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HOUSE BILL 37

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Robert M Burpo

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO TAXATION; AMENDING SECTIONS OF THE GROSS RECEIPTS
AND COMPENSATING TAX ACT TO PROVIDE FOR TAXATION OF CERTAIN
SALES BY FLORISTS.**

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 2001, Chapter 65,
Section 1 and by Laws 2001, Chapter 343, 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;**

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

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

7 (1) road, highway, bridge, parking area or
8 related project;

9 (2) building, stadium or other structure;

10 (3) airport, subway or similar facility;

11 (4) park, trail, athletic field, golf course
12 or similar facility;

13 (5) dam, reservoir, canal, ditch or similar
14 facility;

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

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

20 (8) transmission line;

21 (9) radio, television or other tower;

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

23 (11) shaft, tunnel or other mining
24 appurtenance;

25 (12) microwave station or similar facility;

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

3 (14) similar work;

4 "construction" also means:

5 (15) leveling or clearing land;

6 (16) excavating earth;

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

9 (18) similar work;

10 D. "financial corporation" means any savings and
11 loan association or any incorporated savings and loan company,
12 trust company, mortgage banking company, consumer finance
13 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, or to provide services primarily to non-New
2 Mexico customers;

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

13 (1) "Gross receipts" includes:

14 (a) any receipts from sales of tangible
15 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
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; and

3 (e) amounts received by a New Mexico
4 florist from the sale of flowers, plants or other products
5 that are customarily sold by florists where the sale is made
6 pursuant to orders placed with the New Mexico florist that are
7 filled and delivered outside New Mexico by an out-of-state
8 florist.

9 (2) "Gross receipts" excludes:

10 (a) cash discounts allowed and taken;

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

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

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

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1 (e) any type of time-price
2 differential; [~~and~~]

3 (f) amounts received solely on behalf
4 of another in a disclosed agency capacity; and

5 (g) amounts received by a New Mexico
6 florist from the sale of flowers, plants or other products
7 that are customarily sold by florists where the sale is made
8 pursuant to orders placed with an out-of-state florist for
9 filling and delivery in New Mexico by a New Mexico florist.

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

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

25 H. "person" means:

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

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

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

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

20 K. "service" means all activities engaged in for
21 other persons for a consideration, which activities involve
22 predominantly the performance of a service as distinguished
23 from selling or leasing property. "Service" includes
24 activities performed by a person for its members or
25 shareholders. In determining what is a service, the intended

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

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

15 M. "secretary" means the secretary of taxation and
16 revenue or the secretary's delegate;

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

22 O. "initial use" or "initially used" means the
23 first employment for the intended purpose and does not include
24 the following activities:

25 (1) observation of tests conducted by the

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1 performer of services;

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

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

7 (4) inspection of preliminary prototypes
8 developed by the performer of services; or

9 (5) similar activities;

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

13 (1) advancing basic knowledge in a recognized
14 field of natural science;

15 (2) advancing technology in a field of
16 technical endeavor;

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

22 (4) the development of new uses or
23 applications for an existing product, process or system,
24 whether or not the new use or application is offered as the
25 rationale for purchase, lease or other transfer of the

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1 product, process or system;

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

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

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

23 R. "prescription drugs" means insulin and
24 substances that are:

25 (1) dispensed by or under the supervision of

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1 a licensed pharmacist or by a physician or other person
2 authorized under state law to do so;

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

6 (3) subject to the restrictions on sale
7 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;
8 and

9 S. "construction material" means tangible personal
10 property that becomes or is intended to become an ingredient
11 or component part of a construction project, but "construction
12 material" does not include a replacement fixture when the
13 replacement is not construction or a replacement part for a
14 fixture. "

15 Section 2. Section 7-9-55 NMSA 1978 (being Laws 1969,
16 Chapter 144, Section 45, as amended) is amended to read:

17 "7-9-55. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
18 GROSS RECEIPTS TAX--TRANSACTION IN INTERSTATE COMMERCE.--

19 A. Receipts from transactions in interstate
20 commerce may be deducted from gross receipts to the extent
21 that the imposition of the gross receipts tax would be
22 unlawful under the United States constitution.

23 B. Receipts from transactions in interstate
24 commerce may be deducted from governmental gross receipts.

25 C. Receipts from transmitting messages or

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1 conversations by radio other than from one point in this state
2 to another point in this state and receipts from the sale of
3 radio or television broadcast time when the advertising
4 message is supplied by or on behalf of a national or regional
5 seller or advertiser not having its principal place of
6 business in or being incorporated under the laws of this state
7 may be deducted from gross receipts. Commissions of
8 advertising agencies from performing services in this state
9 may not be deducted from gross receipts under this section.

10 D. Receipts from amounts received by a New Mexico
11 florist from the sale of flowers, plants or other products
12 that are customarily sold by florists where the sale is made
13 pursuant to orders placed with the New Mexico florist that are
14 filled and delivered outside New Mexico by an out-of-state
15 florist may not be deducted from gross receipts under this
16 section. "

17 Section 3. EFFECTIVE DATE. -- The effective date of the
18 provisions of this act is July 1, 2002.

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