

HOUSE BILL 47

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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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; EXCLUDING PERSONAL CARE SERVICES, HOME HEALTH CARE AND HOSPICE CARE FROM DESTINATION-BASED SOURCING RULES FOR PURPOSES OF DETERMINING GROSS RECEIPTS TAX LIABILITY; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-1-14 NMSA 1978 (being Laws 2020, Chapter 80, Section 1) is amended to read:

"7-1-14. HHC → ~~BUSINESS LOCATION INSTRUCTIONS FOR~~

.221841.2AIC January 27, 2022 (9:55am)

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~~PURPOSES OF~~ ←HHHC HHHC→ **SOURCING RULES** ←HHHC REPORTING GROSS RECEIPTS AND USE--LOCATION-CODE DATABASE AND LOCATION-RATE DATABASE.--

A. For purposes of the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts or compensating tax, a person that has gross receipts and a person using property or services in New Mexico in a taxable manner shall report the gross receipts to the proper business location as provided in this section.

B. The business location for gross receipts from the sale, lease or granting of a license to use real property located in New Mexico, and any related deductions, shall be the location of the property.

C. The business location for gross receipts from the sale or license of tangible personal property, and any related deductions, shall be at the following locations:

(1) if the property is received by the purchaser at the New Mexico HHHC→**business**←HHHC location of the seller, the location of the seller;

(2) if the property is not received by the purchaser at HHHC→**a business**←HHHC HHHC→**the**←HHHC location of the seller, the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the

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seller;

(3) if Paragraphs (1) and (2) of this subsection do not apply, the location indicated by an address for the purchaser available from the business records of the seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith;

(4) if Paragraphs (1) through (3) of this subsection do not apply, the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith; or

(5) if Paragraphs (1) through (4) of this subsection do not apply, including a circumstance in which the seller is without sufficient information to apply those standards, the location from which the property was shipped or transmitted.

D. The business location for gross receipts from the lease of tangible personal property, including vehicles, other transportation equipment and other mobile tangible personal property, and any related deductions, shall be the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this

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address does not constitute bad faith. The HHHC→primary
business location←HHHC HHHC→location of primary use←HHHC shall
not be altered by intermittent use at different locations, such
as use of business property that accompanies employees on
business trips and service calls.

E. The business location for gross receipts from
the sale, lease or license of franchises, and any related
deductions, shall be where the franchise is used.

F. The business location for gross receipts from
the performance or sale of the following services, and any
related deductions, shall be at the following locations:

(1) for professional services performed in New
Mexico, other than construction-related services, or performed
outside New Mexico when the product of the service is initially
used in New Mexico, the location of the performer of the
service or seller of the product of the service, as
appropriate;

(2) for home health services, hospice services
and personal care services performed in New Mexico, the
location of the performer of the service or seller of the
product of the service;

[(-2)] (3) for construction services and
construction-related services performed for a construction
project in New Mexico, the location of the construction site;

[(-3)] (4) for services with respect to the

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selling of real estate located in New Mexico, the location of the real estate;

[~~(4)~~] (5) for transportation of persons or property in, into or from New Mexico, the location where the person or property enters the vehicle; and

[~~(5)~~] (6) for services other than those described in Paragraphs (1) through [~~(4)~~] (5) of this subsection, the location where the product of the service is delivered.

G. Except as provided in Subsection H of this section, HHHC→**the business location for**←HHHC uses of property or services subject to the compensating tax shall be HHHC→**reported at**←HHHC the HHHC→**business**←HHHC location at which gross receipts would have been required to be reported had the transaction been subject to the gross receipts tax.

H. If a person subject to the compensating tax can demonstrate that the first use upon which compensating tax is imposed occurred at a time and place different from the time and place of the purchase, then HHHC→**the business location for**←HHHC **the**←HHHC compensating tax shall be reported at the business location of the first use.

HHHC→~~I. The secretary shall designate codes to identify the business locations for a person's gross receipts, or use for purchases subject to the compensating tax, and deductions related to those receipts or that use shall be~~

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reported.←HHHC

HHHC→J.←HHHC HHHC→I.←HHHC The secretary shall develop a location-code database that provides the business location codes designated HHHC→by the secretary for the purposes of reporting←HHHC pursuant to HHHC→Subsection I of←HHHC this section. The secretary shall also develop and provide to taxpayers a location-rate database that sets out the tax rates applicable to business locations within the state, by address, and sellers who properly rely on this database shall not be liable for any additional tax due to the use of an incorrect rate.

HHHC→K.←HHHC HHHC→J.←HHHC As used in this section:

HHHC→(1)←HHHC "~~business location" means the code designated by the department to identify business locations and required to be used to report the gross receipts, or use for purchases subject to the compensating tax, and deductions related to those receipts or that use;~~←HHHC

HHHC→(2)←HHHC HHHC→(1)←HHHC "gross receipts" means, as applicable, "gross receipts" as used in the Gross Receipts and Compensating Tax Act and the Leased Vehicle Gross Receipts Tax Act and "interstate telecommunications gross receipts" in the Interstate Telecommunications Gross Receipts Tax Act;

HHHC→(3)←HHHC HHHC→(2)←HHHC "home health

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services" means skilled, intermittent and medically necessary services provided to a person in the person's home;

HHHC→(4)←HHHC HHHC→(3)←HHHC "hospice services" means services furnished to a person that are reasonable and necessary for the palliation or symptom management of a person's terminal illness and related conditions;

[(3)] HHHC→(5)←HHHC HHHC→(4)←HHHC "in-person service" means a service physically provided in person by the service provider, where the customer or the customer's real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed; [and]

HHHC→(6)←HHHC HHHC→(5)←HHHC "personal care services" means services that are provided to the elderly, people with disabilities and people with chronic or temporary conditions that assist those individuals with activities of daily living and to remain in the individuals' homes and communities; and

[(4)] HHHC→(7)←HHHC HHHC→(6)←HHHC
"professional service" means a service, other than an in-person service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform."

SECTION 2. EFFECTIVE DATE.--

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A. If this act takes effect on or before April 1, 2022, the effective date of the provisions of this act is April 1, 2022.

B. If this act takes effect after April 1, 2022, the effective date of the provisions of this act is June 1, 2022.

SECTION 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.