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SENATE BILL 354

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

INTRODUCED BY

Richard M. Romero

AN ACT

RELATING TO TAXATION; AMENDING AND ENACTING SECTIONS OF THE  
GROSS RECEIPTS AND COMPENSATING TAX ACT TO EXEMPT CERTAIN  
SALES BY FLORISTS.

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] EXEMPTION--GROSS RECEIPTS TAX--SALE OF  
FLORAL PRODUCTS FOR RESALE.--Exempted from the gross receipts  
tax are the receipts from selling flowers, plants or other  
products that are customarily sold by florists if the sale is  
made by means of long distance communication to a florist who  
purchases the flowers, plants or other products to fill an  
order received by that florist for delivery in New Mexico."

Section 2. Section 7-9-3 NMSA 1978 (being Laws 1978,

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1 Chapter 46, Section 1, as amended by Laws 2000, Chapter 84,  
2 Section 1 and also by Laws 2000, Chapter 101, Section 1) is  
3 amended to read:

4 "7-9-3. DEFINITIONS. -- As used in the Gross Receipts and  
5 Compensating Tax Act:

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

10 B. "buying" or "selling" means any transfer of  
11 property for consideration or any performance of service for  
12 consideration;

13 C. "construction" means building, altering,  
14 repairing or demolishing in the ordinary course of business  
15 any:

16 (1) road, highway, bridge, parking area or  
17 related project;

18 (2) building, stadium or other structure;

19 (3) airport, subway or similar facility;

20 (4) park, trail, athletic field, golf course  
21 or similar facility;

22 (5) dam, reservoir, canal, ditch or similar  
23 facility;

24 (6) sewerage or water treatment facility,  
25 power generating plant, pump station, natural gas compressing

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1 station, gas processing plant, coal gasification plant,  
2 refinery, distillery or similar facility;

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

4 (8) transmission line;

5 (9) radio, television or other tower;

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

7 (11) shaft, tunnel or other mining

8 appurtenance;

9 (12) microwave station or similar facility;

10 [~~or~~]

11 (13) retaining wall, wall, fence gate or  
12 similar structure; or

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

14 "construction" also means:

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

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

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

19 [~~(17)~~] (18) similar work;

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

24 E. "engaging in business" means carrying on or  
25 causing to be carried on any activity with the purpose of

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1 direct or indirect benefit, except that:

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

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

12 F. "gross receipts" means the total amount of  
13 money or the value of other consideration received from  
14 selling property in New Mexico, from leasing property employed  
15 in New Mexico, from selling services performed outside New  
16 Mexico the product of which is initially used in New Mexico or  
17 from performing services in New Mexico. "Gross receipts" also  
18 means the total amount of money or the value of other  
19 consideration received from the sale of flowers, plants or  
20 other products by florists pursuant to orders placed in New  
21 Mexico that are filled and delivered outside New Mexico by an  
22 out-of-state florist. In an exchange in which the money or  
23 other consideration received does not represent the value of  
24 the property or service exchanged, "gross receipts" means the  
25 reasonable value of the property or service exchanged.

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(1) "Gross receipts" includes:

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

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

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

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

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;  
(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

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

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that

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

8 (e) any type of time-price  
9 differential; and

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

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

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

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1 construction;

2 H. "person" means:

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

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

13 I. "property" means real property, tangible  
14 personal property, licenses, franchises, patents, trademarks  
15 and copyrights. Tangible personal property includes  
16 electricity and manufactured homes;

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

22 K. "service" means all activities engaged in for  
23 other persons for a consideration, which activities involve  
24 predominantly the performance of a service as distinguished  
25 from selling or leasing property. "Service" includes

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

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

17 M. "secretary" means the secretary of taxation and  
18 revenue or the secretary's delegate;

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

24 O. "initial use" or "initially used" means the  
25 first employment for the intended purpose and does not include



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1 the following activities:

2 (1) observation of tests conducted by the  
3 performer of services;

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

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

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

11 (5) similar activities;

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

15 (1) advancing basic knowledge in a recognized  
16 field of natural science;

17 (2) advancing technology in a field of  
18 technical endeavor;

19 (3) the development of a new or improved  
20 product, process or system with new or improved function,  
21 performance, reliability or quality, whether or not the new or  
22 improved product, process or system is offered for sale, lease  
23 or other transfer;

24 (4) the development of new uses or  
25 applications for an existing product, process or system,

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1 whether or not the new use or application is offered as the  
2 rationale for purchase, lease or other transfer of the  
3 product, process or system;

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

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

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

25 R. "prescription drugs" means insulin and

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substances that are:

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

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

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