AN ACT

RELATING TO TAXATION; ADDING MANUFACTURING SERVICE PROVIDERS TO A GROSS RECEIPTS TAX DEDUCTION FOR MANUFACTURERS; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR CERTAIN BUSINESS SERVICES.

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

SECTION 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 2019, Chapter 270, Section 23 and by Laws 2019, Chapter 274, Section 11) is amended to read:

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

   A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

   B. "department" means the taxation and revenue .219464.1
department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "digital good" means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone;

D. "financial corporation" means a savings and loan association or an incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

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

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

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

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

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

(5) similar activities;

F. "leasing" means an arrangement whereby, for a consideration, property is employed for or by any person other
than the owner of the property, except that the granting of a
license to use property is licensing and is not a lease;

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

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

I. "manufacturing" means combining or processing
components or materials to increase their value for sale in the
ordinary course of business, but does not include construction
services; farming; electric power generation; processing of
natural resources, including hydrocarbons; or the processing or
preparation of meals for immediate consumption;

J. "manufacturing service" means the service of
combining or processing components or materials owned by
another, but does not include construction services; farming;
electric power generation; processing of natural resources,
including hydrocarbons; or the processing or preparation of
meals for immediate consumption;

K. "marketplace provider" means a person who
facilitates the sale, lease or license of tangible personal property or licenses for use of real property on a marketplace seller's behalf, or on the marketplace provider's own behalf, by:

(1) listing or advertising the sale, lease or license, by any means, whether physical or electronic, including by catalog, internet website or television or radio broadcast; and

(2) either directly or indirectly, through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider's services;

[L] "marketplace seller" means a person who sells, leases or licenses tangible personal property or services or who licenses the use of real property through a marketplace provider;

[L] "person" means:

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

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

[M₁ N₁] "property" means:

(1) real property;

(2) tangible personal property, including electricity and manufactured homes;

(3) licenses, including licenses of digital goods, but not including the licenses of copyrights, trademarks or patents; and

(4) franchises;

[N₁ O₁] "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

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

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

(3) developing a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

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

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

(6) designing and developing prototypes or
integrating systems incorporating the advances, developments or
improvements included in Paragraphs (1) through (5) of this
subsection;

[O. P. ] "secretary" means the secretary of taxation
and revenue or the secretary's delegate;

[P. Q. ] "service" means all activities engaged in
for other persons for a consideration, which activities involve
predominantly the performance of a service as distinguished
from selling or leasing property. "Service" includes
activities performed by a person for its members or
shareholders. In determining what is a service, the intended
use, principal objective or ultimate objective of the
contracting parties shall not be controlling. "Service"
includes construction activities and all tangible personal
property that will become an ingredient or component part of a
construction project. That tangible personal property retains
its character as tangible personal property until it is
installed as an ingredient or component part of a construction project in New Mexico. Sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property; and

[Q-] R. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state."

SECTION 2. Section 7-9-46 NMSA 1978 (being Laws 1969, Chapter 144, Section 36, as amended) is amended to read:

"7-9-46. DEDUCTION--GROSS RECEIPTS [TAX]--GOVERNMENTAL GROSS RECEIPTS--SALES TO MANUFACTURERS AND MANUFACTURING SERVICE PROVIDERS.--

A. Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as an ingredient or component part of the product that the buyer is in the business of manufacturing.

B. Receipts from selling [tangible personal property that is] a manufacturing consumable [and used in such a way that it is consumed in the manufacturing process of a]
product, provided that the tangible personal property is not a
tool or equipment used to create the manufactured product, to a
person engaged in the business of manufacturing that product
and who delivers a nontaxable transaction certificate to the
seller] to a manufacturer or a manufacturing service provider
may be deducted [in the following percentages] from gross
receipts or from governmental gross receipts

[(1) twenty percent of receipts received prior
to January 1, 2014;

(2) forty percent of receipts received in
calendar year 2014;

(3) sixty percent of receipts received in
calendar year 2015;

(4) eighty percent of receipts received in
calendar year 2016; and

(5) one hundred percent of receipts received
on or after January 1, 2017] if the buyer delivers a nontaxable
transaction certificate to the seller.

C. Receipts from selling or leasing qualified
equipment may be deducted from gross receipts if the sale is
made to, or the lease is entered into with, a person engaged in
the business of manufacturing or a manufacturing service
provider who delivers a nontaxable transaction certificate to
the seller; provided that a manufacturer or manufacturing
service provider delivering a nontaxable transaction
certificate with respect to the qualified equipment shall not claim an investment credit pursuant to the Investment Credit Act for that same equipment.

[D. ] The purpose of the deductions provided in this section is to encourage manufacturing businesses to locate in New Mexico and to reduce the tax burden, including reducing pyramiding, on the tangible personal property that is consumed in the manufacturing process and that is purchased by manufacturing businesses in New Mexico.

[E. ] The department shall annually report to the revenue stabilization and tax policy committee the aggregate amount of deductions taken pursuant to this section, the number of taxpayers claiming each of the deductions and any other information that is necessary to determine that the deductions are performing the purposes for which they are enacted.

[F. ] A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately for each deduction provided in this section and attribute the amount of the deduction to the appropriate authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature of the benefit to the state of these deductions.

[G. ] As used in [Subsection B of] this section:

(1) "manufacturing consumable" means tangible personal property, other than qualified equipment or an
ingredient or component part of a manufactured product, that is
incorporated into, destroyed, depleted or transformed in the
process of manufacturing a product, [(1)] including
electricity, fuels, water, manufacturing aids and supplies,
chemicals, gases [repair parts, spares] and other tangibles
used to manufacture a product (but (2) excluding tangible
personal property used in (a) the generation of power; (b) the
processing of natural resources, including hydrocarbons; and
(c) the preparation of meals for immediate consumption on–or
off–premises); (2) "manufacturing operation" means a plant
operated by a manufacturer or manufacturing service provider
that employs personnel to perform production tasks to produce
goods, in conjunction with machinery and equipment; and
(3) "qualified equipment" means machinery,
equipment and tools, including component, repair, replacement
and spare parts thereof, that are used directly in the
manufacturing process of a manufacturing operation. "Qualified
equipment" includes computer hardware and software used
directly in the manufacturing process of a manufacturing
operation but excludes any motor vehicle that is required to be
registered in this state pursuant to the Motor Vehicle Code."

SECTION 3. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--CERTAIN
.219464.1

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BUSINESS SERVICES.--

A. Receipts from the sale of accounting services, engineering services, financial management services, information technology services, human resources services, legal services and temporary services may be deducted from gross receipts if:

(1) the sale is made to a sole proprietorship, a limited liability company, a partnership or a corporation;

(2) the sale is made to an entity with a New Mexico tax identification number or an equivalent tax identification number from another state; or

(3) the purchaser presents to the seller a nontaxable transaction certificate or alternative evidence entitling a person to a deduction pursuant to Section 7-9-43 NMSA 1978.

B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.

C. As used in this section:

(1) "accounting services" means the systematic and comprehensive recording of financial transactions pertaining to a business entity and the process of summarizing, analyzing and reporting these transactions to oversight agencies or tax collection entities, including certified public auditing, attest services and preparing financial statements,
bookkeeping, tax return preparation, advice and consulting and, where applicable, representing taxpayers before tax collection agencies. "Accounting services" does not include, except as provided with respect to financial management services, investment advice, wealth management advice or consulting or any tax return preparation, advice, counseling or representation for individuals, regardless of whether those individuals are owners of pass-through entities, such as partnerships, limited liability companies or S-corporations;

(2) "engineering services" means consultation, the production of a creative work, investigation, evaluation, planning and design, the performance of studies and reviewing planning documents when performed by, or under the supervision of, a licensed engineer, including the design, development and testing of mechanical, electrical, hydraulic, chemical, pneumatic or thermal machinery or equipment, industrial or commercial work systems or processes and military equipment. "Engineering services" does not include medical or medical laboratory services, any engineering performed in connection with a construction service or the design and installation of computer or computer network infrastructure;

(3) "financial management services" means managing and directing the investments of, or providing investment advisory services to, a hedge fund, mutual fund or non-captive real estate investment trust;
(4) "hedge fund" means a private investment fund or pool, the assets of which are managed by a professional management firm that:

(a) trades or invests, through public market or private transactions, in securities, commodities, currencies, derivatives or similar classes of financial assets; or

(b) that is not an investment company under 15 USC 80a-3(c)(1) or 15 USC 80a-3(c)(7);

(5) "human resources services" means managing and overseeing the recruitment, management or termination of a business's employees, including employee recruitment; managing employee relations; maintaining employment files; setting personnel policies; managing and administering employee payroll, benefits and compensation, including employee withholding; overseeing employee discipline and termination; and ensuring compliance with labor and antidiscrimination laws. "Human resources services" does not include training or providing required certification to a business's employees or employee efficiency consulting;

(6) "information technology services" means separately stated services for installing and maintaining a business's computers and computer network, including performing computer network design; installing, repairing, maintaining or restoring computer networks, hardware or software; and
performing custom software programming or making custom
modifications to existing software programming. "Information
technology services" does not include:

(a) software maintenance and update

agreements, unless made in conjunction with custom programming;

(b) computers, servers, chilling
equipment and pre-programmed software;

(c) data processing services or the
processing or storage of information to compile and produce
records of transactions for retrieval or use, including data
entry, data retrieval, data searches and information
compilation; or

(d) access to telecommunications or
internet;

(7) "legal services" means services performed
by a licensed attorney or under the supervision of a licensed
attorney for a client, regardless of the attorney's form of
business entity or whether the services are prepaid, including
legal representation before courts or administrative agencies;

drafting legal documents, such as contracts or patent
applications; legal research; advising and counseling;

arbitration; mediation; and notary public and other ancillary
legal services performed for a client in conjunction with and
under the supervision of a licensed attorney. "Legal services"
does not include lobbying or government relations services,
title insurance agent services, licensing or selling legal
software or legal document templates, insurance investigation
services or any legal representation involving financial crimes
or tax evasion in New Mexico;

(8) "mutual fund" means an entity registered
pursuant to the federal Investment Company Act of 1940;

(9) "real estate investment trust" means an
entity described in Section 856(a) of the Internal Revenue Code
of 1986, as that section may be amended or renumbered, the
investments of which are limited to interest in mortgages on
real property and shares of or transferable certificates of
beneficial interest in an entity described in Section 856(a);
provided that a real estate investment trust does not include a
captive real estate investment trust as defined in the
Corporate Income and Franchise Tax Act; and

(10) "temporary service" means an employment
situation in which an employee is expected to remain in a
position for a specified period of time. Temporary employees
may have the opportunity to achieve permanent employment status
after the time period has lapsed and may be referred to as
seasonal employees or temps. "Temporary service" includes
services performed by a skilled or unskilled person replacing
or supporting client company staff for business purposes.
"Temporary service" does not include services performed by a
temporary service provider that is not licensed as such by the
state or subcontracted services."

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.

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