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HOUSE BILL 468

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

INTRODUCED BY

Don Tripp

AN ACT

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

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1 and

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

7 Section 2. Section 7-9-3 NMSA 1978 (being Laws 1978,
8 Chapter 46, Section 1, as amended by Laws 2000, Chapter 84,
9 Section 1 and also by Laws 2000, Chapter 101, Section 1) is
10 amended to read:

11 "7-9-3. DEFINITIONS. --As used in the Gross Receipts and
12 Compensating Tax Act:

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

17 B. "buying" or "selling" means any transfer of
18 property for consideration or any performance of service for
19 consideration;

20 C. "construction" means building, altering,
21 repairing or demolishing in the ordinary course of business
22 any:

23 (1) road, highway, bridge, parking area or
24 related project;

25 (2) building, stadium or other structure;

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- 1 (3) airport, subway or similar facility;
2 (4) park, trail, athletic field, golf course
3 or similar facility;
4 (5) dam, reservoir, canal, ditch or similar
5 facility;
6 (6) sewerage or water treatment facility,
7 power generating plant, pump station, natural gas compressing
8 station, gas processing plant, coal gasification plant,
9 refinery, distillery or similar facility;
10 (7) sewerage, water, gas or other pipeline;
11 (8) transmission line;
12 (9) radio, television or other tower;
13 (10) water, oil or other storage tank;
14 (11) shaft, tunnel or other mining
15 appurtenance;
16 (12) microwave station or similar facility;
17 [~~or~~]
18 (13) retaining wall, wall, fence gate or
19 similar structure; or
20 [~~(13)~~] (14) similar work;
21 "construction" also means:
22 [~~(14)~~] (15) leveling or clearing land;
23 [~~(15)~~] (16) excavating earth;
24 [~~(16)~~] (17) drilling wells of any type,
25 including seismograph shot holes or core drilling; or

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1 [~~(17)~~] (18) similar work;

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

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

9 (1) "engaging in business" does not include
10 having a world wide web site as a third-party content provider
11 on a computer physically located in New Mexico but owned by
12 another nonaffiliated person; and

13 (2) "engaging in business" does not include
14 using a nonaffiliated third-party call center to accept and
15 process telephone or electronic orders of tangible personal
16 property or licenses primarily from non-New Mexico buyers,
17 which orders are forwarded to a location outside New Mexico
18 for filling;

19 F. "gross receipts" means the total amount of
20 money or the value of other consideration received from
21 selling property in New Mexico, from leasing property employed
22 in New Mexico, from selling services performed outside New
23 Mexico the product of which is initially used in New Mexico or
24 from performing services in New Mexico. In an exchange in
25 which the money or other consideration received does not

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1 represent the value of the property or service exchanged,
2 "gross receipts" means the reasonable value of the property or
3 service exchanged.

4 (1) "Gross receipts" includes:

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

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

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

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

19 (2) "Gross receipts" excludes:

20 (a) cash discounts allowed and taken;

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

24 (c) taxes imposed pursuant to the
25 provisions of any local option gross receipts tax that is

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1 payable on transactions for the reporting period;

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

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

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

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

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1 G. "manufacturing" means combining or processing
2 components or materials to increase their value for sale in
3 the ordinary course of business, but does not include
4 construction;

5 H. "person" means:

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

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

16 I. "property" means real property, tangible
17 personal property, licenses, franchises, patents, trademarks
18 and copyrights. Tangible personal property includes
19 electricity and manufactured homes;

20 J. "leasing" means an arrangement whereby, for a
21 consideration, property is employed for or by any person other
22 than the owner of the property, except that the granting of a
23 license to use property is the sale of a license and not a
24 lease;

25 K. "service" means all activities engaged in for

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

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

20 M "secretary" means the secretary of taxation and
21 revenue or the secretary's delegate;

22 N. "manufactured home" means a movable or portable
23 housing structure for human occupancy that exceeds either a
24 width of eight feet or a length of forty feet constructed to
25 be towed on its own chassis and designed to be installed with

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1 or without a permanent foundation;

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

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

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

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

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

14 (5) similar activities;

15 P. "research and development services" means an
16 activity engaged in for other persons for consideration, for
17 one or more of the following purposes:

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

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

22 (3) the development of a new or improved
23 product, process or system with new or improved function,
24 performance, reliability or quality, whether or not the new or
25 improved product, process or system is offered for sale, lease

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1 or other transfer;

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

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

11 (6) the design and development of prototypes
12 or the integration of systems incorporating advances,
13 developments or improvements included in Paragraphs (1)
14 through (5) of this subsection;

15 Q. "local option gross receipts tax" means a tax
16 authorized to be imposed by a county or municipality upon the
17 taxpayer's gross receipts and required to be collected by the
18 department at the same time and in the same manner as the
19 gross receipts tax; "local option gross receipts tax" includes
20 the taxes imposed pursuant to the Municipal Local Option Gross
21 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
22 Act, County Local Option Gross Receipts Taxes Act, Local
23 Hospital Gross Receipts Tax Act, County Correctional Facility
24 Gross Receipts Tax Act and such other acts as may be enacted
25 authorizing counties or municipalities to impose taxes on

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1 gross receipts, which taxes are to be collected by the
2 department; [~~and~~]

3 R. "prescription drugs" means insulin and
4 substances that are:

5 (1) dispensed by or under the supervision of
6 a licensed pharmacist or by a physician or other person
7 authorized under state law to do so;

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

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

13 S. "food" means any food or food product for home
14 consumption that meets the definition of food in 7 USCA
15 2012(g)(1) for purposes of the federal food stamp program; and

16 T. "retail food store" means an establishment that
17 sells food for home preparation and consumption that meets the
18 definition of retail food store in 7 USCA 2012(k)(1) for
19 purposes of the federal food stamp program, whether or not the
20 establishment participates in the food stamp program. "

21 Section 3. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2001.