

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 278

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; ADDING MANUFACTURING SERVICE PROVIDERS TO
A GROSS RECEIPTS TAX DEDUCTION FOR MANUFACTURERS ~~SFC~~;

~~PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR ACCOUNTING
SERVICES.~~ ←SFC SFC→. ←SFC

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 2019, Chapter 270,

.220255.3AIC March 19, 2021 (2:43pm)

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Section 23 and by Laws 2019, Chapter 274, Section 11) is amended to read:

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

A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

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

C. "digital good" means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone;

D. "financial corporation" means a savings and loan association or an incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

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

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

(2) participation in progress reviews, briefings, consultations and conferences conducted by the

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performer of services;

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

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

(5) similar activities;

F. "leasing" means an arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is licensing and is not a lease;

G. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon a taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax;

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

I. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction services; farming; electric power generation; processing of natural resources, including hydrocarbons; or the processing or preparation of meals for immediate consumption;

J. "manufacturing service" means the service of combining or processing components or materials owned by

another, but does not include construction services; farming; electric power generation; processing of natural resources, including hydrocarbons; or the processing or preparation of meals for immediate consumption;

[J.] K. "marketplace provider" means a person who facilitates the sale, lease or license of tangible personal property or services or licenses for use of real property on a marketplace seller's behalf, or on the marketplace provider's own behalf, by:

(1) listing or advertising the sale, lease or license, by any means, whether physical or electronic, including by catalog, internet website or television or radio broadcast; and

(2) either directly or indirectly, through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider's services;

[K.] L. "marketplace seller" means a person who sells, leases or licenses tangible personal property or services or who licenses the use of real property through a marketplace provider;

[L.] M. "person" means:

(1) an individual, estate, trust, receiver,

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cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

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

[M.] N. "property" means:

- (1) real property;
- (2) tangible personal property, including electricity and manufactured homes;
- (3) licenses, including licenses of digital goods, but not including the licenses of copyrights, trademarks or patents; and
- (4) franchises;

[N.] O. "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

- (1) advancing basic knowledge in a recognized field of natural science;
- (2) advancing technology in a field of technical endeavor;
- (3) developing a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other

transfer;

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

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

(6) designing and developing prototypes or integrating systems incorporating the advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

[Θ-] P. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

[P-] Q. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a

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construction project. That tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. Sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property; and

[Q-] R. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state."

SECTION 2. Section 7-9-46 NMSA 1978 (being Laws 1969, Chapter 144, Section 36, as amended) is amended to read:

"7-9-46. DEDUCTION--GROSS RECEIPTS [~~TAX~~]--GOVERNMENTAL GROSS RECEIPTS--SALES TO MANUFACTURERS AND MANUFACTURING SERVICE PROVIDERS.--

A. Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as an ingredient or component part of the product that the buyer is in the business of manufacturing.

B. Receipts from selling [~~tangible personal property that is~~] a manufacturing consumable [~~and used in such a way that it is consumed in the manufacturing process of a product, provided that the tangible personal property is not a~~

~~tool or equipment used to create the manufactured product, to a person engaged in the business of manufacturing that product and who delivers a nontaxable transaction certificate to the seller]~~ to a manufacturer or a manufacturing service provider may be deducted [~~in the following percentages~~] from gross receipts or from governmental gross receipts

~~(1) twenty percent of receipts received prior to January 1, 2014;~~

~~(2) forty percent of receipts received in calendar year 2014;~~

~~(3) sixty percent of receipts received in calendar year 2015;~~

~~(4) eighty percent of receipts received in calendar year 2016; and~~

~~(5) one hundred percent of receipts received on or after January 1, 2017]~~ if the buyer delivers a nontaxable transaction certificate to the seller.

C. Receipts from selling or leasing qualified equipment may be deducted from gross receipts if the sale is made to, or the lease is entered into with, a person engaged in the business of manufacturing or a manufacturing service provider who delivers a nontaxable transaction certificate to the seller; provided that a manufacturer or manufacturing service provider delivering a nontaxable transaction certificate with respect to the qualified equipment shall not

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claim an investment credit pursuant to the Investment Credit Act for that same equipment.

[G.] D. The purpose of the deductions provided in this section is to encourage manufacturing businesses to locate in New Mexico and to reduce the tax burden, including reducing pyramiding, on the tangible personal property that is consumed in the manufacturing process and that is purchased by manufacturing businesses in New Mexico.

[D.] E. The department shall annually report to the revenue stabilization and tax policy committee the aggregate amount of deductions taken pursuant to this section, the number of taxpayers claiming each of the deductions and any other information that is necessary to determine that the deductions are performing the purposes for which they are enacted.

[E.] F. A taxpayer deducting gross receipts pursuant to this section shall report the amount deducted separately for each deduction provided in this section and attribute the amount of the deduction to the appropriate authorization provided in this section in a manner required by the department that facilitates the evaluation by the legislature of the benefit to the state of these deductions.

[F.] G. As used in [~~Subsection B of~~] this section:

(1) "manufacturing consumable" means tangible personal property, other than qualified equipment or an ingredient or component part of a manufactured product, that is incorporated into, destroyed, depleted or transformed in the process of manufacturing a product, [~~(+)~~] including electricity, fuels, water, manufacturing aids and supplies,

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chemicals, gases [~~repair parts, spares~~] and other tangibles used to manufacture a product [~~but (2) excluding tangible personal property used in (a) the generation of power; (b) the processing of natural resources, including hydrocarbons; and (c) the preparation of meals for immediate consumption on or off-premises~~];

(2) "manufacturing operation" means a plant operated by a manufacturer or manufacturing service provider that employs personnel to perform production tasks to produce goods, in conjunction with machinery and equipment; and

(3) "qualified equipment" means machinery, equipment and tools, including component, repair, replacement and spare parts thereof, that are used directly in the manufacturing process of a manufacturing operation. "Qualified equipment" includes computer hardware and software used directly in the manufacturing process of a manufacturing operation but excludes any motor vehicle that is required to be registered in this state pursuant to the Motor Vehicle Code."

SFC → ~~SECTION 3. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:~~

~~"[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--ACCOUNTING SERVICES.--"~~

~~A. Receipts from the sale of accounting services may be deducted from gross receipts if:~~

~~(1) the sale is made to a business that has a~~

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~~New Mexico tax identification number or an equivalent tax identification number from another state; and~~

~~(2) the purchaser presents to the seller a nontaxable transaction certificate or alternative evidence entitling a person to a deduction pursuant to Section 7-9-43 NMSA 1978.~~

~~B. A taxpayer allowed a deduction pursuant to this section shall report the amount of the deduction separately in a manner required by the department.~~

~~C. As used in this section:~~

~~(1) "accounting services" means the systematic and comprehensive recording of financial transactions pertaining to a business entity and the process of summarizing, analyzing and reporting these transactions to oversight agencies or tax collection entities, including certified public auditing, attest services and preparing financial statements, bookkeeping, tax return preparation, advice and consulting and, where applicable, representing taxpayers before tax collection agencies. "Accounting services" does not include, except as provided with respect to financial management services, investment advice, wealth management advice or consulting or any tax return preparation, advice, counseling or representation for individuals, regardless of whether those individuals are owners of pass-through entities, such as partnerships, limited liability companies or S-corporations;~~

~~(2) "financial management services" means managing and directing the investments of, or providing investment advisory services to, a hedge fund, mutual fund or~~

~~non-captive real estate investment trust;~~

~~(3) "hedge fund" means a private investment fund or pool, the assets of which are managed by a professional management firm that:~~

~~(a) trades or invests, through public market or private transactions, in securities, commodities, currencies, derivatives or similar classes of financial assets; or~~

~~(b) that is not an investment company under 15 USC 80a-3(c)(1) or 15 USC 80a-3(c)(7);~~

~~(4) "mutual fund" means an entity registered pursuant to the federal Investment Company Act of 1940; and~~

~~(5) "non-captive real estate investment trust" means an entity described in Section 856(a) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, the investments of which are limited to interest in mortgages on real property and shares of or transferable certificates of beneficial interest in an entity described in Section 856(a). "Non-captive real estate investment trust" does not mean a captive real estate investment trust as defined in the Corporate Income and Franchise Tax Act."~~←SFC

SECTION SFC→4.←SFC SFC→3.←SFC EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2022.

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