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HOUSE BILL 240

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Don Tripp

AN ACT

RELATING TO TAXATION; PROVIDING A CREDIT AGAINST THE GROSS RECEIPTS TAX FOR RECEIPTS FROM THE SALE OF FOOD TO RETAIL FOOD STORES.

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 read:

"[NEW MATERIAL] CREDIT--GROSS RECEIPTS TAX--RECEIPTS FROM SALE OF FOOD AT RETAIL FOOD STORES.--A credit shall be allowed for each reporting period against the gross receipts tax as follows:

A. for a taxpayer located in the unincorporated area of a county, an amount equal to five percent of taxable gross receipts from the sale of food at a retail food store for which the taxpayer is liable for that reporting period; and

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1 B. for a taxpayer located in a municipality, an
2 amount equal to three and two hundred seventy-five
3 thousandths percent of taxable gross receipts from the sale
4 of food at a retail food store for which the taxpayer is
5 liable for that reporting period."

6 Section 2. 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
19 any:

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

22 (2) building, stadium or other structure;

23 (3) airport, subway or similar facility;

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

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

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

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

6 (8) transmission line;

7 (9) radio, television or other tower;

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

9 (11) shaft, tunnel or other mining

10 appurtenance;

11 (12) microwave station or similar facility;

12 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
22 company, trust company, mortgage banking company, consumer
23 finance 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 or indirect benefit, except that "engaging in
business" does not include having a world wide web site as a

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1 third-party content provider on a computer physically located
2 in New Mexico but owned by another nonaffiliated person;

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

13 (1) "Gross receipts" includes:

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

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

25 (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 receipts, excluding any type of time-price differential,

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

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

11 H. "person" means:

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

19 (2) ~~[any]~~ a national, federal, state, Indian
20 or other governmental unit or subdivision, or ~~[any]~~ an
21 agency, department or instrumentality of any ~~[of the~~
22 ~~foregoing]~~ such governmental unit or subdivision;

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

J. "leasing" means ~~[any]~~ an arrangement whereby,

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1 for a consideration, property is employed for or by any
2 person other than the owner of the property, except that the
3 granting of a license to use property is the sale of a
4 license and not a lease;

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

23 L. "use" or "using" includes use, consumption or
24 storage other than storage for subsequent sale in the
25 ordinary course of business or for use solely outside this
state;

M. "secretary" means the secretary of taxation and

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1 revenue or the secretary's delegate;

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

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

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

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

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

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

20 (5) similar activities;

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

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

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

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

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

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

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

20 Q. "local option gross receipts tax" means a tax
21 authorized to be imposed by a county or municipality upon the
22 taxpayer's gross receipts and required to be collected by the
23 department at the same time and in the same manner as the
24 gross receipts tax; "local option gross receipts tax"
25 includes the taxes imposed pursuant to the Municipal Local
Option Gross Receipts Taxes Act, Supplemental Municipal Gross
Receipts Tax Act, [~~Special Municipal Gross Receipts Tax Act~~]

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1 County Local Option Gross Receipts Taxes Act, Local Hospital
2 Gross Receipts Tax Act, County Correctional Facility Gross
3 Receipts Tax Act

4 and such other acts as may be enacted authorizing counties or
5 municipalities to impose taxes on gross receipts, which taxes
6 are to be collected by the department; ~~[and]~~

7 R. "prescription drugs" means insulin and
8 substances that are:

9 (1) dispensed by or under the supervision of
10 a licensed pharmacist or by a physician or other person
11 authorized under state law to do so;

12 (2) prescribed for a specified person by a
13 person authorized under state law to prescribe the substance;
14 and

15 (3) subject to the restrictions on sale
16 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;

17 S. "food" means any food or food product for home
18 consumption that meets the definition of food in 7 USCA
19 2012(g)(1) for purposes of the federal food stamp program;
20 and

21 T. "retail food store" means an establishment that
22 sells food for home preparation and consumption that meets
23 the definition of retail food store in 7 USCA 2012(k)(1) for
24 purposes of the federal food stamp program, whether or not
25 the establishment participates in the food stamp program."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.

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