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SENATE BILL 21

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

INTRODUCED BY

Sue Wilson Beffort

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
property for consideration or any performance of service for
consideration;

C. "construction" means building, altering,
repairing or demolishing in the ordinary course of business

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any:

- (1) road, highway, bridge, parking area or related project;
 - (2) building, stadium or other structure;
 - (3) airport, subway or similar facility;
 - (4) park, trail, athletic field, golf course or similar facility;
 - (5) dam, reservoir, canal, ditch or similar facility;
 - (6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;
 - (7) sewerage, water, gas or other pipeline;
 - (8) transmission line;
 - (9) radio, television or other tower;
 - (10) water, oil or other storage tank;
 - (11) shaft, tunnel or other mining appurtenance;
 - (12) microwave station or similar facility;
 - (13) retaining wall, wall, fence gate or 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;

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

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

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

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

18 F. "gross receipts" means the total amount of
19 money or the value of other consideration received from
20 selling property in New Mexico, from leasing property employed
21 in New Mexico, from selling services performed outside New
22 Mexico the product of which is initially used in New Mexico or
23 from performing services in New Mexico. In an exchange in
24 which the money or other consideration received does not
25 represent the value of the property or service exchanged,
"gross receipts" means the reasonable value of the property or
service exchanged.

(1) "Gross receipts" includes:

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1 (a) any receipts from sales of tangible
2 personal property handled on consignment;

3 (b) the total commissions or fees
4 derived from the business of buying, selling or promoting the
5 purchase, sale or leasing, as an agent or broker on a
6 commission or fee basis, of any property, service, stock, bond
7 or security;

8 (c) amounts paid by members of any
9 cooperative association or similar organization for sales or
10 leases of personal property or performance of services by such
11 organization; and

12 (d) amounts received from transmitting
13 messages or conversations by persons providing telephone or
14 telegraph services.

15 (2) "Gross receipts" excludes:

16 (a) cash discounts allowed and taken;

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

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

23 (d) any gross receipts or sales taxes
24 imposed by an Indian nation, tribe or pueblo; provided that
25 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

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1 receipts-based excise taxes imposed by the state or its
2 political subdivisions;

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

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

7 (3) When the sale of property or service is
8 made under any type of charge, conditional or time-sales
9 contract or the leasing of property is made under a leasing
10 contract, the seller or lessor may elect to treat all
11 receipts, excluding any type of time-price differential, under
12 such contracts as gross receipts as and when the payments are
13 actually received. If the seller or lessor transfers his
14 interest in any such contract to a third person, the seller or
15 lessor shall pay the gross receipts tax upon the full sale or
16 leasing contract amount, excluding any type of time-price
17 differential;

18 G. "manufacturing" means combining or processing
19 components or materials to increase their value for sale in
20 the ordinary course of business, but does not include
21 construction;

22 H. "person" means:

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

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

4 I. "property" means real property, tangible
5 personal property, licenses, franchises, patents, trademarks
6 and copyrights. Tangible personal property includes
7 electricity and manufactured homes;

8 J. "leasing" means an arrangement whereby, for a
9 consideration, property is employed for or by any person other
10 than the owner of the property except that the granting of a
11 license to use property is the sale of a license and not a
12 lease;

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

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

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

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

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

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

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

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

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

23 (5) similar activities;

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

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

 (2) advancing technology in a field of

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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
Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
Act, County Local Option Gross Receipts Taxes Act, Local
Hospital Gross Receipts Tax Act, County Correctional Facility
Gross Receipts Tax Act and such other acts as may be enacted

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1 authorizing counties or municipalities to impose taxes on
2 gross receipts, which taxes are to be collected by the
3 department;

4 R. "prescription drugs" means insulin and
5 substances that are:

6 (1) dispensed by or under the supervision of
7 a licensed pharmacist or by a physician or other person
8 authorized under state law to do so;

9 (2) prescribed for a specified person by a
10 person authorized under state law to prescribe the substance;
11 and

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

15 S. "construction material" means tangible personal
16 property that becomes or is intended to become an ingredient
17 or component part of a construction project, but "construction
18 material" does not include a replacement fixture when the
19 replacement is not construction or a replacement part for a
20 fixture."