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SENATE BILL 342

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

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS TAX DEDUCTIONS FOR CERTAIN FOOD SALES AND CERTAIN HEALTH SERVICES; INCREASING THE RATE OF THE GROSS RECEIPTS TAX; INCREASING CERTAIN DISTRIBUTIONS TO MUNICIPALITIES; CREATING A DISTRIBUTION TO COUNTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is enacted to read:

"~~[NEW MATERIAL]~~ DISTRIBUTION TO COUNTIES FROM GROSS RECEIPTS TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to three hundredths percent divided by the tax rate imposed by Section 7-9-4 NMSA 1978 multiplied by the net .140617.1

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1 receipts for the month attributable to the gross receipts tax  
2 from business locations within that county. "

3 Section 2. A new section of the Gross Receipts and  
4 Compensating Tax Act is enacted to read:

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

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

10 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--MEDICAL AND  
11 HEALTH SERVICES.--Receipts from the provision of medical and  
12 other health services provided by licensed health  
13 practitioners that are not otherwise deductible pursuant to  
14 Section 7-9-77.1 NMSA 1978 may be deducted from gross  
15 receipts. "

16 Section 4. Section 7-1-6.4 NMSA 1978 (being Laws  
17 1983, Chapter 211, Section 9, as amended) is amended to read:

18 "7-1-6.4. DISTRIBUTION--MUNICIPALITY FROM GROSS RECEIPTS  
19 TAX.--

20 A. Except as provided in Subsection B of this  
21 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978  
22 shall be made to each municipality in an amount, subject to  
23 any increase or decrease made pursuant to Section 7-1-6.15  
24 NMSA 1978, equal to the product of the quotient of one and  
25 [~~two hundred twenty-five thousandths~~] four hundred eighty-five

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1 thousandths percent divided by the tax rate imposed by Section  
2 7-9-4 NMSA 1978 [~~times~~] multiplied by the net receipts for the  
3 month attributable to the gross receipts tax from business  
4 locations:

5 (1) within that municipality;

6 (2) on land owned by the state, commonly  
7 known as the "state fair grounds", within the exterior  
8 boundaries of that municipality;

9 (3) outside the boundaries of any  
10 municipality on land owned by that municipality; and

11 (4) on an Indian reservation or pueblo grant  
12 in an area that is contiguous to that municipality and in  
13 which the municipality performs services pursuant to a  
14 contract between the municipality and the Indian tribe or  
15 Indian pueblo if:

16 (a) the contract describes an area in  
17 which the municipality is required to perform services and  
18 requires the municipality to perform services that are  
19 substantially the same as the services the municipality  
20 performs for itself; and

21 (b) the governing body of the  
22 municipality has submitted a copy of the contract to the  
23 secretary.

24 B. If the reduction made by Laws 1991, Chapter 9,  
25 Section 9 to the distribution under this section impairs the

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1 ability of a municipality to meet its principal or interest  
2 payment obligations for revenue bonds outstanding prior to  
3 July 1, 1991 that are secured by the pledge of all or part of  
4 the municipality's revenue from the distribution made under  
5 this section, then the amount distributed pursuant to this  
6 section to that municipality shall be increased by an amount  
7 sufficient to meet any required payment, provided that the  
8 distribution amount does not exceed the amount that would have  
9 been due that municipality under this section as it was in  
10 effect on June 30, 1992. "

11 Section 5. Section 7-9-3 NMSA 1978 (being Laws 1978,  
12 Chapter 46, Section 1, as amended by Laws 2001, Chapter 65,  
13 Section 1 and also by Laws 2001, Chapter 343, Section 1) is  
14 amended to read:

15 "7-9-3. DEFINITIONS. --As used in the Gross Receipts and  
16 Compensating Tax Act:

17 A. "department" means the taxation and revenue  
18 department, the secretary of taxation and revenue or any  
19 employee of the department exercising authority lawfully  
20 delegated to that employee by the secretary;

21 B. "buying" or "selling" means any transfer of  
22 property for consideration or any performance of service for  
23 consideration;

24 C. "construction" means building, altering,  
25 repairing or demolishing in the ordinary course of business

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1 any:

2 (1) road, highway, bridge, parking area or  
3 related project;

4 (2) building, stadium or other structure;

5 (3) airport, subway or similar facility;

6 (4) park, trail, athletic field, golf course  
7 or similar facility;

8 (5) dam, reservoir, canal, ditch or similar  
9 facility;

10 (6) sewerage or water treatment facility,  
11 power generating plant, pump station, natural gas compressing  
12 station, gas processing plant, coal gasification plant,  
13 refinery, distillery or similar facility;

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

15 (8) transmission line;

16 (9) radio, television or other tower;

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

18 (11) shaft, tunnel or other mining

19 appurtenance;

20 (12) microwave station or similar facility;

21 (13) retaining wall, wall, fence gate or  
22 similar structure; or

23 (14) similar work;

24 "construction" also means:

25 (15) leveling or clearing land;

. 140617. 1

1 (16) excavating earth;

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

4 (18) similar work;

5 D. "financial corporation" means any savings and  
6 loan association or any incorporated savings and loan company,  
7 trust company, mortgage banking company, consumer finance  
8 company or other financial corporation;

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

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

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

23 F. "gross receipts" means the total amount of  
24 money or the value of other consideration received from  
25 selling property in New Mexico, from leasing property employed

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1 in New Mexico, from selling services performed outside New  
2 Mexico the product of which is initially used in New Mexico or  
3 from performing services in New Mexico. In an exchange in  
4 which the money or other consideration received does not  
5 represent the value of the property or service exchanged,  
6 "gross receipts" means the reasonable value of the property or  
7 service exchanged.

8 (1) "Gross receipts" includes:

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

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

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

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

23 (2) "Gross receipts" excludes:

24 (a) cash discounts allowed and taken;

25 (b) New Mexico gross receipts tax,

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1 governmental gross receipts tax and leased vehicle gross  
2 receipts tax payable on transactions for the reporting period;

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

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

15 (e) any type of time-price  
16 differential; and

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

19 (3) When the sale of property or service is  
20 made under any type of charge, conditional or time-sales  
21 contract or the leasing of property is made under a leasing  
22 contract, the seller or lessor may elect to treat all  
23 receipts, excluding any type of time-price differential, under  
24 such contracts as gross receipts as and when the payments are  
25 actually received. If the seller or lessor transfers his



1 interest in any such contract to a third person, the seller or  
2 lessor shall pay the gross receipts tax upon the full sale or  
3 leasing contract amount, excluding any type of time-price  
4 differential;

5 G. "manufacturing" means combining or processing  
6 components or materials to increase their value for sale in  
7 the ordinary course of business, but does not include  
8 construction;

9 H. "person" means:

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

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

20 I. "property" means real property, tangible  
21 personal property, licenses, franchises, patents, trademarks  
22 and copyrights. Tangible personal property includes  
23 electricity and manufactured homes;

24 J. "leasing" means an arrangement whereby, for a  
25 consideration, property is employed for or by any person other

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1 than the owner of the property, except that the granting of a  
2 license to use property is the sale of a license and not a  
3 lease;

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

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

24 M "secretary" means the secretary of taxation and  
25 revenue or the secretary's delegate;

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

6           O. "initial use" or "initially used" means the  
7 first employment for the intended purpose and does not include  
8 the following activities:

9                   (1) observation of tests conducted by the  
10 performer of services;

11                   (2) participation in progress reviews,  
12 briefings, consultations and conferences conducted by the  
13 performer of services;

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

16                   (4) inspection of preliminary prototypes  
17 developed by the performer of services; or

18                   (5) similar activities;

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

22                   (1) advancing basic knowledge in a recognized  
23 field of natural science;

24                   (2) advancing technology in a field of  
25 technical endeavor;

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1 (3) the development of a new or improved  
2 product, process or system with new or improved function,  
3 performance, reliability or quality, whether or not the new or  
4 improved product, process or system is offered for sale, lease  
5 or other transfer;

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

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

15 (6) the design and development of prototypes  
16 or the integration of systems incorporating advances,  
17 developments or improvements included in Paragraphs (1)  
18 through (5) of this subsection;

19 Q. "local option gross receipts tax" means a tax  
20 authorized to be imposed by a county or municipality upon the  
21 taxpayer's gross receipts and required to be collected by the  
22 department at the same time and in the same manner as the  
23 gross receipts tax; "local option gross receipts tax" includes  
24 the taxes imposed pursuant to the Municipal Local Option Gross  
25 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax

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1 Act, County Local Option Gross Receipts Taxes Act, Local  
2 Hospital Gross Receipts Tax Act, County Correctional Facility  
3 Gross Receipts Tax Act and such other acts as may be enacted  
4 authorizing counties or municipalities to impose taxes on  
5 gross receipts, which taxes are to be collected by the  
6 department;

7 R. "prescription drugs" means insulin and  
8 substances that are:

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

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

15 (3) subject to the restrictions on sale  
16 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;  
17 [~~and~~]

18 S. "construction material" means tangible personal  
19 property that becomes or is intended to become an ingredient  
20 or component part of a construction project, but "construction  
21 material" does not include a replacement fixture when the  
22 replacement is not construction or a replacement part for a  
23 fixture;

24 T. "food" means any food or food product for home  
25 consumption that meets the definition of food in 7 USCA

. 140617. 1

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1 2012(g)(1) for purposes of the federal food stamp program;

2 U. "retail food store" means an establishment that  
3 sells food for home preparation and consumption that meets the  
4 definition of retail food store in 7 USCA 2012(k)(1) for  
5 purposes of the federal food stamp program, whether or not the  
6 establishment participates in the food stamp program; and

7 V. "licensed health practitioner" means:

8 (1) a chiropractic physician licensed  
9 pursuant to the provisions of the Chiropractic Physician  
10 Practice Act;

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

13 (3) a physician or physician assistant  
14 licensed pursuant to the provisions of Chapter 61, Article 6  
15 NMSA 1978;

16 (4) an osteopathic physician licensed  
17 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978  
18 or an osteopathic physician's assistant licensed pursuant to  
19 the provisions of the Osteopathic Physicians' Assistants Act;

20 (5) a doctor of oriental medicine licensed  
21 pursuant to the provisions of the Acupuncture and Oriental  
22 Medicine Practice Act;

23 (6) a podiatrist licensed pursuant to the  
24 provisions of the Podiatry Act;

25 (7) an optometrist licensed pursuant to the

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1 provisions of the Optometry Act;

2 (8) a psychologist licensed pursuant to the  
3 provisions of the Professional Psychologist Act;

4 (9) a registered nurse or licensed practical  
5 nurse licensed pursuant to the provisions of the Nursing  
6 Practice Act;

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

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

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

14 (13) a respiratory care practitioner licensed  
15 pursuant to the provisions of the Respiratory Care Act. "

16 Section 6. Section 7-9-4 NMSA 1978 (being Laws 1966,  
17 Chapter 47, Section 4, as amended) is amended to read:

18 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
19 "GROSS RECEIPTS TAX".--

20 A. For the privilege of engaging in business, an  
21 excise tax equal to five and one-half percent of gross  
22 receipts is imposed on any person engaging in business in New  
23 Mexico.

24 B. The tax imposed by this section shall be  
25 referred to as the "gross receipts tax". "

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