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HOUSE BILL 189

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Daniel P. Silva

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT.

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 2000, Chapter 84, Section 1 and also by Laws 2000, Chapter 101, Section 1) 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]

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1 (13) retaining wall, wall, fence, gate or
2 similar structure; or

3 [~~(13)~~] (14) similar work;

4 "construction" also means:

5 [~~(14)~~] (15) leveling or clearing land;

6 [~~(15)~~] (16) excavating earth;

7 [~~(16)~~] (17) drilling wells of any type,
8 including seismograph shot holes or core drilling; or

9 [~~(17)~~] (18) similar work;

10 D. "financial corporation" means [~~any~~] a savings
11 and loan association or [~~any~~] an incorporated savings and loan
12 company, trust company, mortgage banking company, consumer
13 finance company or other financial corporation;

14 E. "engaging in business" means carrying on or
15 causing to be carried on any activity with the purpose of
16 direct or indirect benefit, except that:

17 (1) "engaging in business" does not include
18 having a worldwide web site as a third-party content provider
19 on a computer physically located in New Mexico but owned by
20 another nonaffiliated person; and

21 (2) "engaging in business" does not include
22 using a nonaffiliated third-party call center to accept and
23 process telephone or electronic orders of tangible personal
24 property or licenses primarily from non-New Mexico buyers,
25 which orders are forwarded to a location outside New Mexico

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1 for filling;

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

13 (1) "Gross receipts" includes:

14 (a) [~~any~~] receipts from sales of
15 tangible 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, bond
20 or security;

21 (c) amounts paid by members of [~~any~~] a
22 cooperative association or similar organization for sales or
23 leases of personal property or performance of services by such
24 organization; and

25 (d) amounts received from transmitting

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1 messages or conversations by persons providing telephone or
2 telegraph services.

3 (2) "Gross receipts" excludes:

4 (a) cash discounts allowed and taken;

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

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

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

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

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

24 (3) When the sale of property or service is
25 made under any type of charge, conditional or time-sales

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

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

14 H. "person" means:

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

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

25 I. "property" means real property, tangible

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1 personal property, licenses, franchises, patents, trademarks
2 and copyrights. Tangible personal property includes
3 electricity and manufactured homes;

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

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

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1 business are sales of tangible personal property;

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

5 M. "secretary" means the secretary of taxation and
6 revenue or the secretary's delegate;

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

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

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

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

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

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

24 (5) similar activities;

25 P. "research and development services" means an

1 activity engaged in for other persons for consideration, for
2 one or more of the following purposes:

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

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

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

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

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

21 (6) the design and development of prototypes
22 or the integration of systems incorporating advances,
23 developments or improvements included in Paragraphs (1)
24 through (5) of this subsection;

25 Q. "local option gross receipts tax" means a tax

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1 authorized to be imposed by a county or municipality upon the
2 taxpayer's gross receipts and required to be collected by the
3 department at the same time and in the same manner as the
4 gross receipts tax; "local option gross receipts tax" includes
5 the taxes imposed pursuant to the Municipal Local Option Gross
6 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
7 Act, County Local Option Gross Receipts Taxes Act, Local
8 Hospital Gross Receipts Tax Act, County Correctional Facility
9 Gross Receipts Tax Act and such other acts as may be enacted
10 authorizing counties or municipalities to impose taxes on
11 gross receipts, which taxes are to be collected by the
12 department; and

13 R. "prescription drugs" means insulin and
14 substances that are:

15 (1) dispensed by or under the supervision of
16 a licensed pharmacist or by a physician or other person
17 authorized under state law to do so;

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

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

23 Section 2. Section 7-9-10 NMSA 1978 (being Laws 1966,
24 Chapter 47, Section 10, as amended) is amended to read:

25 "7-9-10. AGENTS FOR COLLECTION OF COMPENSATING TAX--

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1 DUTIES. -- [A.] Every person [~~carrying on or causing to be~~
2 ~~carried on any activity~~] engaging in business within this
3 state [~~attempting to exploit New Mexico's markets~~] who sells
4 property or sells property and service for use in this state
5 and who is not subject to the gross receipts tax on receipts
6 from these sales shall collect the compensating tax from the
7 buyer and pay the tax collected to the department.

8 [~~"Activity", for the purposes of this section, includes but is~~
9 ~~not limited to engaging in any of the following in New Mexico:~~
10 ~~maintaining an office or other place of business; soliciting~~
11 ~~orders through employees or independent contractors;~~
12 ~~soliciting orders through advertisements placed in newspapers~~
13 ~~or magazines published in New Mexico or advertisements~~
14 ~~broadcast by New Mexico radio or television stations,~~
15 ~~soliciting orders through programs broadcast by New Mexico~~
16 ~~radio or television stations or transmitted by cable systems~~
17 ~~in New Mexico; canvassing, demonstrating, collecting money,~~
18 ~~warehousing or storing merchandise or delivering or~~
19 ~~distributing products as a consequence of an advertising or~~
20 ~~other sales program directed at potential customers, but~~
21 ~~"activity" does not include having a world wide web site as a~~
22 ~~third party provider on a computer physically located in New~~
23 ~~Mexico but owned by another nonaffiliated person, and~~
24 ~~"activity" does not include using a nonaffiliated third party~~
25 ~~call center to accept and process telephone or electronic~~

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1 ~~orders of tangible personal property or licenses primarily~~
2 ~~from non-New Mexico buyers, which orders are forwarded to a~~
3 ~~location outside New Mexico for filling.~~

4 ~~B. To ensure orderly and efficient collection of~~
5 ~~the public revenue, if any application of this section is held~~
6 ~~invalid, the section's application to other situations or~~
7 ~~persons shall not be affected.]"~~

8 Section 3. Section 7-9-14 NMSA 1978 (being Laws 1969,
9 Chapter 144, Section 7, as amended) is amended to read:

10 "7-9-14. EXEMPTION--COMPENSATING TAX--GOVERNMENTAL
11 AGENCIES--INDIANS.--

12 A. Except as otherwise provided in this
13 subsection, [~~there is~~] exempted from the compensating tax is
14 the use of property by [~~the United States or~~] the state of New
15 Mexico or any governmental unit or subdivision, agency,
16 department or instrumentality thereof. The exemption provided
17 by this subsection does not apply to:

18 (1) the use of property that is or will be
19 incorporated into a metropolitan redevelopment project under
20 the Metropolitan Redevelopment Code; or

21 (2) the use of tangible personal property
22 that becomes an ingredient or component part of a construction
23 project.

24 B. Exempted from the compensating tax is the use
25 of property by any Indian nation, tribe or pueblo or any

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1 governmental unit, subdivision, agency, department or
2 instrumentality thereof on [~~Indian reservations or pueblo~~
3 ~~grants~~] its own reservation or pueblo grant.

4 C. Exempted from the compensating tax is the use
5 of property by the United States or any governmental unit or
6 subdivision, agency, department or instrumentality thereof."

7 Section 4. Section 7-9-39 NMSA 1978 (being Laws 1969,
8 Chapter 144, Section 32, as amended) is amended to read:

9 "7-9-39. EXEMPTION--GROSS RECEIPTS TAX--FEES FROM SOCIAL
10 ORGANIZATIONS.--

11 A. Exempted from the gross receipts tax are the
12 receipts from dues and registration fees of nonprofit social,
13 fraternal, political, civic, trade, labor or professional
14 organizations and business leagues.

15 B. For the purposes of this section:

16 (1) "dues" means amounts that a member of an
17 organization pays at recurring intervals to retain membership
18 in an organization where such amounts are used for the general
19 maintenance and upkeep of the organization; and

20 (2) "registration fees" means amounts paid by
21 persons to attend a specific event or series of events
22 sponsored by an organization to defray the cost of the event
23 or series of events."

24 Section 5. Section 7-9-44 NMSA 1978 (being Laws 1969,
25 Chapter 144, Section 34, as amended) is amended to read:

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1 "7-9-44. SUSPENSION OF THE RIGHT TO USE A NONTAXABLE
2 TRANSACTION CERTIFICATE. --

3 A. The secretary may suspend for not more than one
4 year the privilege of a person to [~~use~~] execute nontaxable
5 transaction certificates if that person:

6 (1) fails to pay, within one year of the date
7 the tax is due, the compensating tax on the subsequent use of
8 property or services purchased through the [~~use~~] execution of
9 a nontaxable transaction certificate; or

10 (2) executes with the seller or lessor a
11 nontaxable transaction certificate inapplicable to the
12 transaction when no compensating tax is due on that buyer's or
13 lessee's use of the property or service.

14 B. The secretary may suspend for not more than six
15 months the privilege of a person to [~~use~~] execute nontaxable
16 transaction certificates, to claim deductions on the basis of
17 nontaxable transaction certificates accepted by that person or
18 both if that person fails to account in the manner and time
19 required by the department, in accordance with Subsection E of
20 Section 7-9-43 NMSA 1978, for the certificates executed or
21 accepted by that person.

22 C. A suspension under this section voids the
23 department's approval of the person's application for the
24 privilege of executing nontaxable transaction certificates
25 and, prior to resumption of [~~use of such certificates~~] the

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1 privilege, the person whose privilege to [~~use~~] execute
2 nontaxable transaction certificates has been suspended shall
3 reapply for the privilege of executing such certificates in
4 accordance with Section 7-9-43 NMSA 1978 [~~and shall pay the~~
5 ~~application fee~~].

6 D. Notwithstanding the provisions of Section 7-1-8
7 NMSA 1978, the department may notify the public or provide for
8 notice to the public of the suspension of a person's privilege
9 to [~~use~~] execute nontaxable transaction certificates."

10 Section 6. Section 7-9-45 NMSA 1978 (being Laws 1969,
11 Chapter 144, Section 35, as amended) is amended to read:

12 "7-9-45. DEDUCTIONS. --

13 A. In computing the gross receipts tax or
14 governmental gross receipts tax due, only those receipts
15 specified in Sections 7-9-46 through 7-9-76.2, 7-9-77.1,
16 7-9-83, 7-9-85 through 7-9-87, [~~and~~] 7-9-89 and 7-9-90 NMSA
17 1978 may be deducted. Receipts, whether specified once or
18 several times in those sections, may be deducted only once
19 from gross receipts or governmental gross receipts.

20 B. Receipts that are exempted from the gross
21 receipts tax and are not reported as gross receipts may not be
22 deducted from gross receipts. [~~Receipts that are deducted~~
23 ~~from gross receipts may not be exempted from the gross~~
24 ~~receipts tax.~~]

25 C. Receipts that are exempted from the

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1 governmental gross receipts tax ~~[shall]~~ and are not reported
2 as governmental gross receipts may not be deducted from
3 governmental gross receipts. [~~Receipts that are deducted from~~
4 ~~governmental gross receipts shall not be exempted from the~~
5 ~~governmental gross receipts tax.~~]"

6 Section 7. Section 7-9-47 NMSA 1978 (being Laws 1969,
7 Chapter 144, Section 37, as amended) is amended to read:

8 "7-9-47. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
9 GROSS RECEIPTS TAX--SALE OF TANGIBLE PERSONAL PROPERTY [~~OR~~
10 ~~LICENSES~~] FOR RESALE--GRANTING LICENSE FOR SUB-LICENSING.--

11 Receipts from selling tangible personal property or granting
12 licenses to use property in New Mexico may be deducted from
13 gross receipts or from governmental gross receipts if the sale
14 is made to a person who delivers a nontaxable transaction
15 certificate to the seller. The buyer delivering the
16 nontaxable transaction certificate must resell the tangible
17 personal property or [~~license~~] grant a sub-license either by
18 itself or in combination with other tangible personal property
19 or licenses in the ordinary course of business. "

20 Section 8. Section 7-9-54.1 NMSA 1978 (being Laws 1992,
21 Chapter 40, Section 1, as amended) is amended to read:

22 "7-9-54.1. DEDUCTION--GROSS RECEIPTS FROM SALE OF
23 AEROSPACE SERVICES TO CERTAIN ORGANIZATIONS.--

24 A. As used in this section:

25 (1) "aerospace services" means research and

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1 development services sold to or for resale to an organization
2 for resale by the organization to the United States air force;
3 and

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

8 B. Receipts from performing or selling, on or
9 after October 1, [1995] 1999, an aerospace service for resale
10 may be deducted from gross receipts if the sale is made to a
11 buyer who delivers a nontaxable transaction certificate. The
12 buyer delivering the nontaxable transaction certificate shall
13 separately state the value of the aerospace service purchased
14 in the buyer's charge for the aerospace service on its
15 subsequent sale to an organization or, if the buyer is an
16 organization, on the organization's subsequent sale to the
17 United States, and the subsequent sale shall be in the
18 ordinary course of business of selling aerospace services to
19 an organization or to the United States.

20 [~~C. A percentage of the receipts from selling~~
21 ~~aerospace services to or for resale to an organization may be~~
22 ~~deducted from gross receipts in accordance with the following~~
23 ~~table:~~

24 **Deductible**
25 **Receipts During the Period** ————— **Percentage**

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1 ~~October 1, 1995 through September 30, 1996~~ ~~10%~~
2 ~~October 1, 1996 through September 30, 1997~~ ~~25%~~
3 ~~October 1, 1997 through September 30, 1999~~ ~~50%~~
4 ~~October 1, 1999 and thereafter~~ ~~100%.] "~~

5 Section 9. Section 7-9-58 NMSA 1978 (being Laws 1969,
6 Chapter 144, Section 48, as amended) is amended to read:

7 "7-9-58. DEDUCTION--GROSS RECEIPTS TAX--FEED--
8 FERTILIZERS.--

9 A. Receipts from selling feed for livestock, fish
10 raised for human consumption, poultry or [~~f~~~~or~~] animals raised
11 for their hides or pelts and from selling seeds, roots, bulbs,
12 plants, soil conditioners, fertilizers, insecticides,
13 germicides, insects used to control populations of other
14 insects, fungicides or weedicides [~~or~~] and from selling water
15 for irrigation purposes may be deducted from gross receipts if
16 the sale is made to a person who states in writing that he is
17 regularly engaged in the business of farming, ranching or
18 [~~the~~] raising [~~of~~] animals for their hides or pelts.

19 B. Receipts of auctioneers from selling livestock
20 or other agricultural products at auction may also be deducted
21 from gross receipts. "

22 Section 10. Section 7-9-65 NMSA 1978 (being Laws 1969,
23 Chapter 144, Section 56) is amended to read:

24 "7-9-65. DEDUCTION--GROSS RECEIPTS TAX--CHEMICALS AND
25 REAGENTS.--Receipts from selling chemicals or reagents to

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1 [any] a mining, milling or oil company for use in processing
2 ores or oil in a mill, smelter or refinery or in acidizing oil
3 wells and receipts from selling chemicals or reagents in lots
4 in excess of eighteen tons may be deducted from gross
5 receipts. Receipts from selling explosives, blasting powder
6 or dynamite may not be deducted from gross receipts under this
7 section. "

8 Section 11. EFFECTIVE DATE. --The effective date of the
9 provisions of this act is July 1, 2001.

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