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HOUSE BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; ALLOWING BUSINESSES TO ELECT ORIGIN-BASED SOURCING RULES FOR REPORTING GROSS RECEIPTS AND USE OF CERTAIN SERVICES.

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. [~~BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF~~] SOURCING RULES--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

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1 person using property or services in New Mexico in a taxable
2 manner shall report the gross receipts or use to the proper
3 business location as provided in this section.

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

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

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

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

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

23 (4) if Paragraphs (1) through (3) of this
24 subsection do not apply, the location for the purchaser
25 obtained during consummation of the sale, including the address

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

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

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

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

24 F. The business location for gross receipts from
25 the performance or sale of the following services, and any

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1 related deductions, shall be at the following locations:

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

8 (2) for construction services and
9 construction-related services performed for a construction
10 project in New Mexico, the location of the construction site;

11 (3) for services with respect to the selling
12 of real estate located in New Mexico, the location of the real
13 estate;

14 (4) for transportation of persons or property
15 in, into or from New Mexico, the location where the person or
16 property enters the vehicle; and

17 (5) for services other than those described in
18 Paragraphs (1) through (4) of this subsection, the location of
19 the performer of the service or seller of the product of the
20 service, as appropriate, unless the business elects to use the
21 location where the product of the service is delivered. The
22 business shall notify the department of the election, in
23 writing, no later than the date on which the taxpayer files the
24 return for the first taxable period to which the election
25 applies. The election shall apply to that taxable period and

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1 to each taxable period thereafter until the taxpayer notifies
2 the department, in writing, that the election is terminated;
3 provided that an election shall not terminate until the method
4 using the location of the performer of the service or seller of
5 the product of the service has been used for at least thirty-
6 six consecutive taxable periods.

7 G. Except as provided in Subsection H of this
8 section, the business location for uses of property or services
9 subject to the compensating tax shall be [~~reported at~~] the
10 [~~business~~] location at which gross receipts would have been
11 required to be reported had the transaction been subject to the
12 gross receipts tax.

13 H. If a person subject to the compensating tax can
14 demonstrate that the first use upon which compensating tax is
15 imposed occurred at a time and place different from the time
16 and place of the purchase, then the business location for the
17 compensating tax shall be [~~reported at~~] the [~~business~~] location
18 of the first use.

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

23 J.] I. The secretary shall develop a location-code
24 database that provides the business location codes designated
25 by the secretary for purposes of reporting pursuant to

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1 ~~[Subsection I of]~~ this section. The secretary shall also
2 develop and provide to taxpayers a location-rate database that
3 sets out the tax rates applicable to business locations within
4 the state, by address, and sellers who properly rely on this
5 database shall not be liable for any additional tax due to the
6 use of an incorrect rate.

7 ~~[K.]~~ J. As used in this section:

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

13 ~~(2)]~~ (1) "gross receipts" means, as
14 applicable, "gross receipts" as used in the Gross Receipts and
15 Compensating Tax Act and the Leased Vehicle Gross Receipts Tax
16 Act and "interstate telecommunications gross receipts" in the
17 Interstate Telecommunications Gross Receipts Tax Act;

18 ~~[(3)]~~ (2) "in-person service" means a service
19 physically provided in person by the service provider, where
20 the customer or the customer's real or tangible personal
21 property upon which the service is performed is in the same
22 location as the service provider at the time the service is
23 performed; and

24 ~~[(4)]~~ (3) "professional service" means a
25 service, other than an in-person service, that requires either

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1 an advanced degree from an accredited post-secondary
2 educational institution or a license from the state to
3 perform."

4 SECTION 2. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2023.

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