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SENATE BILL 321

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO TAXATION; PROVIDING AN EXCLUSION FROM THE
DEFINITION OF "GROSS RECEIPTS".

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

Section 1. Section 7-9-3.5 NMSA 1978 (being Laws 2003,
Chapter 272, Section 3, as amended) is amended to read:

"7-9-3.5. DEFINITION--GROSS RECEIPTS.--

A. As used in the Gross Receipts and Compensating
Tax Act:

(1) "gross receipts" means the total amount of
money or the value of other consideration received from selling
property located in New Mexico, from leasing or licensing
property employed in New Mexico, from selling services
performed outside New Mexico, the product of which is initially
used in New Mexico, or from performing services in New Mexico.

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1 In an exchange in which the money or other consideration
2 received does not represent the value of the property or
3 service exchanged, "gross receipts" means the reasonable value
4 of the property or service exchanged;

5 (2) "gross receipts" includes:

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

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

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

17 (d) amounts received from transmitting
18 messages or conversations by persons providing telephone or
19 telegraph services;

20 (e) amounts received by a New Mexico
21 florist from the sale of flowers, plants or other products that
22 are customarily sold by florists where the sale is made
23 pursuant to orders placed with the New Mexico florist that are
24 filled and delivered outside New Mexico by an out-of-state
25 florist; and

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1 (f) the receipts of a home service
2 provider from providing mobile telecommunications services to
3 customers whose place of primary use is in New Mexico if: 1)
4 the mobile telecommunications services originate and terminate
5 in the same state, regardless of where the services originate,
6 terminate or pass through; and 2) the charges for mobile
7 telecommunications services are billed by or for a customer's
8 home service provider and are deemed provided by the home
9 service provider. For the purposes of this section, "home
10 service provider", "mobile telecommunications services",
11 "customer" and "place of primary use" have the meanings given
12 in the federal Mobile Telecommunications Sourcing Act; and

13 (3) "gross receipts" excludes:

14 (a) cash discounts allowed and taken;

15 (b) New Mexico gross receipts tax,
16 governmental gross receipts tax and leased vehicle gross
17 receipts tax payable on transactions for the reporting period;

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

21 (d) any gross receipts or sales taxes
22 imposed by an Indian nation, tribe or pueblo; provided that the
23 tax is approved, if approval is required by federal law or
24 regulation, by the secretary of the interior of the United
25 States; and provided further that the gross receipts or sales

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1 tax imposed by the Indian nation, tribe or pueblo provides a
2 reciprocal exclusion for gross receipts, sales or gross
3 receipts-based excise taxes imposed by the state or its
4 political subdivisions;

5 (e) any type of time-price differential;

6 (f) amounts received solely on behalf of
7 another in a disclosed agency capacity; ~~and~~

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

13 (h) amounts received by a temporary
14 staffing firm from a customer for direct employee-related costs
15 of services performed by employees of the temporary staffing
16 firm assigned to work for the customer, including wages,
17 salaries, bonuses, commissions, employee benefits, expense
18 reimbursements, insurance and employment taxes.

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

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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."

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