

AN ACT

RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS AND  
COMPENSATING TAX ACT; PROVIDING FOR SPECIAL AGREEMENTS TO  
ALLOW PAYMENT OF TAXES BY A PERSON OTHER THAN THE TAXPAYER;  
DECLARING AN EMERGENCY.

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:

"SPECIAL AGREEMENTS--ALTERNATIVE GROSS RECEIPTS  
TAXPAYER.--

A. To allow the payment of gross receipts tax by a  
person who is not the liable taxpayer, the secretary may  
approve a request by a person to assume the liability for  
gross receipts tax or governmental gross receipts tax owed by  
another provided that the person requesting approval agrees to  
assume the rights and responsibilities as taxpayer pursuant to  
the Tax Administration Act for:

(1) an agreement to collect and pay over  
taxes for persons in a business relationship, which is an  
agreement that may be entered into by persons who wish to  
remit gross receipts tax on behalf of another person with whom  
the taxpayer has a business relationship;

(2) an agreement to collect and pay over  
taxes for a direct sales company:

(a) which agreement may be entered into by a direct sales company that has distributors of tangible personal property in New Mexico; and

(b) in which the direct sales company agrees to pay the gross receipts tax liability of the distributor at the same time the company remits its own gross receipts tax; and

(3) a manufacturer's agreement to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company, which agreement:

(a) allows a person engaged in manufacturing in New Mexico to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company on receipts from sales of utilities that are: 1) not consumed in the manufacturing process; or 2) not otherwise deductible; and

(b) is only applicable to transactions between a manufacturer and a utility company that are associated with the gross receipts tax deduction pursuant to Subsection B of Section 7-9-46 NMSA 1978.

B. To enter into the agreements authorized in this section, a person shall complete a form prescribed by the secretary and provide any additional information or documentation required by department rules or instructions that will assist in the approval of agreements listed in

Subsection A of this section.

C. Once approved, an agreement shall be effective only for the period of time specified in each agreement. Any person entering into an agreement to pay tax on behalf of another person shall fulfill all of the requirements set out in the agreement. Failure to fulfill all of the requirements set out in the agreement may result in the revocation of the agreement by the department. An approved agreement may only be revoked prior to expiration by written notification to all persons who are party to the agreement and shall be applied beginning on the first day of a month that occurs at least one month following the date on which the agreement is revoked.

D. A person approved by the secretary to pay the gross receipts tax or governmental gross receipts tax pursuant to Subsection A of this section shall be deemed to be the taxpayer with respect to that tax pursuant to the Tax Administration Act with respect to all rights and responsibilities related to that tax, except that:

(1) the person shall not be entitled to take any credit against the tax for which the person has assumed liability pursuant to this section; and

(2) the person shall not claim a refund of tax on the basis that the person is not statutorily liable to pay the tax.

E. The department shall relieve from liability and

hold harmless from the payment of a tax assumed by another person pursuant to an agreement approved pursuant to this section a taxpayer that would otherwise be liable for that tax."

**SECTION 2.** Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended) is amended to read:

"7-1-3. DEFINITIONS.--Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

A. "automated clearinghouse transaction" means an electronic credit or debit transmitted through an automated clearinghouse payable to the state treasurer and deposited with the fiscal agent of New Mexico;

B. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "electronic payment" means a payment made by automated clearinghouse deposit, any funds wire transfer system or a credit card, debit card or electronic cash transaction through the internet;

D. "employee of the department" means any employee

of the department, including the secretary, or any person acting as agent or authorized to represent or perform services for the department in any capacity with respect to any law made subject to administration and enforcement under the provisions of the Tax Administration Act;

E. "financial institution" means any state or federally chartered, federally insured depository institution;

F. "Internal Revenue Code" means the Internal Revenue Code of 1986, as that code may be amended or its sections renumbered;

G. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

H. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County

Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

I. "managed audit" means a review and analysis conducted by a taxpayer under an agreement with the department to determine the taxpayer's compliance with a tax administered pursuant to the Tax Administration Act and the presentation of the results to the department for assessment of tax found to be due;

J. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

K. "overpayment" means an amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by a person to the department or withheld from the person in excess of tax due from the person to the state at the time of the payment or at the time the amount withheld is credited against tax due;

L. "paid" includes the term "paid over";

M. "pay" includes the term "pay over";

N. "payment" includes the term "payment over";

O. "person" means any individual, estate, trust,

receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; and "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

P. "property" means property or rights to property;

Q. "property or rights to property" means any tangible property, real or personal, or any intangible property of a taxpayer;

R. "return" means any tax or information return, declaration of estimated tax or claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act and filed with the secretary or the secretary's delegate by or on behalf of any person;

S. "return information" means a taxpayer's name,

address, government-issued identification number and other identifying information; any information contained in or derived from a taxpayer's return; any information with respect to any actual or possible administrative or legal action by an employee of the department concerning a taxpayer's return, such as audits, managed audits, denial of credits or refunds, assessments of tax, penalty or interest, protests of assessments or denial of refunds or credits, levies or liens; or any other information with respect to a taxpayer's return or tax liability that was not obtained from public sources or that was created by an employee of the department; but "return information" does not include statistical data or other information that cannot be associated with or directly or indirectly identify a particular taxpayer;

T. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

U. "secretary or the secretary's delegate" means the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

V. "security" means money, property or rights to property or a surety bond;



W. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States;

X. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under provision of any law made subject to administration and enforcement according to the provisions of the Tax Administration Act and, unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto; "tax" also means any amount of any abatement of tax made or any credit, rebate or refund paid or credited by the department under any law subject to administration and enforcement under the provisions of the Tax Administration Act to any person contrary to law and includes, unless the context requires otherwise, the amount of any interest or civil penalty relating thereto;

Y. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid, or a person who entered into a special agreement to assume the liability of gross receipts tax or governmental gross receipts tax of another person and the special agreement was approved by the secretary pursuant to the Tax Administration Act; and

Z. "tax return preparer" means a person who prepares for others for compensation or who employs one or more persons to prepare for others for compensation any return of income tax, a substantial portion of any return of income tax, any claim for refund with respect to income tax or a substantial portion of any claim for refund with respect to income tax; provided that a person shall not be a "tax return preparer" merely because such person:

(1) furnishes typing, reproducing or other mechanical assistance;

(2) is an employee who prepares an income tax return or claim for refund with respect to an income tax return of the employer, or of an officer or employee of the employer, by whom the person is regularly and continuously employed; or

(3) prepares as a trustee or other fiduciary an income tax return or claim for refund with respect to income tax for any person."

**SECTION 3. APPLICABILITY.**--The provisions of this act apply to gross receipts or governmental gross receipts received in tax periods beginning on or after May 1, 2013.

**SECTION 4. EMERGENCY.**--It is necessary for the public peace, health and safety that this act take effect immediately.

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