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HOUSE BILL 35

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

JUDY VANDERSTAR RUSSELL

AN ACT

**RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS AND
COMPENSATING TAX ACT AND LOCAL OPTION GROSS RECEIPTS TAX ACTS;
PROVIDING AN EXEMPTION FOR FOREIGN GOVERNMENTS AND A DEDUCTION
FOR FOREIGN DIPLOMATS; PERMITTING ACCEPTANCE OF NONTAXABLE
TRANSACTION DOCUMENTS FROM OTHER JURISDICTIONS; CLARIFYING THE
DEDUCTIONS FOR AGRICULTURAL IMPLEMENTS AND EXPORTED SERVICES;
ELIMINATING THE EXEMPTION FOR TRANSPORTATION ACROSS CERTAIN
JURISDICTIONAL BOUNDARIES; AMENDING, REPEALING AND ENACTING
CERTAIN SECTIONS OF THE NMSA 1978.**

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

**Section 1. Section 7-9-13 NMSA 1978 (being Laws 1969,
Chapter 144, Section 6, as amended) is amended to read:**

**"7-9-13. EXEMPTION--GROSS RECEIPTS TAX--GOVERNMENTAL
AGENCIES. --**

Underscored material = new
[bracketed material] = delete

1 A. Except as otherwise provided in this section,
2 exempted from the gross receipts tax are receipts of:

3 (1) the United States or any agency,
4 department or instrumentality thereof;

5 (2) the state of New Mexico or any political
6 subdivision thereof; [or]

7 (3) any Indian nation, tribe or pueblo from
8 activities or transactions occurring on its sovereign
9 territory; or

10 (4) any foreign nation or agency,
11 instrumentality or political subdivision thereof, but only
12 when required by a treaty in force to which the United States
13 is a party.

14 B. Receipts from the sale of gas or electricity by
15 a utility owned or operated by a county, municipality or other
16 political subdivision of a state are not exempted from the
17 gross receipts tax.

18 C. Receipts from the operation of a cable
19 television system owned or operated by a municipality are not
20 exempted from the gross receipts tax. "

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

23 " [NEW MATERIAL] DEDUCTION-- SALES TO CERTAIN ACCREDITED
24 DIPLOMATS AND MISSIONS.--Receipts from selling or leasing
25 property to, or from performing services for, an accredited

Underscored material = new
[bracketed material] = delete

1 foreign mission or an accredited member of a foreign mission
2 may be deducted from gross receipts when a treaty in force to
3 which the United States is a party requires forbearance of tax
4 when the legal incidence is upon the buyer or when the tax is
5 customarily passed on to the buyer. "

6 Section 3. Section 7-9-43 NMSA 1978 (being Laws 1966,
7 Chapter 47, Section 13, as amended) is amended to read:

8 "7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER
9 EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS--RENEWAL. --

10 A. All nontaxable transaction certificates of the
11 appropriate series executed by buyers or lessees should be in
12 the possession of the seller or lessor for nontaxable
13 transactions at the time the return is due for receipts from
14 the transactions. If the seller or lessor is not in
15 possession of the required nontaxable transaction certificates
16 within sixty days from the date that the notice requiring
17 possession of these nontaxable transaction certificates is
18 given the seller or lessor by the department, deductions
19 claimed by the seller or lessor that require delivery of these
20 nontaxable transaction certificates shall be disallowed. The
21 nontaxable transaction certificates shall contain the
22 information and be in a form prescribed by the department.
23 The department by regulation may deem to be nontaxable
24 transaction certificates documents issued by other states or
25 the multistate tax commission to taxpayers not required to be

Underscored material = new
[bracketed material] = delete

1 registered in New Mexico. Only buyers or lessees who have a
2 registration number or have applied for a registration number
3 and have not been refused one under Subsection C of Section
4 7-1-12 NMSA 1978 shall execute nontaxable transaction
5 certificates issued by the department. If the seller or
6 lessor has been given an identification number for tax
7 purposes by the department, the seller or lessor shall
8 disclose that identification number to the buyer or lessee
9 prior to or upon acceptance of a nontaxable transaction
10 certificate. When the seller or lessor accepts a nontaxable
11 transaction certificate within the required time and in good
12 faith that the buyer or lessee will employ the property or
13 service transferred in a nontaxable manner, the properly
14 executed nontaxable transaction certificate shall be
15 conclusive evidence, and the only material evidence, that the
16 proceeds from the transaction are deductible from the seller's
17 or lessor's gross receipts.

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

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

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

16 D. On January 1, 1992, every nontaxable
17 transaction certificate, except for nontaxable transaction
18 certificates of the series applicable to the ten-year period
19 beginning January 1, 1992 and issued by the department prior
20 to that date, is void with respect to transactions after
21 December 31, 1991. The department shall issue separate series
22 of nontaxable transaction certificates for the ten-year period
23 beginning January 1, 1992 and for each ten-year period
24 beginning on January 1 of every tenth year succeeding calendar
25 year 1992. A series of nontaxable transaction certificates

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Underscored material = new
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1 issued by the department for any ten-year period may be
2 executed by buyers or lessees for transactions occurring
3 within or prior to that ten-year period but are not valid for
4 transactions occurring after that ten-year period. For
5 administrative convenience, the department may accept and
6 approve qualifying applications for the privilege of executing
7 nontaxable transaction certificates and pre-issue certificates
8 of any series within the six-month period immediately
9 preceding the beginning of the ten-year period to which the
10 series of nontaxable transaction certificates applies.

11 E. To exercise the privilege of executing
12 appropriate nontaxable transaction certificates, a buyer or
13 lessee shall apply to the department for permission to execute
14 nontaxable transaction certificates, except with respect to
15 documents issued by other states or the multistate tax
16 commission that the department has deemed to be nontaxable
17 transaction certificates. If a person is shown on the
18 department's records to be a delinquent taxpayer, the
19 department may refuse to approve the application of the person
20 until the person is no longer shown to be a delinquent
21 taxpayer, and the taxpayer may protest that refusal pursuant
22 to Section 7-1-24 NMSA 1978. Upon the department's approval
23 of the application, the buyer or lessee may request
24 appropriate nontaxable transaction certificates for execution
25 by the buyer or lessee; provided that if a person is shown on

Underscored material = new
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1 the department's records to be a delinquent taxpayer, the
2 department may refuse to issue nontaxable transaction
3 certificates to the person until the person is no longer shown
4 to be a delinquent taxpayer, and the taxpayer may protest that
5 refusal pursuant to Section 7-1-24 NMSA 1978. The department
6 may require any buyer or lessee requesting and receiving
7 nontaxable transaction certificates for execution by that
8 buyer or lessee to report to the department annually the
9 names, addresses and identification numbers assigned by the
10 department of the sellers and lessors to whom they have
11 delivered nontaxable transaction certificates. The department
12 may require any seller or lessor engaged in business in New
13 Mexico to report to the department annually the names,
14 addresses and federal employer identification numbers or state
15 identification numbers for tax purposes issued by the
16 department of the buyers or lessees from whom the seller or
17 lessor has accepted nontaxable transaction certificates. "

18 Section 4. Section 7-9-57 NMSA 1978 (being Laws 1969,
19 Chapter 144, Section 47, as amended) is amended to read:

20 "7-9-57. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CERTAIN
21 SERVICES [TO AN OUT-OF-STATE BUYER] FOR EXPORT. --

22 A. Receipts from performing a service may be
23 deducted from gross receipts if [the sale of the service is
24 made to a buyer who delivers to the seller either a nontaxable
25 transaction certificate or other evidence acceptable to the

Underscored material = new
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1 ~~secretary that the transaction does not contravene the~~
2 ~~conditions set out in Subsection C of this section.~~

3 ~~B. The buyer delivering the nontaxable transaction~~
4 ~~certificate or other evidence acceptable to the secretary~~
5 ~~shall not contravene the conditions set out in Subsection C of~~
6 ~~this section.~~

7 ~~C. Receipts from performance of a service shall~~
8 ~~not be subject to the deduction provided in this section if~~
9 ~~the buyer of the service or any of the buyer's employees or~~
10 ~~agents:~~

11 ~~(1) makes initial use of the product of the~~
12 ~~service in New Mexico; or~~

13 ~~(2) takes delivery of the product of the~~
14 ~~service in New Mexico] there is a product of the service, that~~
15 ~~product is delivered out of state and initially used out of~~
16 ~~state and the buyer delivers to the seller either a nontaxable~~
17 ~~transaction certificate or other evidence acceptable to the~~
18 ~~secretary.~~

19 ~~[D.]~~ B. Receipts from performing a service which
20 initially qualified for the deduction provided in this section
21 but which no longer meets the criteria set forth in Subsection
22 [E] A of this section shall be deductible for the period prior
23 to the disqualification.

24 C. As used in this section, "product of the
25 service" means tangible personal property that incorporates or

Underscored material = new
[bracketed material] = delete

1 embodies the service performed. "

2 Section 5. Section 7-9-62 NMSA 1978 (being Laws 1969,
3 Chapter 144, Section 52, as amended) is amended to read:

4 "7-9-62. DEDUCTION--GROSS RECEIPTS TAX--AGRICULTURAL
5 IMPLEMENTS--AIRCRAFT--VEHICLES THAT ARE NOT REQUIRED TO BE
6 REGISTERED.--

7 A. Fifty percent of the receipts from selling
8 agricultural implements, farm tractors, aircraft or vehicles
9 that are not required to be registered under the Motor Vehicle
10 Code may be deducted from gross receipts; provided that, with
11 respect to agricultural implements, the sale is made to a
12 person who states in writing that the person is regularly
13 engaged in the business of farming or ranching. Any deduction
14 allowed under Section [~~72-16A-14.28 NMSA 1953~~] 7-9-71 NMSA
15 1978 must be taken before the deduction allowed by this
16 section is computed.

17 B. As used in this section, "agricultural
18 implement" means a tool, utensil or instrument that is:

19 (1) designed primarily for use with a source
20 of motive power, such as a tractor, in planting, growing,
21 cultivating, harvesting or processing agricultural produce at
22 the place where the produce is grown; in raising poultry or
23 livestock; or in obtaining or processing food or fiber, such
24 as eggs, milk, wool or mohair, from living poultry or
25 livestock at the place where the poultry or livestock are kept

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1 for this purpose; and

2 (2) depreciable for federal income tax purposes."

3 Section 6. Section 7-9-77 NMSA 1978 (being Laws 1966,
4 Chapter 47, Section 15, as amended) is amended to read:

5 "7-9-77. DEDUCTIONS--COMPENSATING TAX.--

6 A. Fifty percent of the value of agricultural
7 implements, farm tractors, aircraft not exempted under Section
8 7-9-30 NMSA 1978 or vehicles that are not required to be
9 registered under the Motor Vehicle Code may be deducted from
10 the value in computing the compensating tax due; provided
11 that, with respect to use of agricultural implements, the
12 person using the property is regularly engaged in the business
13 of farming or ranching. Any deduction allowed under
14 Subsection B of this section is to be taken before the
15 deduction allowed by this subsection is computed. As used in
16 this subsection, "agricultural implement" means a tool,
17 utensil or instrument that is:

18 (1) designed primarily for use with a source
19 of motive power, such as a tractor, in planting, growing,
20 cultivating, harvesting or processing agricultural produce at
21 the place where the produce is grown; in raising poultry or
22 livestock; or in obtaining or processing food or fiber, such
23 as eggs, milk, wool or mohair, from living poultry or
24 livestock at the place where the poultry or livestock are kept
25 for this purpose; and

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(2) depreciable for federal income tax purposes.

B. That portion of the value of tangible personal property on which an allowance was granted to the buyer for a trade-in of tangible personal property of the same type that was bought may be deducted from the value in computing the compensating tax due. "

Section 7. Section 7-19-14 NMSA 1978 (being Laws 1979, Chapter 397, Section 5, as amended) is amended to read:

"7-19-14. SPECIFIC EXEMPTIONS. -- No supplemental municipal gross receipts tax shall be imposed on the gross receipts arising from

~~[A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or~~

~~B.]~~ a business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978. "

Section 8. Section 7-19D-5 NMSA 1978 (being Laws 1993, Chapter 346, Section 5, as amended) is amended to read:

"7-19D-5. SPECIFIC EXEMPTIONS. -- No tax authorized by the provisions of the Municipal Local Option Gross Receipts Taxes Act shall be imposed on the gross receipts arising from

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~~[A. transporting persons or property for hire by
railroad, motor vehicle, air transportation or any other means
from one point within the municipality to another point
outside the municipality; or~~

B.] a business located outside the boundaries of a
municipality on land owned by that municipality for which a
state gross receipts tax distribution is made pursuant to
Section 7-1-6.4 NMSA 1978. "

Section 9. REPEAL. -- Sections 7-20C-5, 7-20E-5 and
7-20F-6 NMSA 1978 (being Laws 1991, Chapter 176, Section 5,
Laws 1993, Chapter 354, Section 5 and Laws 1993, Chapter 303,
Section 6, as amended) are repealed.

Section 10. EFFECTIVE DATE. -- The effective date of the
provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 January 26, 1998
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9 Mr. Speaker:
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11 Your RULES AND ORDER OF BUSINESS COMMITTEE, to
12 whom has been referred
13

14
15 HOUSE BILL 35
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17 has had it under consideration and finds same to be GERMANE
18 in accordance with constitutional provisions.
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21 Respectfully submitted,
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R. David Pederson, Chairman

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

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Hobbs, Nicely, Olguin, Sanchez, S. Williams

Absent: None

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FORTY-THIRD LEGISLATURE

SECOND SESSION

February 16, 1998

HOUSE FLOOR AMENDMENT number _____ to HOUSE BILL 35

Amendment sponsored by Representative Judy Vanderstar Russell

1. On pages 7 through 9, strike Section 4 in its entirety and insert in lieu thereof:

"Section 4. Section 7-9-57 NMSA 1978 (being Laws 1969, Chapter 144, Section 47, as amended) is amended to read:

"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 deducted from gross receipts if the sale of the service is made to a buyer who delivers to the seller either [a] an appropriate nontaxable

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FORTY-THIRD LEGISLATURE
SECOND SESSION

HF1/HB 35

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transaction certificate or other evidence acceptable to the secretary
~~that the transaction does not contravene the conditions set out in
Subsection C of this section.~~

~~B. The buyer delivering the nontaxable transaction
certificate or other evidence acceptable to the secretary shall not
contravene the conditions set out in Subsection C of this section.~~

~~C. Receipts from performance of a service shall not be sub-
ject to the deduction provided in this section if] unless the buyer of
the service or any of the buyer's employees or agents [(1)] makes
initial use of the product of the service in New Mexico or [(2)]
takes delivery of the product of the service in New Mexico.~~

~~[D.] B. Receipts from performing a service [which] that
initially qualified for the deduction provided in this section but
[which] that no longer meets the criteria set forth in Subsection [E]
A of this section shall be deductible for the period prior to the
disqualification. "".~~

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FORTY-THIRD LEGISLATURE
SECOND SESSION

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HF1/HB 35

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Judy Vanderstar Russell

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

Date _____

Underscored material = new
[bracketed material] = delete

123514.2

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 February 15, 1998

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8 Mr. Speaker:

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10 Your TAXATION AND REVENUE COMMITTEE, to whom has been
11 referred

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13 HOUSE BILL 35

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

17 1. On page 1, strike line 17 in its entirety and strike line 18
18 through the semicolon.

19
20 2. On page 1, line 18, strike ", REPEALING".

21
22 3. On page 8, strike lines 24 and 25 in their entirety and on
23 page 9, strike line 1 through the period.

24 4. On pages 11 and 12, strike Sections 7, 8 and 9 in their
25 entirety.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HTRC/HB 35

Page 19

4
5 5. Renumber the succeeding section accordingly.,

6 Respectfully submitted,

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10 _____
11 Jerry W. Sandel, Chairman

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13 Adopted _____ Not Adopted _____
14 (Chief Clerk) (Chief Clerk)

15
16 Date _____

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18 The roll call vote was 12 For 0 Against

19 Yes: 12

20 Excused: None

21 Absent: Lovejoy

22
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24 G:\BILLTEXT\BILLW_98\H0035

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HTRC/HB 35

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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February 17, 1998

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Mr. President:

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Your WAYS AND MEANS COMMITTEE, to whom has been referred

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13

HOUSE BILL 35, as amended

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has had it under consideration and reports same with recommendation
that it DO PASS.

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Respectfully submitted,

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Carlos R. Cisneros, Chairman

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Adopted _____ Not Adopted _____

Underscored material = new
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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

1 HTRC/HB 35

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 8 For 0 Against

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Yes: 8

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No: 0

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Excused: McSorley

12

Absent: None

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