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HOUSE BILL 882

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

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS TAX DEDUCTIONS FOR SALES OF CERTAIN HEALTH SERVICES, LABORATORY SERVICES AND PROSTHETIC DEVICES; PROVIDING DEFINITIONS; 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 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

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1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

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

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

9 (1) road, highway, bridge, parking area or
10 related project;

11 (2) building, stadium or other structure;

12 (3) airport, subway or similar facility;

13 (4) park, trail, athletic field, golf course
14 or similar facility;

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

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

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

22 (8) transmission line;

23 (9) radio, television or other tower;

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

25 (11) shaft, tunnel or other mining

1 appurtenance;

2 (12) microwave station or similar facility;

3 [~~or~~]

4 (13) retaining wall, wall, fence gate or
5 similar structure; or

6 [~~(13)~~] (14) similar work;

7 "construction" also means:

8 [~~(14)~~] (15) leveling or clearing land;

9 [~~(15)~~] (16) excavating earth;

10 [~~(16)~~] (17) drilling wells of any type,
11 including seismograph shot holes or core drilling; or

12 [~~(17)~~] (18) similar work;

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

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

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

24 (2) "engaging in business" does not include
25 using a nonaffiliated third-party call center to accept and

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1 process telephone or electronic orders of tangible personal
2 property or licenses primarily from non-New Mexico buyers,
3 which orders are forwarded to a location outside New Mexico
4 for filling;

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

15 (1) "Gross receipts" includes:

16 (a) any receipts from sales of tangible
17 personal property handled on consignment;

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

23 (c) amounts paid by members of any
24 cooperative association or similar organization for sales or
25 leases of personal property or performance of services by such

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1 organization; and

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

5 (2) "Gross receipts" excludes:

6 (a) cash discounts allowed and taken;

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

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

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

22 (e) any type of time-price
23 differential; and

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

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

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

16 H. "person" means:

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

24 (2) a national, federal, state, Indian or
25 other governmental unit or subdivision, or an agency,

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1 department or instrumentality of any of the foregoing;

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

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

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

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1 construction project to persons engaged in the construction
2 business are sales of tangible personal property;

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

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

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

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

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

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

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

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

25 (5) similar activities;

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

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

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

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

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

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

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

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

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

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

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

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

24 S. "health facility" means a facility licensed by
25 the department of health as a hospital, nursing facility or

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1 outpatient facility, whether licensed by that name or other
2 similar designation;

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

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

11 V. "licensed health practitioner" means:

12 (1) a chiropractic physician licensed
13 pursuant to the provisions of the Chiropractic Physician
14 Practice Act;

15 (2) a dentist or dental hygienist licensed
16 pursuant to the provisions of the Dental Health Care Act;

17 (3) a physician or physician assistant
18 licensed pursuant to the provisions of Chapter 61, Article 6
19 NMSA 1978;

20 (4) an osteopathic physician licensed
21 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
22 or an osteopathic physician's assistant licensed pursuant to
23 the provisions of the Osteopathic Physicians' Assistants Act;

24 (5) a doctor of oriental medicine licensed
25 pursuant to the provisions of the Acupuncture and Oriental

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1 Medicine Practice Act;

2 (6) a podiatrist licensed pursuant to the
3 provisions of the Podiatry Act;

4 (7) a psychologist licensed pursuant to the
5 provisions of the Professional Psychologist Act;

6 (8) a registered nurse or licensed practical
7 nurse licensed pursuant to the provisions of the Nursing
8 Practice Act;

9 (9) a registered lay midwife registered by
10 the department of health;

11 (10) a physical therapist licensed pursuant
12 to the provisions of the Physical Therapy Act;

13 (11) a registered occupational therapist
14 licensed pursuant to the provisions of the Occupational
15 Therapy Act;

16 (12) a respiratory care practitioner licensed
17 pursuant to the provisions of the Respiratory Care Act; and

18 (13) an optometrist licensed pursuant to the
19 provisions of the Optometry Act. "

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

22 "7-9-73. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
23 GROSS RECEIPTS--SALE OF PROSTHETIC DEVICES.--Receipts from
24 selling prosthetic devices may be deducted from gross receipts
25 or from governmental gross receipts [~~if the sale is made to a~~

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1 ~~person who is licensed to practice medicine, osteopathic~~
2 ~~medicine, dentistry, podiatry, optometry, chiropractic or~~
3 ~~professional nursing and who delivers a nontaxable transaction~~
4 ~~certificate to the seller. The buyer delivering the~~
5 ~~nontaxable transaction certificate must deliver the prosthetic~~
6 ~~device incidental to the performance of a service and must~~
7 ~~include the value of the prosthetic device in his charge for~~
8 ~~the service]. "~~

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

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

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

21 "59A-6-2. PREMIUM TAX. --

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

24 (1) each insurer authorized to transact
25 insurance in New Mexico;

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1 (2) each insurer formerly authorized to
2 transact insurance in New Mexico and receiving premiums on
3 policies remaining in force in New Mexico, except that this
4 provision shall not apply as to an insurer that withdrew from
5 New Mexico prior to March 26, 1955;

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

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

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

21 B. Each such taxpayer shall pay in accordance with
22 this subsection three percent of the gross premiums and
23 membership and policy fees received by it on insurance or
24 contracts covering risks within this state during the
25 preceding calendar year, less all return premiums, including

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

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1 rate shall be two and four-tenths percent; and effective July
2 1, 1993 and thereafter, the rate shall be three percent.

3 C. New Mexico investments for the purpose of
4 Subsection B of this section are defined as follows:

- 5 (1) real estate located within New Mexico;
6 (2) bonds or obligations of New Mexico or of
7 any county or other subdivision thereof;
8 (3) bonds, debentures or secured obligations
9 of any corporation that has fifty percent of its assets
10 located within New Mexico;
11 (4) first mortgages secured by real estate
12 located within New Mexico;
13 (5) deposits in state banks, national banks
14 and trust companies having their principal place of business
15 within New Mexico;
16 (6) policy loans to residents of New Mexico;
17 and
18 (7) preferred and common stock of
19 corporations having at least fifty percent of their assets
20 located within New Mexico.

21 D. Nothing contained in Subsection C of this
22 section shall be construed to affect any provision of Chapter
23 59A, Article 9 NMSA 1978.

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

