

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; PROVIDING ALTERNATIVE EVIDENCE OTHER THAN
A NONTAXABLE TRANSACTION CERTIFICATE TO ENTITLE PERSONS TO A
DEDUCTION FROM GROSS RECEIPTS.

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

SECTION 1. Section 7-9-43 NMSA 1978 (being Laws 1966,
Chapter 47, Section 13, as amended) is repealed and a new
Section 7-9-43 NMSA 1978 is enacted to read:

"7-9-43. [NEW MATERIAL] NONTAXABLE TRANSACTION
CERTIFICATE AND ALTERNATIVE EVIDENCE REQUIRED TO ENTITLE
PERSONS TO DEDUCTIONS.--

A. Except as provided in Subsection B of this
section, a person may establish entitlement to a deduction from
gross receipts allowed pursuant to the Gross Receipts and
Compensating Tax Act by obtaining a properly executed

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1 nontaxable transaction certificate from the purchaser.

2 B. Except as provided in Subsection C of this
3 section, a person who does not comply with Subsection A of this
4 section may establish entitlement to a deduction from gross
5 receipts by presenting alternative evidence that demonstrates
6 the facts necessary to support entitlement to the deduction,
7 but the burden of proof is on that person. Alternative
8 evidence includes:

9 (1) invoices or contracts that identify the
10 nature of the transaction;

11 (2) documentation as to the purchaser's use or
12 disposition of the property or service;

13 (3) a statement from the purchaser summarizing
14 the purchaser's use or disposition of the property or service
15 purchased from the seller, which shall include the following
16 information:

17 (a) the seller's name;

18 (b) the date of invoice or date of
19 transaction;

20 (c) the invoice number or a copy of the
21 invoice;

22 (d) a copy of purchase order, if
23 available;

24 (e) the amount of purchase; and

25 (f) a description of the property or

1 service purchased or leased;

2 (4) a statement of the purchaser indicating
3 that the purchaser sold or intends to resell the property or
4 service purchased from the seller, either by itself or in
5 combination with other property or services, in the ordinary
6 course of business; or

7 (5) other evidence that demonstrates the facts
8 necessary to establish entitlement to the deduction or
9 specified by department rule or instruction.

10 C. A utility company that is claiming a deduction
11 pursuant to Section 7-9-46 NMSA 1978 must obtain a nontaxable
12 transaction certificate pursuant to Subsection A of this
13 section from a manufacturer who enters into a manufacturer's
14 agreement pursuant to Paragraph (3) of Subsection A of Section
15 7-1-21.1 NMSA 1978 with the utility company. Entitlement to
16 the deduction pursuant to Section 7-9-46 NMSA 1978 shall not be
17 established by alternative evidence pursuant to Subsection B of
18 this section.

19 D. When a person accepts in good faith a properly
20 executed nontaxable transaction certificate from the purchaser,
21 the properly executed nontaxable transaction certificate shall
22 be conclusive evidence that the proceeds from the transaction
23 are deductible from the person's gross receipts.

24 E. If a person has accepted in good faith a
25 properly executed nontaxable transaction certificate, but the

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1 purchaser has not employed the property or service purchased in
2 the nontaxable manner or has provided false or inaccurate
3 information on the nontaxable transaction certificate, the
4 purchaser shall be liable for an amount equal to any tax,
5 penalty and interest that the seller would have been required
6 to pay if the seller had not complied with Subsection A of this
7 section.

8 F. Any person who knowingly or willfully provides
9 false or inaccurate information on a nontaxable transaction
10 certificate may be subject to prosecution under Sections 7-1-72
11 and 7-1-73 NMSA 1978.

12 G. As used in this section:

13 (1) "accept in good faith" means that the
14 person who receives a properly executed nontaxable transaction
15 certificate from the purchaser:

16 (a) reviews the nontaxable transaction
17 certificate and confirms that the nontaxable transaction
18 certificate is properly executed and that the facts presented
19 therein accurately reflect the seller's activities with respect
20 to the transaction or transactions covered by the nontaxable
21 transaction certificate;

22 (b) does not have any reason to believe
23 that the information contained in the nontaxable transaction
24 certificate is inaccurate or incomplete; and

25 (c) does not have actual knowledge that

1 the purchaser will employ the property or services in a manner
2 inconsistent with the facts presented in the nontaxable
3 transaction certificate or with the requirements of the claimed
4 deduction;

5 (2) "nontaxable transaction certificate" means
6 a form that is prescribed by the department and that includes,
7 at minimum, the following:

8 (a) the name and address of the
9 purchaser;

10 (b) the precise nature of the business
11 of the purchaser;

12 (c) identification of the deduction or
13 deductions for which the nontaxable transaction certificate is
14 being issued;

15 (d) the facts to establish the deduction
16 allowed pursuant to the Gross Receipts and Compensating Tax Act
17 is appropriate;

18 (e) the New Mexico tax identification
19 number of the purchaser or the tax identification number of the
20 purchaser's resident state; and

21 (f) certification that the person
22 executing the nontaxable transaction certificate is authorized
23 to do so on behalf of the purchaser and that the information
24 contained in the nontaxable transaction certificate is true and
25 correct to the best of the person's knowledge; and

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1 (3) "properly executed" means that a purchaser
2 employs the correct nontaxable certificate form as prescribed
3 by the department, that the information required by Paragraph
4 (2) of this subsection is complete and contained in the form
5 and that the deductions identified on the form are appropriate
6 and correct for the nature of the transaction covered on the
7 nontaxable transaction certificate."

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