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HOUSE BILL 261

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY

Raymond G. Sanchez

AN ACT

RELATING TO TAXATION; CLARIFYING THAT CERTAIN USES OF A CALL CENTER DO NOT CONSTITUTE A BUSINESS OR ACTIVITY SUBJECT TO THE GROSS RECEIPTS TAX OR OTHER PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "buying" or "selling" means any transfer of

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1 property for consideration or any performance of service for
2 consideration;

3 C. "construction" means building, altering,
4 repairing or demolishing in the ordinary course of business
5 any:

6 (1) road, highway, bridge, parking area or
7 related project;

8 (2) building, stadium or other structure;

9 (3) airport, subway or similar facility;

10 (4) park, trail, athletic field, golf course
11 or similar facility;

12 (5) dam, reservoir, canal, ditch or similar
13 facility;

14 (6) sewerage or water treatment facility,
15 power generating plant, pump station, natural gas compressing
16 station, gas processing plant, coal gasification plant,
17 refinery, distillery or similar facility;

18 (7) sewerage, water, gas or other pipeline;

19 (8) transmission line;

20 (9) radio, television or other tower;

21 (10) water, oil or other storage tank;

22 (11) shaft, tunnel or other mining

23 appurtenance;

24 (12) microwave station or similar facility;

25 or

(13) similar work;

"construction" also means:

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- 1 (14) leveling or clearing land;
- 2 (15) excavating earth;
- 3 (16) drilling wells of any type, including
- 4 seismograph shot holes or core drilling; or
- 5 (17) similar work;

6 D. "financial corporation" means any savings and
7 loan association or any incorporated savings and loan
8 company, trust company, mortgage banking company, consumer
9 finance company or other financial corporation;

10 E. "engaging in business" means carrying on or
11 causing to be carried on any activity with the purpose of
12 direct or indirect benefit, except that:

13 (1) "engaging in business" does not include
14 having a world wide web site as a third-party content
15 provider on a computer physically located in New Mexico but
16 owned by another nonaffiliated person; and

17 (2) "engaging in business" does not include
18 using a nonaffiliated third-party call center to accept and
19 process telephone or electronic orders of tangible personal
20 property or licenses primarily from non-New Mexico buyers,
21 which orders are forwarded to a location outside New Mexico
22 for filling;

23 F. "gross receipts" means the total amount of
24 money or the value of other consideration received from
25 selling property in New Mexico, from leasing property
employed in New Mexico, from selling services performed
outside New Mexico the product of which is initially used in

1 New Mexico or from performing services in New Mexico. In an
2 exchange in which the money or other consideration received
3 does not represent the value of the property or service
4 exchanged, "gross receipts" means the reasonable value of the
5 property or service exchanged.

6 (1) "Gross receipts" includes:

7 (a) any receipts from sales of tangible
8 personal property handled on consignment;

9 (b) the total commissions or fees
10 derived from the business of buying, selling or promoting the
11 purchase, sale or leasing, as an agent or broker on a
12 commission or fee basis, of any property, service, stock,
13 bond or security;

14 (c) amounts paid by members of any
15 cooperative association or similar organization for sales or
16 leases of personal property or performance of services by
17 such organization; and

18 (d) amounts received from transmitting
19 messages or conversations by persons providing telephone or
20 telegraph services.

21 (2) "Gross receipts" excludes:

22 (a) cash discounts allowed and taken;

23 (b) New Mexico gross receipts tax,
24 governmental gross receipts tax and leased vehicle gross
25 receipts tax payable on transactions for the reporting
period;

(c) taxes imposed pursuant to the

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1 provisions of any local option gross receipts tax that is
2 payable on transactions for the reporting period;

3 (d) any gross receipts or sales taxes
4 imposed by an Indian nation, tribe or pueblo; provided that
5 the tax is approved, if approval is required by federal law
6 or regulation, by the secretary of the interior of the United
7 States; and provided further that the gross receipts or sales
8 tax imposed by the Indian nation, tribe or pueblo provides a
9 reciprocal exclusion for gross receipts, sales or gross
10 receipts-based excise taxes imposed by the state or its
11 political subdivisions;

12 (e) any type of time-price
13 differential; and

14 (f) amounts received solely on behalf
15 of another in a disclosed agency capacity.

16 (3) When the sale of property or service is
17 made under any type of charge, conditional or time-sales
18 contract or the leasing of property is made under a leasing
19 contract, the seller or lessor may elect to treat all
20 receipts, excluding any type of time-price differential,
21 under such contracts as gross receipts as and when the
22 payments are actually received. If the seller or lessor
23 transfers his interest in any such contract to a third
24 person, the seller or lessor shall pay the gross receipts tax
25 upon the full sale or leasing contract amount, excluding any
type of time-price differential;

G. "manufacturing" means combining or processing

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1 components or materials to increase their value for sale in
2 the ordinary course of business, but does not include
3 construction;

4 H. "person" means:

5 (1) ~~[any]~~ an individual, estate, trust,
6 receiver, cooperative association, club, corporation,
7 company, firm, partnership, limited liability company,
8 limited liability partnership, joint venture, syndicate or
9 other entity, including any gas, water or electric utility
10 owned or operated by a county, municipality or other
11 political subdivision of the state; or

12 (2) ~~[any]~~ a national, federal, state, Indian
13 or other governmental unit or subdivision, or ~~[any]~~ an
14 agency, department or instrumentality of any of the
15 foregoing;

16 I. "property" means real property, tangible
17 personal property, licenses, franchises, patents, trademarks
18 and copyrights. Tangible personal property includes
19 electricity and manufactured homes;

20 J. "leasing" means ~~[any]~~ an arrangement whereby,
21 for a consideration, property is employed for or by any
22 person other than the owner of the property, except that the
23 granting of a license to use property is the sale of a
24 license and not a lease;

25 K. "service" means all activities engaged in for
other persons for a consideration, which activities involve
predominantly the performance of a service as distinguished

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1 from selling or leasing property. "Service" includes
2 activities performed by a person for its members or
3 shareholders. In determining what is a service, the intended
4 use, principal objective or ultimate objective of the
5 contracting parties shall not be controlling. "Service"
6 includes construction activities and all tangible personal
7 property that will become an ingredient or component part of
8 a construction project. Such tangible personal property
9 retains its character as tangible personal property until it
10 is installed as an ingredient or component part of a
11 construction project in New Mexico. However, sales of
12 tangible personal property that will become an ingredient or
13 component part of a construction project to persons engaged
14 in the construction business are sales of tangible personal
15 property;

16 L. "use" or "using" includes use, consumption or
17 storage other than storage for subsequent sale in the
18 ordinary course of business or for use solely outside this
19 state;

20 M. "secretary" means the secretary of taxation and
21 revenue or the secretary's delegate;

22 N. "manufactured home" means a movable or portable
23 housing structure for human occupancy that exceeds either a
24 width of eight feet or a length of forty feet constructed to
25 be towed on its own chassis and designed to be installed with
or without a permanent foundation;

O. "initial use" or "initially used" means the

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1 first employment for the intended purpose and does not
2 include the following activities:

3 (1) observation of tests conducted by the
4 performer of services;

5 (2) participation in progress reviews,
6 briefings, consultations and conferences conducted by the
7 performer of services;

8 (3) review of preliminary drafts, drawings
9 and other materials prepared by the performer of the
10 services;

11 (4) inspection of preliminary prototypes
12 developed by the performer of services; or

13 (5) similar activities;

14 P. "research and development services" means ~~[any]~~
15 an activity engaged in for other persons for consideration,
16 for one or more of the following purposes:

17 (1) advancing basic knowledge in a
18 recognized field of natural science;

19 (2) advancing technology in a field of
20 technical endeavor;

21 (3) the development of a new or improved
22 product, process or system with new or improved function,
23 performance, reliability or quality, whether or not the new
24 or improved product, process or system is offered for sale,
25 lease or other transfer;

(4) the development of new uses or
applications for an existing product, process or system,

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1 whether or not the new use or application is offered as the
2 rationale for purchase, lease or other transfer of the
3 product, process or system;

4 (5) analytical or survey activities
5 incorporating technology review, application, trade-off
6 study, modeling, simulation, conceptual design or similar
7 activities, whether or not offered for sale, lease or other
8 transfer; or

9 (6) the design and development of prototypes
10 or the integration of systems incorporating advances,
11 developments or improvements included in Paragraphs (1)
12 through (5) of this subsection;

13 Q. "local option gross receipts tax" means a tax
14 authorized to be imposed by a county or municipality upon the
15 taxpayer's gross receipts and required to be collected by the
16 department at the same time and in the same manner as the
17 gross receipts tax; "local option gross receipts tax"
18 includes the taxes imposed pursuant to the Municipal Local
19 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
20 Receipts Tax Act, [~~Special Municipal Gross Receipts Tax Act~~]
21 County Local Option Gross Receipts Taxes Act, Local Hospital
22 Gross Receipts Tax Act, County Correctional Facility Gross
23 Receipts Tax Act
24 and such other acts as may be enacted authorizing counties or
25 municipalities to impose taxes on gross receipts, which taxes
are to be collected by the department; and

R. "prescription drugs" means insulin and

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1 substances that are:

2 (1) dispensed by or under the supervision of
3 a licensed pharmacist or by a physician or other person
4 authorized under state law to do so;

5 (2) prescribed for a specified person by a
6 person authorized under state law to prescribe the substance;
7 and

8 (3) subject to the restrictions on sale
9 contained in Subparagraph 1 of Subsection (b) of 21 USCA
10 353."

11 Section 2. Section 7-9-10 NMSA 1978 (being Laws 1966,
12 Chapter 47, Section 10, as amended) is amended to read:

13 "7-9-10. AGENTS FOR COLLECTION OF COMPENSATING TAX--
14 DUTIES.--

15 A. Every person carrying on or causing to be
16 carried on any activity within this state attempting to
17 exploit New Mexico's markets who sells property or sells
18 property and service for use in this state and who is not
19 subject to the gross receipts tax on receipts from these
20 sales shall collect the compensating tax from the buyer and
21 pay the tax collected to the department. "Activity", for the
22 purposes of this section, includes, but is not limited to,
23 engaging in any of the following in New Mexico: maintaining
24 an office or other place of business, soliciting orders
25 through employees or independent contractors, soliciting
orders through advertisements placed in newspapers or
magazines published in New Mexico or advertisements broadcast

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1 by New Mexico radio or television stations, soliciting orders
2 through programs broadcast by New Mexico radio or television
3 stations or transmitted by cable systems in New Mexico,
4 canvassing, demonstrating, collecting money, warehousing or
5 storing merchandise or delivering or distributing products as
6 a consequence of an advertising or other sales program
7 directed at potential customers, but "activity" does not
8 include having a world wide web site as a third-party
9 provider on a computer physically located in New Mexico but
10 owned by another nonaffiliated person and "activity" does not
11 include using a nonaffiliated third-party call center to
12 accept and process telephone or electronic orders of tangible
13 personal property or licenses primarily from non-new Mexico
14 buyers, which orders are forwarded to a location outside New
15 Mexico.

16 B. To [~~insure~~] ensure orderly and efficient
17 collection of the public revenue, if any application of this
18 section is held invalid, the section's application to other
19 situations or persons shall not be affected."

20 Section 3. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2000.