

1 SENATE BILL 136

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

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; EXCLUDING OIL AND GAS PRODUCTION SERVICES
12 FROM DESTINATION-BASED SOURCING RULES FOR PURPOSES OF
13 DETERMINING GROSS RECEIPTS TAX LIABILITY; DECLARING AN
14 EMERGENCY.

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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 SOURCING RULES FOR REPORTING GROSS RECEIPTS AND USE--LOCATION-
21 CODE DATABASE AND 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~~] the location of the seller, the
17 location indicated by instructions for delivery to the
18 purchaser, or the 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 location of primary
19 [~~business location~~] use shall not be altered by intermittent
20 use at different locations, such as use of business property
21 that accompanies 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 oil and gas production services
10 performed in New Mexico, the New Mexico location of the
11 performer of the service or seller of the product of the
12 service, as appropriate;

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, the business location for uses of property or services
3 subject to the compensating tax shall be ~~[reported at]~~ the
4 ~~[business]~~ location at which gross receipts would have been
5 required to be reported had the transaction been subject to the
6 gross receipts tax.

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

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

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

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1 [K-] J. As used in this section:

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

7 (2) (1) "gross receipts" means, as
8 applicable, "gross receipts" as used in the Gross Receipts and
9 Compensating Tax Act and the Leased Vehicle Gross Receipts Tax
10 Act and "interstate telecommunications gross receipts" in the
11 Interstate Telecommunications Gross Receipts Tax Act;

12 ~~[(3)]~~ (2) "in-person service" means a service
13 physically provided in person by the service provider, where
14 the customer or the customer's real or tangible personal
15 property upon which the service is performed is in the same
16 location as the service provider at the time the service is
17 performed; ~~[and]~~

18 (3) "oil and gas production services" means
19 services necessary for the production or severance of products,
20 as that term is used in the Oil and Gas Emergency School Tax
21 Act, including services conducted in preparation for such
22 severance, field operations, transfer of the products off a
23 lease site, operation monitoring, operation maintenance and
24 workover drilling; and

25 (4) "professional service" means a service,

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1 other than an in-person service, that requires either an
2 advanced degree from an accredited post-secondary educational
3 institution or a license from the state to perform."

4 SECTION 2. EFFECTIVE DATE.--

5 A. If this act takes effect on or before April 1,
6 2022, the effective date of the provisions of this act is April
7 1, 2022.

8 B. If this act takes effect after April 1, 2022,
9 the effective date of the provisions of this act is June 1,
10 2022.

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