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SENATE BILL 1223

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

TIMOTHY Z. JENNINGS

AN ACT

RELATING TO TAXATION; EXEMPTING CERTAIN SALES AND ACTIVITIES
RELATED TO THE WORLD WIDE WEB FROM THE GROSS RECEIPTS AND
COMPENSATING TAX; AMENDING SECTIONS OF THE GROSS RECEIPTS AND
COMPENSATING TAX ACT.

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

Section 1. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--HOSTING WORLD WIDE WEB SITES. --
Receipts from hosting world wide web sites may be deducted from
gross receipts. For purposes of this section, "hosting" means
designing and preparing information for the world wide web and
storing information on computers attached to the internet."

Section 2. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

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1 " [NEW MATERIAL] DEDUCTION-- SALES THROUGH WORLD WIDE WEB
2 SITES. -- Receipts of any person derived from the sale of a
3 service or property made through a world wide web site to a
4 person with a billing address outside New Mexico may be deducted
5 from gross receipts. "

6 Section 3. Section 7-9-3 NMSA 1978 (being Laws 1978,
7 Chapter 46, Section 1, as amended) is amended to read:

8 "7-9-3. DEFINITIONS. -- As used in the Gross Receipts and
9 Compensating Tax Act:

10 A. "department" means the taxation and revenue
11 department, the secretary of taxation and revenue or any
12 employee of the department exercising authority lawfully
13 delegated to that employee by the secretary;

14 B. "buying" or "selling" means any transfer of
15 property for consideration or any performance of service for
16 consideration;

17 C. "construction" means building, altering,
18 repairing or demolishing in the ordinary course of business any:

19 (1) road, highway, bridge, parking area or
20 related project;

21 (2) building, stadium or other structure;

22 (3) airport, subway or similar facility;

23 (4) park, trail, athletic field, golf course or
24 similar facility;

25 (5) dam, reservoir, canal, ditch or similar

1 facility;

2 (6) sewerage or water treatment facility, power
3 generating plant, pump station, natural gas compressing station,
4 gas processing plant, coal gasification plant, refinery,
5 distillery or similar facility;

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

7 (8) transmission line;

8 (9) radio, television or other tower;

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

10 (11) shaft, tunnel or other mining

11 appurtenance;

12 (12) microwave station or similar facility; or

13 (13) similar work;

14 "construction" also means:

15 (14) leveling or clearing land;

16 (15) excavating earth;

17 (16) drilling wells of any type, including
18 seismograph shot holes or core drilling; or

19 (17) similar work;

20 D. "financial corporation" means any savings and
21 loan association or any incorporated savings and loan company,
22 trust company, mortgage banking company, consumer finance
23 company or other financial corporation;

24 E. "engaging in business" means carrying on or
25 causing to be carried on any activity with the purpose of direct

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1 or indirect benefit; except that "engaging in business" does not
2 include having a world wide web site as a third-party content
3 provider on a computer physically located in New Mexico but
4 owned by another person;

5 F. "gross receipts" means the total amount of money
6 or the value of other consideration received from selling
7 property in New Mexico, from leasing property employed in New
8 Mexico, from selling services performed outside New Mexico the
9 product of which is initially used in New Mexico or from
10 performing services in New Mexico. In an exchange in which the
11 money or other consideration received does not represent the
12 value of the property or service exchanged, "gross receipts"
13 means the reasonable value of the property or service exchanged.

14 (1) "Gross receipts" includes:

15 (a) any receipts from sales of tangible
16 personal property handled on consignment;

17 (b) the total commissions or fees derived
18 from the business of buying, selling or promoting the purchase,
19 sale or leasing, as an agent or broker on a commission or fee
20 basis, of any property, service, stock, bond or security;

21 (c) amounts paid by members of any
22 cooperative association or similar organization for sales or
23 leases of personal property or performance of services by such
24 organization; and

25 (d) amounts received from transmitting

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1 messages or conversations by persons providing telephone or
2 telegraph services.

3 (2) "Gross receipts" excludes:

4 (a) cash discounts allowed and taken;

5 (b) New Mexico gross receipts tax,
6 governmental gross receipts tax and leased vehicle gross
7 receipts tax payable on transactions for the reporting period;

8 (c) taxes imposed pursuant to the
9 provisions of any local option gross receipts tax that is
10 payable on transactions for the reporting period;

11 (d) any gross receipts or sales taxes
12 imposed by an Indian nation, tribe or pueblo provided that the
13 tax is approved, if approval is required by federal law or
14 regulation, by the secretary of the interior of the United
15 States and provided further that the gross receipts or sales tax
16 imposed by the Indian nation, tribe or pueblo provides a
17 reciprocal exclusion for gross receipts, sales or gross
18 receipts-based excise taxes imposed by the state or its
19 political subdivisions;

20 (e) any type of time-price differential;

21 and

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

24 (3) When the sale of property or service is
25 made under any type of charge, conditional or time-sales

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1 contract or the leasing of property is made under a leasing
2 contract, the seller or lessor may elect to treat all receipts,
3 excluding any type of time-price differential, under such
4 contracts as gross receipts as and when the payments are
5 actually received. If the seller or lessor transfers his
6 interest in any such contract to a third person, the seller or
7 lessor shall pay the gross receipts tax upon the full sale or
8 leasing contract amount, excluding any type of time-price
9 differential;

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

13 H. "person" means:

14 (1) any individual, estate, trust, receiver,
15 cooperative association, club, corporation, company, firm,
16 partnership, limited liability company, limited liability
17 partnership, joint venture, syndicate or other entity, including
18 any gas, water or electric utility owned or operated by a
19 county, municipality or other political subdivision of the
20 state; or

21 (2) any national, federal, state, Indian or
22 other governmental unit or subdivision, or any agency,
23 department or instrumentality of any of the foregoing;

24 I. "property" means real property, tangible personal
25 property, licenses, franchises, patents, trademarks and

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1 copyrights. Tangible personal property includes electricity and
2 manufactured homes;

3 J. "leasing" means any arrangement whereby, for a
4 consideration, property is employed for or by any person other
5 than the owner of the property, except that the granting of a
6 license to use property is the sale of a license and not a
7 lease;

8 K. "service" means all activities engaged in for
9 other persons for a consideration, which activities involve
10 predominantly the performance of a service as distinguished from
11 selling or leasing property. "Service" includes activities
12 performed by a person for its members or shareholders. In
13 determining what is a service, the intended use, principal
14 objective or ultimate objective of the contracting parties shall
15 not be controlling. "Service" includes construction activities
16 and all tangible personal property that will become an
17 ingredient or component part of a construction project. Such
18 tangible personal property retains its character as tangible
19 personal property until it is installed as an ingredient or
20 component part of a construction project in New Mexico.
21 However, sales of tangible personal property that will become an
22 ingredient or component part of a construction project to
23 persons engaged in the construction business are sales of
24 tangible personal property;

25 L. "use" or "using" includes use, consumption or

1 storage other than storage for subsequent sale in the ordinary
2 course of business or for use solely outside this state;

3 M. "secretary" means the secretary of taxation and
4 revenue or the secretary's delegate;

5 N. "manufactured home" means a moveable or portable
6 housing structure for human occupancy that exceeds either a
7 width of eight feet or a length of forty feet constructed to be
8 towed on its own chassis and designed to be installed with or
9 without a permanent foundation;

10 O. "initial use" or "initially used" means the first
11 employment for the intended purpose and does not include the
12 following activities:

13 (1) observation of tests conducted by the
14 performer of services;

15 (2) participation in progress reviews,
16 briefings, consultations and conferences conducted by the
17 performer of services;

18 (3) review of preliminary drafts, drawings and
19 other materials prepared by the performer of the services;

20 (4) inspection of preliminary prototypes
21 developed by the performer of services; or

22 (5) similar activities;

23 P. "research and development services" means any
24 activity engaged in for other persons for consideration, for one
25 or more of the following purposes:

1 (1) advancing basic knowledge in a recognized
2 field of natural science;

3 (2) advancing technology in a field of
4 technical endeavor;

5 (3) the development of a new or improved
6 product, process or system with new or improved function,
7 performance, reliability or quality, whether or not the new or
8 improved product, process or system is offered for sale, lease
9 or other transfer;

10 (4) the development of new uses or applications
11 for an existing product, process or system, whether or not the
12 new use or application is offered as the rationale for purchase,
13 lease or other transfer of the product, process or system;

14 (5) analytical or survey activities
15 incorporating technology review, application, trade-off study,
16 modeling, simulation, conceptual design or similar activities,
17 whether or not offered for sale, lease or other transfer; or

18 (6) the design and development of prototypes or
19 the integration of systems incorporating advances, developments
20 or improvements included in Paragraphs (1) through (5) of this
21 subsection; and

22 Q. "local option gross receipts tax" means a tax
23 authorized to be imposed by a county or municipality upon the
24 taxpayer's gross receipts and required to be collected by the
25 department at the same time and in the same manner as the gross

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1 receipts tax; "local option gross receipts tax" includes the
2 taxes imposed pursuant to the Municipal Local Option Gross
3 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
4 Act, Special Municipal Gross Receipts Tax Act, County Local
5 Option Gross Receipts Taxes Act, Local Hospital Gross Receipts
6 Tax Act, County Correctional Facility Gross Receipts Tax Act and
7 such other acts as may be enacted authorizing counties or
8 municipalities to impose taxes on gross receipts, which taxes
9 are to be collected by the department. "

10 Section 4. Section 7-9-10 NMSA 1978 (being Laws 1966,
11 Chapter 47, Section 10, as amended) is amended to read:

12 "7-9-10. AGENTS FOR COLLECTION OF COMPENSATING TAX--
13 DUTIES. --

14 A. Every person carrying on or causing to be carried
15 on any activity within this state attempting to exploit New
16 Mexico's markets who sells property or sells property and
17 service for use in this state and who is not subject to the
18 gross receipts tax on receipts from these sales shall collect
19 the compensating tax from the buyer and pay the tax collected to
20 the department. "Activity", for the purposes of this section,
21 includes, but is not limited to, engaging in any of the
22 following in New Mexico: maintaining an office or other place
23 of business, soliciting orders through employees or independent
24 contractors, soliciting orders through advertisements placed in
25 newspapers or magazines published in New Mexico or

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1 advertisements broadcast by New Mexico radio or television
2 stations, soliciting orders through programs broadcast by New
3 Mexico radio or television stations or transmitted by cable
4 systems in New Mexico, canvassing, demonstrating, collecting
5 money, warehousing or storing merchandise or delivering or
6 distributing products as a consequence of an advertising or
7 other sales program directed at potential customers, but
8 "activity" does not include having a world wide web site as a
9 third-party provider on a computer physically located in New
10 Mexico but owned by another person.

11 B. To [~~insure~~] ensure orderly and efficient
12 collection of the public revenue, if any application of this
13 section is held invalid, the section's application to other
14 situations or persons shall not be affected."

15 Section 5. EFFECTIVE DATE. -- The effective date of the
16 provisions of this act is July 1, 1997.

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

SB 1223/a

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4
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6 March 12, 1997

7
8 Mr. President:

9
10 Your WAYS AND MEANS COMMITTEE, to whom has been
11 referred

12
13 SENATE BILL 1223

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

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18
- 19 1. On page 1, line 13, after "AMENDING" insert "AND
 - 20 ENACTING".
 - 21
 - 22 2. On page 1, strike line 22 in its entirety.
 - 23
 - 24 3. On page 1, lines 24 and 25, and on page 2, lines 1 through
 - 25 5, strike Section 2 in its entirety.
 -
 4. Renumber succeeding sections accordingly.

1 and thence referred to the FINANCE COMMITTEE.

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Respectfully submitted,

Carlos R. Cisneros, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Kidd, Leavell, McSorley, Wilson

Absent: None

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