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HOUSE BILL 152

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Pauline K. Gubbels

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; MAKING A TECHNICAL CORRECTION TO THE  
GROSS RECEIPTS AND COMPENSATING TAX ACT.

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 by Laws 2001, Chapter 65,  
Section 1 and by Laws 2001, Chapter 343, Section 1) 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 (13) retaining wall, wall, fence gate or

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similar structure; or

(14) similar work;

"construction" also means:

(15) leveling or clearing land;

(16) excavating earth;

(17) drilling wells of any type, including  
seismograph shot holes or core drilling; or

(18) similar work;

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

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

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

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

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1 Mexico customers;

2 F. "gross receipts" means the total amount of  
3 money or the value of other consideration received from  
4 selling property in New Mexico, from leasing property employed  
5 in New Mexico, from selling services performed outside New  
6 Mexico the product of which is initially used in New Mexico or  
7 from performing services in New Mexico. In an exchange in  
8 which the money or other consideration received does not  
9 represent the value of the property or service exchanged,  
10 "gross receipts" means the reasonable value of the property or  
11 service exchanged.

12 (1) "Gross receipts" includes:

13 (a) any receipts from sales of tangible  
14 personal property handled on consignment;

15 (b) the total commissions or fees  
16 derived from the business of buying, selling or promoting the  
17 purchase, sale or leasing, as an agent or broker on a  
18 commission or fee basis, of any property, service, stock, bond  
19 or security;

20 (c) amounts paid by members of any  
21 cooperative association or similar organization for sales or  
22 leases of personal property or performance of services by such  
23 organization; and

24 (d) amounts received from transmitting  
25 messages or conversations by persons providing telephone or

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telegraph services.

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

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

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

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

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

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

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing

1 contract, the seller or lessor may elect to treat all  
2 receipts, excluding any type of time-price differential, under  
3 such contracts as gross receipts as and when the payments are  
4 actually received. If the seller or lessor transfers his  
5 interest in any such contract to a third person, the seller or  
6 lessor shall pay the gross receipts tax upon the full sale or  
7 leasing contract amount, excluding any type of time-price  
8 differential;

9 G. "manufacturing" means combining or processing  
10 components or materials to increase their value for sale in  
11 the ordinary course of business, but does not include  
12 construction;

13 H. "person" means:

14 (1) an individual, estate, trust, receiver,  
15 cooperative association, club, corporation, company, firm,  
16 partnership, limited liability company, limited liability  
17 partnership, joint venture, syndicate or other entity,  
18 including any gas, water or electric utility owned or operated  
19 by a county, municipality or other political subdivision of  
20 the state; or

21 (2) a national, federal, state, Indian or  
22 other governmental unit or subdivision, or an agency,  
23 department or instrumentality of any of the foregoing;

24 I. "property" means real property, tangible  
25 personal property, licenses, franchises, patents, trademarks

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1 and copyrights. Tangible personal property includes  
2 electricity and manufactured homes;

3 J. "leasing" means an arrangement whereby, for a  
4 consideration, property is employed for or by any person other  
5 than the owner of the property except that the granting of a  
6 license to use property is the sale of a license and not a  
7 lease;

8 K. "service" means all activities engaged in for  
9 other persons for a consideration, which activities involve  
10 predominantly the performance of a service as distinguished  
11 from selling or leasing property. "Service" includes  
12 activities performed by a person for its members or  
13 shareholders. In determining what is a service, the intended  
14 use, principal objective or ultimate objective of the  
15 contracting parties shall not be controlling. "Service"  
16 includes construction activities and all tangible personal  
17 property that will become an ingredient or component part of a  
18 construction project. Such tangible personal property retains  
19 its character as tangible personal property until it is  
20 installed as an ingredient or component part of a construction  
21 project in New Mexico. However, sales of tangible personal  
22 property that will become an ingredient or component part of a  
23 construction project to persons engaged in the construction  
24 business are sales of tangible personal property;

25 L. "use" or "using" includes use, consumption or

1 storage other than storage for subsequent sale in the ordinary  
2 course of business or for use solely outside this state;

3 M "secretary" means the secretary of taxation and  
4 revenue or the secretary's delegate;

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

10 O. "initial use" or "initially used" means the  
11 first employment for the intended purpose and does not include  
12 the following activities:

13 (1) observation of tests conducted by the  
14 performer of services;

15 (2) participation in progress reviews,  
16 briefings, consultations and conferences conducted by the  
17 performer of services;

18 (3) review of preliminary drafts, drawings  
19 and other materials prepared by the performer of the services;

20 (4) inspection of preliminary prototypes  
21 developed by the performer of services; or

22 (5) similar activities;

23 P. "research and development services" means an  
24 activity engaged in for other persons for consideration, for  
25 one or more of the following purposes:



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

3 (2) advancing technology in a field of  
4 technical endeavor;

5 (3) the development of a new or improved  
6 product, process or system with new or improved function,  
7 performance, reliability or quality, whether or not the new or  
8 improved product, process or system is offered for sale, lease  
9 or other transfer;

10 (4) the development of new uses or  
11 applications for an existing product, process or system,  
12 whether or not the new use or application is offered as the  
13 rationale for purchase, lease or other transfer of the  
14 product, process or system;

15 (5) analytical or survey activities  
16 incorporating technology review, application, trade-off study,  
17 modeling, simulation, conceptual design or similar activities,  
18 whether or not offered for sale, lease or other transfer; or

19 (6) the design and development of prototypes  
20 or the integration of systems incorporating advances,  
21 developments or improvements included in Paragraphs (1)  
22 through (5) of this subsection;

23 Q. "local option gross receipts tax" means a tax  
24 authorized to be imposed by a county or municipality upon the  
25 taxpayer's gross receipts and required to be collected by the

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1 department at the same time and in the same manner as the  
2 gross receipts tax; "local option gross receipts tax" includes  
3 the taxes imposed pursuant to the Municipal Local Option Gross  
4 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax  
5 Act, County Local Option Gross Receipts Taxes Act, Local  
6 Hospital Gross Receipts Tax Act, County Correctional Facility  
7 Gross Receipts Tax Act and such other acts as may be enacted  
8 authorizing counties or municipalities to impose taxes on  
9 gross receipts, which taxes are to be collected by the  
10 department;

11 R. "prescription drugs" means insulin and  
12 substances that are:

13 (1) dispensed by or under the supervision of  
14 a licensed pharmacist or by a physician or other person  
15 authorized under state law to do so;

16 (2) prescribed for a specified person by a  
17 person authorized under state law to prescribe the substance;  
18 and

19 (3) subject to the restrictions on sale  
20 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;  
21 and

22 S. "construction material" means tangible personal  
23 property that becomes or is intended to become an ingredient  
24 or component part of a construction project, but "construction  
25 material" does not include a replacement fixture when the

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replacement is not construction or a replacement part for a  
fixture. "