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SENATE BILL 188

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FROM GROSS RECEIPTS  
FOR SALES OF DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES.

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

SECTION 1. Section 7-9-73.2 NMSA 1978 (being Laws 1998,  
Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4, as  
amended) is amended to read:

"7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL  
GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--OXYGEN--DURABLE MEDICAL  
EQUIPMENT--MEDICAL SUPPLIES.--

~~[A. Receipts from the sale of prescription drugs  
and oxygen and oxygen services provided by a licensed medicare  
durable medical equipment provider may be deducted from gross  
receipts and governmental gross receipts.~~

~~B. For the purposes of this section]~~

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1           A. Receipts from the sale of the following may be  
2 deducted from gross receipts and governmental gross receipts:

3                   (1) prescription drugs; and

4                   (2) if provided by a licensed medicare durable  
5 medical equipment provider:

6                           (a) oxygen and oxygen services provided  
7 by a licensed medicare durable medical equipment provider;

8                           (b) prescribed durable medical  
9 equipment; and

10                           (c) prescribed medical supplies.

11           B. The purpose of the deductions provided in this  
12 section is to help retain businesses in New Mexico that sell  
13 durable medical equipment, including oxygen and oxygen services  
14 and medical supplies, and to provide prescription drugs to New  
15 Mexicans without the added cost of taxation.

16           C. Deductions pursuant to this section shall be  
17 stated separately by the taxpayer on forms provided by the  
18 department.

19           D. The department shall annually report to the  
20 interim legislative revenue stabilization and tax policy  
21 committee aggregate amounts of each deduction taken pursuant to  
22 this section, the number of taxpayers claiming each deduction  
23 and any other information that is necessary to determine that  
24 the deduction is performing the purposes for which it is  
25 enacted.

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underscored material = new  
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1                   E. As used in this section:

2                   (1) "durable medical equipment" means a  
3 medical assistive device or other equipment that:

4                               (a) can withstand repeated use;

5                               (b) is primarily and customarily used to  
6 serve a medical purpose and is not useful to an individual in  
7 the absence of an illness, injury or other medical necessity,  
8 including improved functioning of a body part;

9                               (c) is appropriate for use at home  
10 exclusively by the eligible recipient for whom the durable  
11 medical equipment is prescribed; and

12                               (d) is prescribed by a physician or  
13 other person licensed by the state to prescribe durable medical  
14 equipment;

15                   (2) "medical supplies" means prescribed items  
16 for a course of medical treatment, including nutritional  
17 products prescribed for non-oral consumption, that are:

18                               (a) necessary for an ongoing course of  
19 medical treatment;

20                               (b) disposable and cannot be reused; and

21                               (c) prescribed by a physician or other  
22 person licensed by the state to prescribe medical supplies;

23                   (3) "prescribe" means to authorize the use of  
24 an item or substance for a course of medical treatment; and

25                   (4) "prescription drugs" means insulin and

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substances that are:

~~[(1)]~~ (a) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

~~[(2)]~~ (b) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

~~[(3)]~~ (c) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353."

**SECTION 2. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2012.