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C. If the state or states of assignment under Subsection A or B of this section cannot be determined, the state or states of assignment shall be reasonably approximated.

D. If the taxpayer is not taxable in a state to which a sale is assigned pursuant to Subsection A or B of this section or if the state of assignment cannot be determined or reasonably approximated pursuant to Subsection C of this section, that sale shall be excluded from the numerator and denominator of the sales factor.

E. The department may promulgate rules as necessary or appropriate to carry out the purposes of this section.

F. As used in this section:

(1) "broadcaster" means a taxpayer that is a television or radio station licensed by the federal communications commission, a television or radio broadcast network, a cable program network or a television distribution company. "Broadcaster" does not include a platform distribution company;

(2) "communication service" means transmission or reception of information or a combination of the transmission and reception of information by the use of electronic, magnetic, digital or optical means, or any combination of those communication technologies, and that may be available for use by another person for consideration. "Communication service" does not include services of a broadcaster or platform distribution company;

(3) "platform distribution company" means a cable service provider, a direct broadcast satellite system, an internet content distributor or any other distributor that directly charges viewers for access to any film programming;

(4) "qualified expenditure" means an expenditure incurred in a transaction with a person who is not a member of a

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qualified group for:

(a) purchasing tangible personal property placed in service in this state by a member of a qualified group; and

(b) payroll for employees employed by a member of the qualified group at a facility in this state;

(5) "qualified group" means a group of corporations that files a return in this state pursuant to Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978 and:

(a) at least one of the members of the group is a qualified member; and

(b) the members of the group, during the tax period: 1) incur at least forty-three million dollars (\$43,000,000) in qualified expenditures in this state; or 2) make at least forty-three million dollars (\$43,000,000) in sales that are subject to the gross receipts tax; and

(6) "qualified member" means a person that is principally engaged in the sale of communication services."

SECTION 5. Section 7-9-17 NMSA 1978 (being Laws 1969, Chapter 144, Section 10) is amended to read:

"7-9-17. EXEMPTION--GROSS RECEIPTS TAX--WAGES.--Exempted from the gross receipts tax are the receipts of employees from wages, salaries, commissions or from any other form of remuneration for personal services; provided that a payment to an individual who is a partner or member of a partnership, limited liability company or similar entity shall be considered exempt remuneration to the extent that payment is substantially similar to the type of remuneration an employee might receive for personal services."

SECTION 6. A new section of the Gross Receipts and

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Compensating Tax Act is enacted to read:

"[NEW MATERIAL] SEPARATE REPORTING REQUIRED FOR CERTAIN DEDUCTIONS FROM GROSS RECEIPTS.--A taxpayer allowed a deduction pursuant to Section 7-9-48, 7-9-54.3, 7-9-73.2, 7-9-73.3 or 7-9-75 NMSA 1978 shall report the amount of the deduction separately in a manner required by the department."

**SECTION 7. TEMPORARY PROVISION--REVENUE STABILIZATION AND TAX POLICY COMMITTEE--2017 INTERIM--STUDY TAX REFORM--RECOMMENDATIONS TO REDUCE THE PYRAMIDING EFFECTS OF THE GROSS RECEIPTS TAX--RECOMMENDATIONS ON THE REPEAL OF CERTAIN GROSS RECEIPTS AND COMPENSATING TAX CREDITS, DEDUCTIONS AND EXEMPTIONS.--**

A. To continue the efforts begun in the 2016 interim by the legislative interim revenue stabilization and tax policy committee, in the 2017 interim, the committee shall continue to study and review the tax reform proposals considered during the first session of the fifty-third legislature.

B. In December 2018, the legislative interim revenue stabilization and tax policy committee shall make recommendations to the legislature to reduce the pyramiding effects of the gross receipts on New Mexico taxpayers.

C. The legislative interim revenue stabilization and tax policy committee shall make recommendations to the legislature on the repeal of certain exemptions and deductions being repealed by this act as follows:

(1) in December 2018, the deductions and exemptions being repealed by Subsection A of Section 8 of this act; and

(2) in December 2020, the credits and deductions being repealed by Subsection B of Section 8 of this act.

**SECTION 8. REPEAL.--**

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A. Sections 6-4-5, 7-9-13.4, 7-9-26.1, 7-9-41.4, 7-9-54.2 through 7-9-54.5, 7-9-56.2 through 7-9-57, 7-9-57.2, 7-9-63, 7-9-64, 7-9-66, 7-9-68, 7-9-73.2, 7-9-73.3, 7-9-76.1, 7-9-79.2, 7-9-83, 7-9-84, 7-9-86 and 7-9-87 NMSA 1978 (being Laws 1987, Chapter 347, Section 5, Laws 2002, Chapter 20, Section 1; Laws 2003, Chapter 62, Section 1; Laws 2009, Chapter 62, Section 1; Laws 1995, Chapter 183, Section 2; Laws 2002, Chapter 37, Section 8; Laws 2003, Chapter 62, Section 4; Laws 2004, Chapter 16, Section 3; Laws 1998, Chapter 92, Section 2; Laws 2003, Chapter 232, Section 1; Laws 1969, Chapter 144, Section 47; Laws 2002, Chapter 10, Section 1; Laws 1969, Chapter 144, Sections 53, 54, 57 and 60; Laws 1998, Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4; Laws 2014, Chapter 26, Section 1; Laws 1979, Chapter 338, Section 7; Laws 2007, Chapter 204, Section 9; Laws 1993, Chapter 364, Sections 1 and 2; Laws 1995, Chapter 80, Section 1; and Laws 1995, Chapter 155, Section 35, as amended) are repealed effective July 1, 2019.

B. Sections 7-9-91, 7-9-94, 7-9-95, 7-9-97 through 7-9-103.2, 7-9-105, 7-9-107, 7-9-108, 7-9-111, 7-9-112, 7-9-114, 7-9A-1 through 7-9A-9, 7-9A-11, 7-9G-1, 7-9G-2 and 7-9J-1 through 7-9J-8 NMSA 1978 (being Laws 2001, Chapter 135, Section 1; Laws 2005, Chapter 104, Sections 23 and 25; Laws 2005, Chapter 169, Section 1; Laws 2005, Chapter 179, Section 1; Laws 2006, Chapter 35, Sections 1 and 2; Laws 2007, Chapter 3, Sections 16 through 18; Laws 2012, Chapter 12, Sections 2 and 3; Laws 2007, Chapter 45, Section 6; Laws 2007, Chapter 172, Sections 9 and 10; Laws 2007, Chapter 361, Section 6; Laws 2007, Chapter 204, Section 10; Laws 2010, Chapter 77, Section 1 and Laws 2010, Chapter 78, Section 1; Laws 1979, Chapter 347, Sections 1 and 2; Laws 2001, Chapter 57, Section 2 and Laws 2001, Chapter 337, Section 2; Laws 1979, Chapter 347, Sections 3 through 7; Laws 1983, Chapter 206, Section 6; Laws 1979, Chapter 347, Sections 8 and 9; Laws 1997, Chapter 62, Section 2; Laws 2004, Chapter 15, Section 1; Laws 2007, Chapter 229, Section 1; and Laws 2007, Chapter 204, Sections 11 through 18, as amended) are repealed effective July 1, 2021.

**SECTION 9. APPLICABILITY.**--The provisions of Section 4 of this

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act apply to taxable years beginning on or after January 1, 2018.

**SECTION 10. EFFECTIVE DATE.--**

A. The effective date of the provisions of Sections 1 through 3 of this act is July 1, 2018.

B. The effective date of the provisions of Sections 5 and 6 of this act is July 1, 2017."

\_\_\_\_\_  
Cliff R. Pirtle

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_