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HOUSE BILL 443

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

INTRODUCED BY
Timothy E. Macko

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS TAX DEDUCTIONS FOR SALES OF CERTAIN HEALTH SERVICES, LABORATORY SERVICES AND PROSTHETIC DEVICES; EXEMPTING HEALTH INSURANCE CONTRACTS, POLICIES AND PLANS FROM THE PREMIUM TAX; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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) is amended to read:

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

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

B. "buying" or "selling" means any transfer of

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1 property for consideration or any performance of service for
2 consideration;

3 C. "construction" means building, altering,
4 repairing or demolishing in the ordinary course of business
5 any:

6 (1) road, highway, bridge, parking area or
7 related project;

8 (2) building, stadium or other structure;

9 (3) airport, subway or similar facility;

10 (4) park, trail, athletic field, golf course
11 or similar facility;

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

14 (6) sewerage or water treatment facility,
15 power generating plant, pump station, natural gas compressing
16 station, gas processing plant, coal gasification plant,
17 refinery, distillery or similar facility;

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

19 (8) transmission line;

20 (9) radio, television or other tower;

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

22 (11) shaft, tunnel or other mining

23 appurtenance;

24 (12) microwave station or similar facility;

25 or

(13) similar work;

"construction" also means:

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(14) leveling or clearing land;

(15) excavating earth;

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

(17) similar work;

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

E. "engaging in business" means carrying on or
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
third-party content provider on a computer physically located
in New Mexico but owned by another nonaffiliated person;

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

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1 personal property handled on consignment;
2 (b) the total commissions or fees
3 derived from the business of buying, selling or promoting the
4 purchase, sale or leasing, as an agent or broker on a
5 commission or fee basis, of any property, service, stock,
6 bond or security;
7 (c) amounts paid by members of any
8 cooperative association or similar organization for sales or
9 leases of personal property or performance of services by
10 such organization; and
11 (d) amounts received from transmitting
12 messages or conversations by persons providing telephone or
13 telegraph services.
14 (2) "Gross receipts" excludes:
15 (a) cash discounts allowed and taken;
16 (b) New Mexico gross receipts tax,
17 governmental gross receipts tax and leased vehicle gross
18 receipts tax payable on transactions for the reporting
19 period;
20 (c) taxes imposed pursuant to the
21 provisions of any local option gross receipts tax that is
22 payable on transactions for the reporting period;
23 (d) any gross receipts or sales taxes
24 imposed by an Indian nation, tribe or pueblo; provided that
25 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

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1 tax imposed by the Indian nation, tribe or pueblo provides a
2 reciprocal exclusion for gross receipts, sales or gross
3 receipts-based excise taxes imposed by the state or its
4 political subdivisions;

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

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

9 (3) When the sale of property or service is
10 made under any type of charge, conditional or time-sales
11 contract or the leasing of property is made under a leasing
12 contract, the seller or lessor may elect to treat all
13 receipts, excluding any type of time-price differential,
14 under such contracts as gross receipts as and when the
15 payments are actually received. If the seller or lessor
16 transfers his interest in any such contract to a third
17 person, the seller or lessor shall pay the gross receipts tax
18 upon the full sale or leasing contract amount, excluding any
19 type of time-price differential;

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

24 H. "person" means:

25 (1) ~~[any]~~ an individual, estate, trust,
receiver, cooperative association, club, corporation,
company, firm, partnership, limited liability company,

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1 limited liability partnership, joint venture, syndicate or
2 other entity, including any gas, water or electric utility
3 owned or operated by a county, municipality or other
4 political subdivision of the state; or

5 (2) ~~[any]~~ a national, federal, state, Indian
6 or other governmental unit or subdivision, or ~~[any]~~ an
7 agency, department or instrumentality of any of the
8 foregoing;

9 I. "property" means real property, tangible
10 personal property, licenses, franchises, patents, trademarks
11 and copyrights. Tangible personal property includes
12 electricity and manufactured homes;

13 J. "leasing" means ~~[any]~~ an arrangement whereby,
14 for a consideration, property is employed for or by any
15 person other than the owner of the property, except that the
16 granting of a license to use property is the sale of a
17 license and not a lease;

18 K. "service" means all activities engaged in for
19 other persons for a consideration, which activities involve
20 predominantly the performance of a service as distinguished
21 from selling or leasing property. "Service" includes
22 activities performed by a person for its members or
23 shareholders. In determining what is a service, the intended
24 use, principal objective or ultimate objective of the
25 contracting parties shall not be controlling. "Service"
includes construction activities and all tangible personal
property that will become an ingredient or component part of

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1 a construction project. Such tangible personal property
2 retains its character as tangible personal property until it
3 is installed as an ingredient or component part of a
4 construction project in New Mexico. However, sales of
5 tangible personal property that will become an ingredient or
6 component part of a construction project to persons engaged
7 in the construction business are sales of tangible personal
8 property;

9 L. "use" or "using" includes use, consumption or
10 storage other than storage for subsequent sale in the
11 ordinary course of business or for use solely outside this
12 state;

13 M. "secretary" means the secretary of taxation and
14 revenue or the secretary's delegate;

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

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

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

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

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

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

6 (5) similar activities;

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

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

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

14 (3) the development of a new or improved
15 product, process or system with new or improved function,
16 performance, reliability or quality, whether or not the new
17 or improved product, process or system is offered for sale,
18 lease or other transfer;

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

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

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1 transfer; or

2 (6) the design and development of prototypes
3 or the integration of systems incorporating advances,
4 developments or improvements included in Paragraphs (1)
5 through (5) of this subsection;

6 Q. "local option gross receipts tax" means a tax
7 authorized to be imposed by a county or municipality upon the
8 taxpayer's gross receipts and required to be collected by the
9 department at the same time and in the same manner as the
10 gross receipts tax; "local option gross receipts tax"
11 includes the taxes imposed pursuant to the Municipal Local
12 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
13 Receipts Tax Act, [~~Special Municipal Gross Receipts Tax Act~~]
14 County Local Option Gross Receipts Taxes Act, Local Hospital
15 Gross Receipts Tax Act, County Correctional Facility Gross
16 Receipts Tax Act
17 and such other acts as may be enacted authorizing counties or
18 municipalities to impose taxes on gross receipts, which taxes
19 are to be collected by the department; [~~and~~]

20 R. "prescription drugs" means insulin and
21 substances that are:

22 (1) dispensed by or under the supervision of
23 a licensed pharmacist or by a physician or other person
24 authorized under state law to do so;

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

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

S. "health facility" means a facility licensed by the department of health as a hospital, nursing facility or outpatient facility, whether licensed by that name or other similar designation;

T. "health service" means a service provided to a human being for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body;

U. "laboratory service" means an analytic or diagnostic service, including body fluid analysis and diagnostic imaging, provided to an individual on referral from a licensed practitioner; and

V. "licensed practitioner" means a medical doctor, physician assistant, dentist, dental assistant, dental hygienist or optometrist who is licensed pursuant to state law to practice in the state and is practicing within the scope of that license."

Section 2. Section 7-9-73 NMSA 1978 (being Laws 1970, Chapter 78, Section 2, as amended) is amended to read:

"7-9-73. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS--SALE OF PROSTHETIC DEVICES.--Receipts from selling prosthetic devices may be deducted from gross receipts or from governmental gross receipts ~~[if the sale is made to a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry,~~

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1 ~~chiropractic or professional nursing and who delivers a~~
2 ~~nontaxable transaction certificate to the seller. The buyer~~
3 ~~delivering the nontaxable transaction certificate must~~
4 ~~deliver the prosthetic device incidental to the performance~~
5 ~~of a service and must include the value of the prosthetic~~
6 ~~device in his charge for the service]."~~

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

9 " [NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--HEALTH
10 SERVICES--LABORATORY SERVICES.--Receipts of a licensed
11 practitioner or health facility from selling health services
12 and the receipts of any person from selling laboratory
13 services may be deducted from gross receipts; provided the
14 deduction may be applied only to the taxable gross receipts
15 remaining after all other appropriate deductions have been
16 taken."

17 Section 4. Section 59A-6-2 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 102, as amended) is amended to read:

19 "59A-6-2. PREMIUM TAX.--

20 A. The premium tax provided for in this section
21 shall apply as to the following taxpayers:

- 22 (1) each insurer authorized to transact
23 insurance in New Mexico;
24 (2) each insurer formerly authorized to
25 transact insurance in New Mexico and receiving premiums on
policies remaining in force in New Mexico, except that this
provision shall not apply as to an insurer that withdrew from

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1 New Mexico prior to March 26, 1955;

2 (3) each plan operating under provisions of
3 Chapter 59A, ~~[Articles 46 through]~~ Article 49 NMSA 1978;

4 (4) each property bondsman, as that person
5 is defined in Section 59A-51-2 NMSA 1978, as to any
6 consideration received as security or surety for a bail bond
7 in connection with a judicial proceeding, which consideration
8 shall be considered "gross premiums" for the purposes of this
9 section; and

10 (5) each unauthorized insurer that has
11 assumed a contract or policy of insurance directly or
12 indirectly from an authorized or formerly authorized insurer
13 and is receiving premiums on such policies remaining in force
14 in New Mexico, except that this provision shall not apply if
15 a ceding insurer continues to pay the tax provided in this
16 section as to such policy or contract.

17 B. Each such taxpayer shall pay in accordance with
18 this subsection three percent of the gross premiums and
19 membership and policy fees received by it on insurance or
20 contracts covering risks within this state during the
21 preceding calendar year, less all return premiums, including
22 dividends paid or credited to policyholders or contract
23 holders and premiums received for reinsurance on New Mexico
24 risks. For each calendar quarter, an estimated payment shall
25 be made on April 15, July 15, October 15 and the following
January 15. The estimated payments shall be equal to at
least one-fourth of either the payment made during the

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1 previous calendar year or eighty percent of the actual
2 payment due for the current calendar year, whichever is
3 greater. The final adjustment for payments due for the prior
4 year shall be made with the return, which shall be filed on
5 April 15 of each year, at which time all taxes for that year
6 are due. Dividends paid or credited to policyholders or
7 contract holders and refunds, savings, savings coupons and
8 similar returns or credits applied or credited to payment of
9 premiums for existing, new or additional insurance shall, in
10 the amount so used, constitute premiums subject to tax under
11 this section for the year in which so applied or credited.
12 Provided that as to every insurer which throughout such
13 preceding calendar year had at least forty percent of its
14 admitted assets invested in New Mexico investments, as the
15 same are defined in Subsection C of this section, the rate of
16 such tax shall be nine-tenths of one percent in lieu of three
17 percent; provided further that, effective January 1, 1992,
18 the rate shall be one and four-tenths percent; effective July
19 1, 1992, the rate shall be one and nine-tenths percent;
20 effective January 1, 1993, the rate shall be two and four-
21 tenths percent; and effective July 1, 1993 and thereafter,
22 the rate shall be three percent.

23 C. New Mexico investments for the purpose of
24 Subsection B of this section are defined as follows:
25

- (1) real estate located within New Mexico;
- (2) bonds or obligations of New Mexico or of any county or other subdivision thereof;

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1 (3) bonds, debentures or secured obligations
2 of any corporation that has fifty percent of its assets
3 located within New Mexico;

4 (4) first mortgages secured by real estate
5 located within New Mexico;

6 (5) deposits in state banks, national banks
7 and trust companies having their principal place of business
8 within New Mexico;

9 (6) policy loans to residents of New Mexico;
10 and

11 (7) preferred and common stock of
12 corporations having at least fifty percent of their assets
13 located within New Mexico.

14 D. Nothing contained in Subsection C of this
15 section shall be construed to affect any provision of Chapter
16 59A, Article 9 NMSA 1978.

17 E. Exempted from the tax imposed by Subsection B
18 of this section are premiums attributable to:

19 (1) insurance or contracts purchased by the
20 state or any political subdivision; ~~and~~

21 (2) payments received by a health
22 maintenance organization from the federal secretary of health
23 and human services pursuant to a contract issued under the
24 provisions of 42 U.S.C. Section 1395 mm(g);

25 (3) health insurance contracts or policies
issued pursuant to Chapter 59A, Articles 22, 22A, 23 and 24A
NMSA 1978; and

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(4) plans operating pursuant to Chapter 59A, Articles 46 through 48 NMSA 1978."

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.