

1 HOUSE BILL 200
2 44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

3 INTRODUCED BY
4 Anna Marie Crook
5

6
7
8 FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE
9

10 AN ACT

11 RELATING TO TAXATION; AMENDING A DEFINITION AND AMENDING
12 REQUIREMENTS FOR CERTAIN DEDUCTIONS IN THE GROSS RECEIPTS AND
13 COMPENSATING TAX ACT; AMENDING THE LOCAL HOSPITAL GROSS
14 RECEIPTS TAX ACT; REMOVING RESTRICTIONS ON TAXATION OF CERTAIN
15 TRANSPORTATION RECEIPTS IN THE SUPPLEMENTAL MUNICIPAL GROSS
16 RECEIPTS TAX ACT, THE MUNICIPAL LOCAL OPTION GROSS RECEIPTS
17 TAXES ACT, THE COUNTY LOCAL OPTION GROSS RECEIPTS TAXES ACT,
18 THE LOCAL HOSPITAL GROSS RECEIPTS TAX ACT AND THE COUNTY
19 CORRECTIONAL FACILITY GROSS RECEIPTS TAX ACT; AMENDING AND
20 REPEALING SECTIONS OF THE NMSA 1978.
21

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

23 Section 1. Section 7-9-3 NMSA 1978 (being Laws 1978,
24 Chapter 46, Section 1, as amended by Laws 1998, Chapter 92,
25 Section 4 and by Laws 1998, Chapter 95, Section 1 and also by

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1 Laws 1998, Chapter 99, Section 3) is amended to read:

2 "7-9-3. DEFINITIONS. -- As used in the Gross Receipts and
3 Compensating Tax Act:

4 A. "department" means the taxation and revenue
5 department, the secretary of taxation and revenue or any
6 employee of the department exercising authority lawfully
7 delegated to that employee by the secretary;

8 B. "buying" or "selling" means any transfer of
9 property for consideration or any performance of service for
10 consideration;

11 C. "construction" means building, altering,
12 repairing or demolishing in the ordinary course of business
13 any:

14 (1) road, highway, bridge, parking area or
15 related project;

16 (2) building, stadium or other structure;

17 (3) airport, subway or similar facility;

18 (4) park, trail, athletic field, golf course
19 or similar facility;

20 (5) dam, reservoir, canal, ditch or similar
21 facility;

22 (6) sewerage or water treatment facility,
23 power generating plant, pump station, natural gas compressing
24 station, gas processing plant, coal gasification plant,
25 refinery, distillery or similar facility;

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- 1 (7) sewerage, water, gas or other pipeline;
- 2 (8) transmission line;
- 3 (9) radio, television or other tower;
- 4 (10) water, oil or other storage tank;
- 5 (11) shaft, tunnel or other mining

6 appurtenance;

- 7 (12) microwave station or similar facility;

8 or

- 9 (13) similar work;

10 "construction" also means:

- 11 (14) leveling or clearing land;
- 12 (15) excavating earth;
- 13 (16) drilling wells of any type, including
- 14 seismograph shot holes or core drilling; or
- 15 (17) similar work;

16 D. "financial corporation" means any savings and
17 loan association or any incorporated savings and loan company,
18 trust company, mortgage banking company, consumer finance
19 company or other financial corporation;

20 E. "engaging in business" means carrying on or
21 causing to be carried on any activity with the purpose of
22 direct or indirect benefit, except that "engaging in business"
23 does not include having a world wide web site as a third-party
24 content provider on a computer physically located in New
25 Mexico but owned by another nonaffiliated person;

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

(1) "Gross receipts" includes:

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

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

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

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

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(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

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

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

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

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

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

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all

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

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

12 H. "person" means:

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

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

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

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1 electricity and manufactured homes;

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

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

24 L. "use" or "using" includes use, consumption or
25 storage other than storage for subsequent sale in the ordinary

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1 course of business or for use solely outside this state;

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

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

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

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

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

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

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

21 (5) similar activities;

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

25 (1) advancing basic knowledge in a recognized

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1 field of natural science;

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

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

9 (4) the development of new uses or
10 applications for an existing product, process or system,
11 whether or not the new use or application is offered as the
12 rationale for purchase, lease or other transfer of the
13 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
19 or the integration of systems incorporating advances,
20 developments or improvements included in Paragraphs (1)
21 through (5) of this subsection;

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

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1 gross receipts tax; "local option gross receipts tax" includes
2 the 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
7 and 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; and

10 R. "prescription drugs" means insulin and
11 substances that are:

12 (1) dispensed by or under the supervision of
13 a licensed pharmacist or by a physician or other person
14 authorized under state law to do so;

15 (2) prescribed for a specified person by a
16 person authorized under state law to prescribe the substance;
17 and

18 (3) subject to the restrictions on sale
19 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353. "

20 Section 2. Section 7-9-45 NMSA 1978 (being Laws 1969,
21 Chapter 144, Section 35, as amended) is amended to read:

22 "7-9-45. DEDUCTIONS. --

23 A. In computing the gross receipts tax or
24 governmental gross receipts tax due, only those receipts
25 specified in Sections 7-9-46 through 7-9-76. 2, [and] 7-9-77. 1,

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1 7-9-83, [~~through~~] 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978
2 may be deducted. Receipts, whether specified once or several
3 times in [~~Sections 7-9-46 through 7-9-76.2 and 7-9-83 through~~
4 ~~7-9-85 NMSA 1978~~] those sections, may be deducted only once
5 from gross receipts or governmental gross receipts.

6 B. Receipts that are exempted from the gross
7 receipts tax may not be deducted from gross receipts.
8 Receipts that are deducted from gross receipts may not be
9 exempted from the gross receipts tax.

10 C. Receipts that are exempted from the
11 governmental gross receipts tax shall not be deducted from
12 governmental gross receipts. Receipts that are deducted from
13 governmental gross receipts shall not be exempted from the
14 governmental gross receipts tax."

15 Section 3. Section 7-9-48 NMSA 1978 (being Laws 1969,
16 Chapter 144, Section 38, as amended) is amended to read:

17 "7-9-48. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
18 GROSS RECEIPTS TAX--SALE OF A SERVICE FOR RESALE.--Receipts
19 from selling a service for resale may be deducted from gross
20 receipts or from governmental gross receipts if the sale is
21 made to a person who delivers a nontaxable transaction
22 certificate to the seller. The buyer delivering the
23 nontaxable transaction certificate must [~~separately state the~~
24 ~~value of the service purchased in his charge for the service~~
25 ~~on its subsequent sale, and the subsequent sale must be]~~

1 resell the service in the ordinary course of business either
2 by itself or in combination with other services and the
3 subsequent sale must be subject to the gross receipts tax or
4 governmental gross receipts tax."

5 Section 4. Section 7-9-54.1 NMSA 1978 (being Laws 1992,
6 Chapter 40, Section 1, as amended) is amended to read:

7 "7-9-54.1. DEDUCTION--GROSS RECEIPTS FROM SALE OF
8 AEROSPACE SERVICES TO CERTAIN ORGANIZATIONS. --

9 A. As used in this section:

10 (1) "aerospace services" means research and
11 development services sold to or for resale to an organization
12 for resale by the organization to the United States air force;
13 and

14 (2) "organization" means an organization
15 described in Subsection A of Section 7-9-29 NMSA 1978 other
16 than a prime contractor operating facilities in New Mexico
17 designated as a national laboratory by act of congress.

18 B. Receipts from performing or selling, on or
19 after October 1, 1995, an aerospace service for resale may be
20 deducted from gross receipts if the sale is made to a buyer
21 who delivers a nontaxable transaction certificate. The buyer
22 delivering the nontaxable transaction certificate [~~shall~~
23 ~~separately state the value of the aerospace service purchased~~
24 ~~in the buyer's charge for the aerospace service on its~~
25 ~~subsequent sale to an organization or, if the buyer is an~~

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1 ~~organization, on the organization's subsequent sale to the~~
2 ~~United States, and the subsequent sale shall be]~~ must resell
3 the service in the ordinary course of business of selling
4 aerospace services to an organization or to the United States.

5 C. A percentage of the receipts from selling
6 aerospace services to or for resale to an organization may be
7 deducted from gross receipts in accordance with the following
8 table:

Receipts During the Period	Deductible Percentage
October 1, 1995 through September 30, 1996	10%
October 1, 1996 through September 30, 1997	25%
October 1, 1997 through September 30, 1999	50%
October 1, 1999 and thereafter	100%. "

15 Section 5. Section 7-9-57 NMSA 1978 (being Laws 1969,
16 Chapter 144, Section 47, as amended) is amended to read:

17 "7-9-57. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CERTAIN
18 SERVICES TO AN OUT-OF-STATE BUYER. --

19 A. Receipts from performing a service may be
20 deducted from gross receipts if the sale of the service is
21 made to [a] an out-of-state buyer who delivers to the seller
22 either an appropriate nontaxable transaction certificate or
23 other evidence acceptable to the secretary unless the buyer of
24 the service or any of the buyer's employees or agents makes
25 initial use of the product of the service in New Mexico or

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1 takes delivery of the product of the service in New Mexico.

2 B. Receipts from performing a service that
3 initially qualified for the deduction provided in this section
4 but that no longer meets the criteria set forth in Subsection
5 A of this section shall be deductible for the period prior to
6 the disqualification. "

7 Section 6. Section 7-19-14 NMSA 1978 (being Laws 1979,
8 Chapter 397, Section 5, as amended) is amended to read:

9 "7-19-14. SPECIFIC EXEMPTIONS. --No supplemental
10 municipal gross receipts tax shall be imposed on the gross
11 receipts arising from

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

16 ~~B.]~~ a business located outside the boundaries of a
17 municipality on land owned by that municipality for which a
18 gross receipts tax distribution is made pursuant to Section
19 7-1-6.4 NMSA 1978. "

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

22 "7-19D-5. SPECIFIC EXEMPTIONS. --No tax authorized by the
23 provisions of the Municipal Local Option Gross Receipts Taxes
24 Act shall be imposed on the gross receipts arising from

25 [~~A. transporting persons or property for hire by~~

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1 ~~railroad, motor vehicle, air transportation or any other means~~
2 ~~from one point within the municipality to another point~~
3 ~~outside the municipality; or B.]~~ a business located outside
4 the boundaries of a municipality on land owned by that
5 municipality for which a state gross receipts tax distribution
6 is made pursuant to Section 7-1-6.4 NMSA 1978. "

7 Section 8. Section 7-20C-2 NMSA 1978 (being Laws 1991,
8 Chapter 176, Section 2, as amended by Laws 1997, Chapter 54,
9 Section 1 and also by Laws 1997, Chapter 129, Section 1) is
10 amended to read:

11 "7-20C-2. DEFINITIONS. --As used in the Local Hospital
12 Gross Receipts Tax Act:

13 A. "county" means:

14 (1) a class B county having a population of
15 less than twenty-five thousand according to the most recent
16 federal decennial census and having a net taxable value for
17 rate-setting purposes for the 1990 property tax year or any
18 subsequent year of more than two hundred fifty million dollars
19 (\$250,000,000);

20 (2) a class B county having a population of
21 less than forty-seven thousand but more than forty-four
22 thousand according to the 1990 federal decennial census and
23 having a net taxable value for rate-setting purposes for the
24 1992 property tax year of more than three hundred million
25 dollars (\$300,000,000) but less than six hundred million

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1 dollars (\$600,000,000);

2 (3) a class B county having a population of
3 less than ten thousand according to the most recent federal
4 decennial census and having a net taxable value for rate-
5 setting purposes for the 1990 property tax year or any
6 subsequent year of more than one hundred million dollars
7 (\$100,000,000);

8 (4) a class B county having a population of
9 less than twenty-five thousand according to the 1990 federal
10 decennial census and having a net taxable value for rate-
11 setting purposes for the 1993 property tax year of more than
12 ninety-one million dollars (\$91,000,000) but less than one
13 hundred twenty-five million dollars (\$125,000,000); [~~or~~]

14 (5) a class B county having a population of
15 more than seventeen thousand but less than twenty thousand
16 according to the 1990 federal decennial census and having a
17 net taxable value for rate-setting purposes for the 1993
18 property tax year of more than one hundred fifty-three million
19 dollars (\$153,000,000) but less than one hundred fifty-six
20 million dollars (\$156,000,000); or

21 (6) a class B county having a population of
22 more than fifteen thousand according to the 1990 federal
23 decennial census and having a net taxable value for
24 rate-setting purposes for the 1996 taxable year of more than
25 one hundred fifty million dollars (\$150,000,000) but less than

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1 one hundred seventy-five million dollars (\$175,000,000);

2 B. "department" means the taxation and revenue
3 department, the secretary of taxation and revenue or any
4 employee of the department exercising authority lawfully
5 delegated to that employee by the secretary;

6 C. "governing body" means the board of county
7 commissioners of a county;

8 D. "hospital facility revenues" means all or a
9 portion of the revenues derived from a lease of a hospital
10 facility acquired, constructed or equipped pursuant to and
11 operated in accordance with the Local Hospital Gross Receipts
12 Tax Act;

13 E. "local hospital gross receipts tax" means the
14 tax authorized to be imposed under the Local Hospital Gross
15 Receipts Tax Act;

16 F. "person" means an individual or any other legal
17 entity; and

18 G. "state gross receipts tax" means the gross
19 receipts tax imposed under the Gross Receipts and Compensating
20 Tax Act. "

21 Section 9. REPEAL. -- Sections 7-20C-5, 7-20E-5 and
22 7-20F-6 NMSA 1978 (being Laws 1991, Chapter 176, Section 5,
23 Laws 1993, Chapter 354, Section 5 and Laws 1993, Chapter 303,
24 Section 6, as amended) are repealed.

25 Section 10. EFFECTIVE DATE. -- The effective date of the

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provisions of this act is July 1, 1999.

- 18 -

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 3, 1999
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8 Mr. Speaker:
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10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 200
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 APPROPRIATIONS AND FINANCE COMMITTEE.

18 Respectfully submitted,
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22 _____
23 Jerry S. Sandel, Chairman
24
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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3 **HB 200**

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4 Adopted _____ Not Adopted _____

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6 (Chief Clerk)

(Chief Clerk)

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8 Date _____

9
10 The roll call vote was 11 For 0 Against

11 Yes: 11

12 Excused: Lujan, Russell, Silva, Stell

13 Absent: None

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15 J:\99BillSWP\H0200

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