

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 318

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

INTRODUCED BY

Don Tripp

AN ACT

RELATING TO TAXATION; PROVIDING A PHASED-IN CREDIT AGAINST THE STATE PORTION OF GROSS RECEIPTS TAX FOR RECEIPTS FROM THE SALE OF FOOD AT RETAIL FOOD STORES.

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

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] CREDIT--GROSS RECEIPTS TAX--RECEIPTS FROM SALE OF FOOD AT RETAIL FOOD STORES.--The credit provided for in this section shall be considered a payment of the state portion of gross receipts tax. A credit shall be allowed for each reporting period against the gross receipts tax as follows:

A. for a taxpayer located in the unincorporated area of a county:

underscored material = new
[bracketed material] = delete

1 (1) on or after July 1, 2002 and before July
2 1, 2003, an amount equal to one and one-fourth percent of the
3 taxpayer's taxable gross receipts from the sale of food at a
4 retail food store for that reporting period;

5 (2) on or after July 1, 2003 and before July
6 1, 2004, an amount equal to two and one-half percent of the
7 taxpayer's taxable gross receipts from the sale of food at a
8 retail food store for that reporting period;

9 (3) on or after July 1, 2004 and before July
10 1, 2005, an amount equal to three and three-fourths percent of
11 the taxpayer's taxable gross receipts from the sale of food at
12 a retail store for that reporting period; and

13 (4) on or after January 1, 2005, an amount
14 equal to five percent of the taxpayer's taxable gross receipts
15 from the sale of food at a retail food store for that
16 reporting period; and

17 B. for a taxpayer located in a municipality:

18 (1) on or after July 1, 2002 and before July
19 1, 2003, an amount equal to two hundred seventy-five
20 thousandths percent of the taxpayer's taxable gross receipts
21 from the sale of food at a retail food store for that
22 reporting period;

23 (2) on or after July 1, 2003 and before July
24 1, 2004, an amount equal to one and two hundred seventy-five
25 thousandths percent of the taxpayer's taxable gross receipts

underscored material = new
[bracketed material] = delete

1 from the sale of food at a retail food store for that
2 reporting period;

3 (3) on or after July 1, 2004 and before July
4 1, 2005, an amount equal to two and two hundred seventy-five
5 thousandths percent of the taxpayer's taxable gross receipts
6 from the sale of food at a retail store for that reporting
7 period; and

8 (4) on or after January 1, 2005, an amount
9 equal to three and two hundred seventy-five thousandths
10 percent of the taxpayer's taxable gross receipts from the sale
11 of food at a retail food store for that reporting period. "

12 Section 2. Section 7-9-3 NMSA 1978 (being Laws 1978,
13 Chapter 46, Section 1, as amended by Laws 2001, Chapter 65,
14 Section 1 and by Laws 2001, Chapter 343, Section 1) is amended
15 to read:

16 "7-9-3. DEFINITIONS. --As used in the Gross Receipts and
17 Compensating Tax Act:

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

22 B. "buying" or "selling" means any transfer of
23 property for consideration or any performance of service for
24 consideration;

25 C. "construction" means building, altering,

underscored material = new
[bracketed material] = delete

1 repairing or demolishing in the ordinary course of business
2 any:

3 (1) road, highway, bridge, parking area or
4 related project;

5 (2) building, stadium or other structure;

6 (3) airport, subway or similar facility;

7 (4) park, trail, athletic field, golf course
8 or similar facility;

9 (5) dam, reservoir, canal, ditch or similar
10 facility;

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

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

16 (8) transmission line;

17 (9) radio, television or other tower;

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

19 (11) shaft, tunnel or other mining
20 appurtenance;

21 (12) microwave station or similar facility;

22 (13) retaining wall, wall, fence gate or
23 similar structure; or

24 (14) similar work;

25 "construction" also means:

. 140228. 1

1 (15) leveling or clearing land;

2 (16) excavating earth;

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

5 (18) similar work;

6 D. "financial corporation" means any savings and
7 loan association or any incorporated savings and loan company,
8 trust company, mortgage banking company, consumer finance
9 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 worldwide web site as a third-party content provider
15 on a computer physically located in New Mexico but owned by
16 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, or to provide services primarily to non-New
23 Mexico customers;

24 F. "gross receipts" means the total amount of
25 money or the value of other consideration received from

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

9 (1) "Gross receipts" includes:

10 (a) any receipts from sales of tangible
11 personal property handled on consignment;

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

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

21 (d) amounts received from transmitting
22 messages or conversations by persons providing telephone or
23 telegraph services.

24 (2) "Gross receipts" excludes:

25 (a) cash discounts allowed and taken;

underscored material = new
[bracketed material] = delete

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

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

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

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

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

20 (3) When the sale of property or service is
21 made under any type of charge, conditional or time-sales
22 contract or the leasing of property is made under a leasing
23 contract, the seller or lessor may elect to treat all
24 receipts, excluding any type of time-price differential, under
25 such contracts as gross receipts as and when the payments are

underscored material = new
[bracketed material] = delete

1 actually received. If the seller or lessor transfers his
2 interest in any such contract to a third person, the seller or
3 lessor shall pay the gross receipts tax upon the full sale or
4 leasing contract amount, excluding any type of time-price
5 differential;

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

10 H. "person" means:

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

18 (2) a national, federal, state, Indian or
19 other governmental unit or subdivision, or an agency,
20 department or instrumentality of any of the foregoing;

21 I. "property" means real property, tangible
22 personal property, licenses, franchises, patents, trademarks
23 and copyrights. Tangible personal property includes
24 electricity and manufactured homes;

25 J. "leasing" means an arrangement whereby, for a

underscored material = new
[bracketed material] = delete

1 consideration, property is employed for or by any person other
2 than the owner of the property, except that the granting of a
3 license to use property is the sale of a license and not a
4 lease;

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

22 L. "use" or "using" includes use, consumption or
23 storage other than storage for subsequent sale in the ordinary
24 course of business or for use solely outside this state;

25 M "secretary" means the secretary of taxation and

underscored material = new
[bracketed material] = delete

1 revenue or the secretary's delegate;

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

7 O. "initial use" or "initially used" means the
8 first employment for the intended purpose and does not include
9 the following activities:

10 (1) observation of tests conducted by the
11 performer of services;

12 (2) participation in progress reviews,
13 briefings, consultations and conferences conducted by the
14 performer of services;

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

17 (4) inspection of preliminary prototypes
18 developed by the performer of services; or

19 (5) similar activities;

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

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

25 (2) advancing technology in a field of

underscored material = new
[bracketed material] = delete

1 technical endeavor;

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

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

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

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

20 Q. "local option gross receipts tax" means a tax
21 authorized to be imposed by a county or municipality upon the
22 taxpayer's gross receipts and required to be collected by the
23 department at the same time and in the same manner as the
24 gross receipts tax; "local option gross receipts tax" includes
25 the taxes imposed pursuant to the Municipal Local Option Gross

. 140228. 1

underscored material = new
[bracketed material] = delete

1 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
2 Act, County Local Option Gross Receipts Taxes Act, Local
3 Hospital Gross Receipts Tax Act, County Correctional Facility
4 Gross Receipts Tax Act and such other acts as may be enacted
5 authorizing counties or municipalities to impose taxes on
6 gross receipts, which taxes are to be collected by the
7 department;

8 R. "prescription drugs" means insulin and
9 substances that are:

10 (1) dispensed by or under the supervision of
11 a licensed pharmacist or by a physician or other person
12 authorized under state law to do so;

13 (2) prescribed for a specified person by a
14 person authorized under state law to prescribe the substance;
15 and

16 (3) subject to the restrictions on sale
17 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;
18 [~~and~~]

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

25 T. "food" means any food or food product for home

1 consumption that meets the definition of food in 7 USCA
2 2012(g)(1) for purposes of the federal food stamp program; and
3 U. "retail food store" means an establishment that
4 sells food for home preparation and consumption that meets the
5 definition of retail food store in 7 USCA 2012(k)(1) for
6 purposes of the federal food stamp program, whether or not the
7 establishment participates in the food stamp program. "

8 Section 3. EFFECTIVE DATE. --The effective date of the
9 provisions of this act is July 1, 2002.

10 - 13 -

underscored material = new
[bracketed material] = delete