

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 194

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

AN ACT

RELATING TO TAXATION; PROVIDING FOR ALTERNATIVE EVIDENCE OTHER
THAN A NONTAXABLE TRANSACTION CERTIFICATE TO ENTITLE PERSONS TO
A DEDUCTION FROM GROSS RECEIPTS; REPEALING AN IRRELEVANT
NONTAXABLE TRANSACTION CERTIFICATE SUSPENSION PROVISION;
DECLARING AN EMERGENCY.

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.--

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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underscored material = new
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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 except as provided~~
8 ~~in Subsection E of this section. The] Except as provided in~~
9 Subsection B of this section, a person may establish
10 entitlement to a deduction from gross receipts allowed pursuant
11 to the Gross Receipts and Compensating Tax Act by obtaining a
12 properly executed nontaxable transaction certificate from the
13 purchaser. Nontaxable transaction certificates shall contain
14 the information and be in a form prescribed by the department.
15 The department by regulation may deem to be nontaxable
16 transaction certificates documents issued by other states or
17 the multistate tax commission to taxpayers not required to be
18 registered in New Mexico. Only buyers or lessees who have a
19 registration number or have applied for a registration number
20 and have not been refused one under Subsection C of Section
21 7-1-12 NMSA 1978 shall execute nontaxable transaction
22 certificates issued by the department. If the seller or lessor
23 has been given an identification number for tax purposes by the
24 department, the seller or lessor shall disclose that
25 identification number to the buyer or lessee prior to or upon

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1 acceptance of a nontaxable transaction certificate.

2 B. Except as provided in Subsection C of this
3 section, a person who does not comply with Subsection A of this
4 section may establish entitlement to a deduction from gross
5 receipts by presenting alternative evidence that demonstrates
6 the facts necessary to support entitlement to the deduction,
7 but the burden of proof is on that person. Alternative
8 evidence includes:

9 (1) invoices or contracts that identify the
10 nature of the transaction;

11 (2) documentation as to the purchaser's use or
12 disposition of the property or service;

13 (3) a statement from the purchaser indicating
14 that the purchaser sold or intends to resell the property or
15 service purchased from the seller, either by itself or in
16 combination with other property or services, in the ordinary
17 course of business. The statement from the purchaser shall
18 include:

19 (a) the seller's name;

20 (b) the date of the invoice or date of
21 the transaction;

22 (c) the invoice number or a copy of the
23 invoice;

24 (d) a copy of the purchase order, if
25 available;

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1 (e) the amount of purchase; and
2 (f) a description of the property or
3 service purchased or leased; or

4 (4) any other evidence that demonstrates the
5 facts necessary to establish entitlement to the deduction.

6 C. Subsection B of this section does not apply to
7 sellers of electricity or fuels that are parties to an
8 agreement with the department pursuant to Section 7-1-21.1 NMSA
9 1978 regarding the deduction pursuant to Subsection B of
10 Section 7-9-46 NMSA 1978.

11 D. When [the seller or lessor] a person accepts in
12 good faith a properly executed nontaxable transaction
13 certificate [within the required time and in good faith that
14 the buyer or lessee will employ the property or service
15 transferred in a nontaxable manner] from the purchaser, the
16 properly executed nontaxable transaction certificate shall be
17 conclusive evidence [and the only material evidence] that the
18 proceeds from the transaction are deductible from the [seller's
19 or lessor's] person's gross receipts.

20 [B. Properly executed documents required to support
21 the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74
22 NMSA 1978 should be in the possession of the seller at the time
23 the return is due for receipts from the transactions. If the
24 seller is not in possession of these documents within sixty
25 days from the date that the notice requiring possession of

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1 ~~these documents is given to the seller by the department,~~
2 ~~deductions claimed by the seller or lessor that require~~
3 ~~delivery of these documents shall be disallowed. These~~
4 ~~documents shall contain the information and be in a form~~
5 ~~prescribed by the department. When the seller accepts these~~
6 ~~documents within the required time and in good faith that the~~
7 ~~buyer will employ the property or service transferred in a~~
8 ~~nontaxable manner, the properly executed documents shall be~~
9 ~~conclusive evidence, and the only material evidence, that the~~
10 ~~proceeds from the transaction are deductible from the seller's~~
11 ~~gross receipts.~~

12 ~~G. Notice, as used in this section, is sufficient~~
13 ~~if the notice is mailed or served as provided in Subsection A~~
14 ~~of Section 7-1-9 NMSA 1978. Notice by the department under~~
15 ~~this section shall not be given prior to the commencement of an~~
16 ~~audit of the seller required to be in possession of the~~
17 ~~documents.~~

18 ~~D.] E. To exercise the privilege of executing~~
19 ~~appropriate nontaxable transaction certificates, a buyer or~~
20 ~~lessee shall apply to the department for permission to execute~~
21 ~~nontaxable transaction certificates, except with respect to~~
22 ~~documents issued by other states or the multistate tax~~
23 ~~commission that the department has deemed to be nontaxable~~
24 ~~transaction certificates. [If a person is shown on the~~
25 ~~department's records to be a delinquent taxpayer or to have a~~

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1 ~~non-filed period, the department may refuse to approve the~~
2 ~~application of the person until the person has filed returns~~
3 ~~for all non-filed periods and is no longer shown to be a~~
4 ~~delinquent taxpayer, and the taxpayer may protest that refusal~~
5 ~~pursuant to Section 7-1-24 NMSA 1978. Upon the department's~~
6 ~~approval of the application, the buyer or lessee may request~~
7 ~~appropriate nontaxable transaction certificates for execution~~
8 ~~by the buyer or lessee; provided that if a person is shown on~~
9 ~~the department's records to be a delinquent taxpayer or to have~~
10 ~~a non-filed period, the department may refuse to issue~~
11 ~~nontaxable transaction certificates to the person until the~~
12 ~~person has filed returns for all non-filed periods and is no~~
13 ~~longer shown to be a delinquent taxpayer. The taxpayer may~~
14 ~~protest that refusal pursuant to Section 7-1-24 NMSA 1978. The~~
15 ~~department may require a buyer or lessee requesting and~~
16 ~~receiving nontaxable transaction certificates for execution by~~
17 ~~that buyer or lessee to report to the department the names,~~
18 ~~addresses and identification numbers assigned by the department~~
19 ~~of the sellers and lessors to whom they have delivered~~
20 ~~nontaxable transaction certificates. The department may~~
21 ~~require a seller or lessor engaged in business in New Mexico to~~
22 ~~report to the department the names, addresses and federal~~
23 ~~employer identification numbers or state identification numbers~~
24 ~~for tax purposes issued by the department of the buyers or~~
25 ~~lessees from whom the seller or lessor has accepted nontaxable~~

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1 ~~transaction certificates.~~

2 ~~E. The secretary or secretary's delegate may accept~~
3 ~~other evidence, as specified by rule, to support the deduction~~
4 ~~provided pursuant to Section 7-9-47 NMSA 1978 for the sale of~~
5 ~~tangible personal property if a taxpayer is unable to provide a~~
6 ~~nontaxable transaction certificate within the sixty-day period~~
7 ~~specified in Subsection A of this section:~~

8 ~~(1) prior to the issuance of an audit~~
9 ~~assessment; or~~

10 ~~(2) if the audit assessment is protested,~~
11 ~~prior to either the taxpayer's withdrawal of the protest or the~~
12 ~~formal hearing of the protest; provided, however, that the~~
13 ~~protest in this paragraph is acknowledged by the department~~
14 ~~prior to December 31, 2011.]~~

15 F. If a person has accepted in good faith a
16 properly executed nontaxable transaction certificate, but the
17 purchaser has not employed the property or service purchased in
18 the nontaxable manner or has provided materially false or
19 inaccurate information on the nontaxable transaction
20 certificate, the purchaser shall be liable for an amount equal
21 to any tax, penalty and interest that the seller would have
22 been required to pay if the seller had not complied with
23 Subsection A of this section.

24 G. Any person who knowingly or willfully provides
25 false or inaccurate information on a nontaxable transaction

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1 certificate or as alternative evidence provided in support of a
2 claim for a deduction may be subject to prosecution under
3 Sections 7-1-72 and 7-1-73 NMSA 1978."

4 SECTION 2. REPEAL.--Section 7-9-44 NMSA 1978 (being Laws
5 1969, Chapter 144, Section 34, as amended) is repealed.

6 SECTION 3. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect immediately.