

1 HOUSE BILL 47

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

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5 and Cathrynn N. Brown and Martin Hickey  
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10 AN ACT

11 RELATING TO TAXATION; EXCLUDING PERSONAL CARE SERVICES, HOME  
12 HEALTH CARE AND HOSPICE CARE FROM DESTINATION-BASED SOURCING  
13 RULES FOR PURPOSES OF DETERMINING GROSS RECEIPTS TAX LIABILITY;  
14 DECLARING AN EMERGENCY.  
15

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

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

19 "7-1-14. BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF  
20 REPORTING GROSS RECEIPTS AND USE--LOCATION-CODE DATABASE AND  
21 LOCATION-RATE DATABASE.--

22 A. For purposes of the Gross Receipts and  
23 Compensating Tax Act, Interstate Telecommunications Gross  
24 Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any  
25 act authorizing the imposition of a local option gross receipts

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1 or compensating tax, a person that has gross receipts and a  
2 person using property or services in New Mexico in a taxable  
3 manner shall report the gross receipts to the proper business  
4 location as provided in this section.

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

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

12 (1) if the property is received by the  
13 purchaser at the New Mexico business location of the seller,  
14 the location of the seller;

15 (2) if the property is not received by the  
16 purchaser at a business location of the seller, the location  
17 indicated by instructions for delivery to the purchaser, or the  
18 purchaser's donee, when known to the seller;

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

24 (4) if Paragraphs (1) through (3) of this  
25 subsection do not apply, the location for the purchaser

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1 obtained during consummation of the sale, including the address  
2 of a purchaser's payment instrument, if no other address is  
3 available; provided that use of this address does not  
4 constitute bad faith; or

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

10 D. The business location for gross receipts from  
11 the lease of tangible personal property, including vehicles,  
12 other transportation equipment and other mobile tangible  
13 personal property, and any related deductions, shall be the  
14 location of primary use of the property, as indicated by the  
15 address for the property provided by the lessee that is  
16 available to the lessor from the lessor's records maintained in  
17 the ordinary course of business; provided that use of this  
18 address does not constitute bad faith. The primary business  
19 location shall not be altered by intermittent use at different  
20 locations, such as use of business property that accompanies  
21 employees on business trips and service calls.

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

25 F. The business location for gross receipts from

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1 the performance or sale of the following services, and any  
2 related deductions, shall be at the following locations:

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

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

13 [~~(2)~~] (3) for construction services and  
14 construction-related services performed for a construction  
15 project in New Mexico, the location of the construction site;

16 [~~(3)~~] (4) for services with respect to the  
17 selling of real estate located in New Mexico, the location of  
18 the real estate;

19 [~~(4)~~] (5) for transportation of persons or  
20 property in, into or from New Mexico, the location where the  
21 person or property enters the vehicle; and

22 [~~(5)~~] (6) for services other than those  
23 described in Paragraphs (1) through [~~(4)~~] (5) of this  
24 subsection, the location where the product of the service is  
25 delivered.

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1           G. Except as provided in Subsection H of this  
2 section, uses of property or services subject to the  
3 compensating tax shall be reported at the business location at  
4 which gross receipts would have been required to be reported  
5 had the transaction been subject to the gross receipts tax.

6           H. If a person subject to the compensating tax can  
7 demonstrate that the first use upon which compensating tax is  
8 imposed occurred at a time and place different from the time  
9 and place of the purchase, then compensating tax shall be  
10 reported at the business location of the first use.

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

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

23           K. As used in this section:

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

4 (2) "gross receipts" means, as applicable,  
5 "gross receipts" as used in the Gross Receipts and Compensating  
6 Tax Act and the Leased Vehicle Gross Receipts Tax Act and  
7 "interstate telecommunications gross receipts" in the  
8 Interstate Telecommunications Gross Receipts Tax Act;

9 (3) "home health services" means skilled,  
10 intermittent and medically necessary services provided to a  
11 person in the person's home;

12 (4) "hospice services" means services  
13 furnished to a person that are reasonable and necessary for the  
14 palliation or symptom management of a person's terminal illness  
15 and related conditions;

16 [~~(3)~~] (5) "in-person service" means a service  
17 physically provided in person by the service provider, where  
18 the customer or the customer's real or tangible personal  
19 property upon which the service is performed is in the same  
20 location as the service provider at the time the service is  
21 performed; [~~and~~]

22 (6) "personal care services" means services  
23 that are provided to the elderly, people with disabilities and  
24 people with chronic or temporary conditions that assist those  
25 individuals with activities of daily living and to remain in

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