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**HOUSE BILL 570**

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

**INTRODUCED BY**

**Leo C. Watchman Jr.**

**AN ACT**

**RELATING TO TAXATION; ELIMINATING THE GROSS RECEIPTS TAX ON  
FOOD SOLD 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 to read:**

**" [NEW MATERIAL] DEDUCTION-- GROSS RECEIPTS TAX-- SALE OF  
FOOD AT RETAIL FOOD STORES. --Receipts from the sale of food at  
a retail food store may be deducted from gross receipts. "**

**Section 2. 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:**

**. 135354. 1**

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

5           B. "buying" or "selling" means any transfer of  
6 property for consideration or any performance of service for  
7 consideration;

8           C. "construction" means building, altering,  
9 repairing or demolishing in the ordinary course of business  
10 any:

11                   (1) road, highway, bridge, parking area or  
12 related project;

13                   (2) building, stadium or other structure;

14                   (3) airport, subway or similar facility;

15                   (4) park, trail, athletic field, golf course  
16 or similar facility;

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

19                   (6) sewerage or water treatment facility,  
20 power generating plant, pump station, natural gas compressing  
21 station, gas processing plant, coal gasification plant,  
22 refinery, distillery or similar facility;

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

24                   (8) transmission line;

25                   (9) radio, television or other tower;

- 1 (10) water, oil or other storage tank;  
2 (11) shaft, tunnel or other mining  
3 appurtenance;  
4 (12) microwave station or similar facility;  
5 [~~or~~]  
6 (13) retaining wall, wall, fence gate or  
7 similar structure; or

8 [~~(13)~~] (14) similar work;

9 "construction" also means:

10 [~~(14)~~] (15) leveling or clearing land;

11 [~~(15)~~] (16) excavating earth;

12 [~~(16)~~] (17) drilling wells of any type,

13 including seismograph shot holes or core drilling; or

14 [~~(17)~~] (18) similar work;

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

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

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

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

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

17 (1) "Gross receipts" includes:

18 (a) any receipts from sales of tangible  
19 personal property handled on consignment;

20 (b) the total commissions or fees  
21 derived from the business of buying, selling or promoting the  
22 purchase, sale or leasing, as an agent or broker on a  
23 commission or fee basis, of any property, service, stock, bond  
24 or security;

25 (c) amounts paid by members of any

1 cooperative association or similar organization for sales or  
2 leases of personal property or performance of services by such  
3 organization; and

4 (d) amounts received from transmitting  
5 messages or conversations by persons providing telephone or  
6 telegraph services.

7 (2) "Gross receipts" excludes:

8 (a) cash discounts allowed and taken;

9 (b) New Mexico gross receipts tax,  
10 governmental gross receipts tax and leased vehicle gross  
11 receipts tax payable on transactions for the reporting period;

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

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

24 (e) any type of time-price  
25 differential; and

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

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

14 G. "manufacturing" means combining or processing  
15 components or materials to increase their value for sale in  
16 the ordinary course of business, but does not include  
17 construction;

18 H. "person" means:

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

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

4 I. "property" means real property, tangible  
5 personal property, licenses, franchises, patents, trademarks  
6 and copyrights. Tangible personal property includes  
7 electricity and manufactured homes;

8 J. "leasing" means an arrangement whereby, for a  
9 consideration, property is employed for or by any person other  
10 than the owner of the property, except that the granting of a  
11 license to use property is the sale of a license and not a  
12 lease;

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

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1 project in New Mexico. However, sales of tangible personal  
2 property that will become an ingredient or component part of a  
3 construction project to persons engaged in the construction  
4 business are sales of tangible personal property;

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

8 M. "secretary" means the secretary of taxation and  
9 revenue or the secretary's delegate;

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

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

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

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

23 (3) review of preliminary drafts, drawings  
24 and other materials prepared by the performer of [the]  
25 services;



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

3 (5) similar activities;

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

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

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

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

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

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

25 (6) the design and development of prototypes

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1 or the integration of systems incorporating advances,  
2 developments or improvements included in Paragraphs (1)  
3 through (5) of this subsection;

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

17 R. "prescription drugs" means insulin and  
18 substances that are:

19 (1) dispensed by or under the supervision of  
20 a licensed pharmacist or by a physician or other person  
21 authorized under state law to do so;

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

25 (3) subject to the restrictions on sale

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1 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;

2 S. "food" means any food or food product for home  
3 consumption that meets the definition of "food" in 7 USCA  
4 2012(g) (1) for purposes of the federal food stamp program;  
5 and

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

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