

1 HOUSE BILL 315

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 James R.J. Strickler

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10 AN ACT

11 RELATING TO TAXATION; AMENDING THE GROSS RECEIPTS AND  
12 COMPENSATING TAX ACT; PROVIDING FOR SPECIAL AGREEMENTS TO ALLOW  
13 PAYMENT OF TAXES BY A PERSON OTHER THAN THE TAXPAYER; REMOVING  
14 REPORTING REQUIREMENTS FROM A DEDUCTION REGARDING SALES TO  
15 MANUFACTURERS; DECLARING AN EMERGENCY.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the Tax Administration Act is  
19 enacted to read:

20 "[NEW MATERIAL] SPECIAL AGREEMENTS--ALTERNATIVE GROSS  
21 RECEIPTS TAXPAYER.--

22 A. To allow the payment of gross receipts tax by a  
23 person who is not the liable taxpayer, the secretary may  
24 approve a request by a person to assume the liability for gross  
25 receipts tax or governmental gross receipts tax owed by another

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1 provided that the person requesting approval agrees to assume  
2 the rights and responsibilities as taxpayer pursuant to the Tax  
3 Administration Act for:

4 (1) an agreement to collect and pay over taxes  
5 for persons in a business relationship, which is an agreement  
6 that may be entered into by persons who wish to remit gross  
7 receipts tax on behalf of another person with whom the taxpayer  
8 has a business relationship;

9 (2) an agreement to collect and pay over taxes  
10 for a direct sales company:

11 (a) which agreement may be entered into  
12 by a direct sales company that has distributors of tangible  
13 personal property in New Mexico; and

14 (b) in which the direct sales company  
15 agrees to pay the gross receipts tax liability of the  
16 distributor at the same time the company remits its own gross  
17 receipts tax; and

18 (3) a manufacturer's agreement to pay gross  
19 receipts tax or governmental gross receipts tax on behalf of a  
20 utility company, which agreement:

21 (a) allows a person engaged in  
22 manufacturing in New Mexico to pay gross receipts tax or  
23 governmental gross receipts tax on behalf of a utility company  
24 on receipts from sales of utilities that are: 1) not consumed  
25 in the manufacturing process; or 2) not otherwise deductible;

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1 and

2 (b) is only applicable to transactions  
3 between a manufacturer and a utility company that are  
4 associated with the gross receipts tax deduction pursuant to  
5 Subsection B of Section 7-9-46 NMSA 1978.

6 B. To enter into the agreements authorized in this  
7 section, a person shall complete a form prescribed by the  
8 secretary and provide any additional information or  
9 documentation required by department rules or instructions that  
10 will assist in the approval of agreements listed in Subsection  
11 A of this section.

12 C. Once approved, an agreement shall be effective  
13 only for the period of time specified in each agreement. Any  
14 person entering into an agreement to pay tax on behalf of  
15 another person shall fulfill all of the requirements set out in  
16 the agreement. Failure to fulfill all of the requirements set  
17 out in the agreement may result in the revocation of the  
18 agreement by the department. An approved agreement may only be  
19 revoked prior to expiration by written notification to all  
20 persons who are party to the agreement and shall be applied  
21 beginning on the first day of a month that occurs at least one  
22 month following the date on which the agreement is revoked.

23 D. A person approved by the secretary to pay the  
24 gross receipts tax or governmental gross receipts tax pursuant  
25 to Subsection A of this section shall be deemed to be the

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1 taxpayer with respect to that tax pursuant to the Tax  
2 Administration Act with respect to all rights and  
3 responsibilities related to that tax, except that:

4 (1) the person shall not be entitled to take  
5 any credit against the tax for which the person has assumed  
6 liability pursuant to this section; and

7 (2) the person shall not claim a refund of tax  
8 on the basis that the person is not statutorily liable to pay  
9 the tax.

10 E. The department shall relieve from liability and  
11 hold harmless from the payment of a tax assumed by another  
12 person pursuant to an agreement approved pursuant to this  
13 section a taxpayer that would otherwise be liable for that  
14 tax."

15 SECTION 2. Section 7-1-3 NMSA 1978 (being Laws 1965,  
16 Chapter 248, Section 3, as amended) is amended to read:

17 "7-1-3. DEFINITIONS.--Unless the context clearly  
18 indicates a different meaning, the definitions of words and  
19 phrases as they are stated in this section are to be used, and  
20 whenever in the Tax Administration Act these words and phrases  
21 appear, the singular includes the plural and the plural  
22 includes the singular:

23 A. "automated clearinghouse transaction" means an  
24 electronic credit or debit transmitted through an automated  
25 clearinghouse payable to the state treasurer and deposited with

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1 the fiscal agent of New Mexico;

2 B. "department" means the taxation and revenue  
3 department, the secretary or any employee of the department  
4 exercising authority lawfully delegated to that employee by the  
5 secretary;

6 C. "electronic payment" means a payment made by  
7 automated clearinghouse deposit, any funds wire transfer system  
8 or a credit card, debit card or electronic cash transaction  
9 through the internet;

10 D. "employee of the department" means any employee  
11 of the department, including the secretary, or any person  
12 acting as agent or authorized to represent or perform services  
13 for the department in any capacity with respect to any law made  
14 subject to administration and enforcement under the provisions  
15 of the Tax Administration Act;

16 E. "financial institution" means any state or  
17 federally chartered, federally insured depository institution;

18 F. "Internal Revenue Code" means the Internal  
19 Revenue Code of 1986, as that code may be amended or its  
20 sections renumbered;

21 G. "levy" means the lawful power, hereby invested  
22 in the secretary, to take into possession or to require the  
23 present or future surrender to the secretary or the secretary's  
24 delegate of any property or rights to property belonging to a  
25 delinquent taxpayer;

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1           H. "local option gross receipts tax" means a tax  
2 authorized to be imposed by a county or municipality upon the  
3 taxpayer's gross receipts, as that term is defined in the Gross  
4 Receipts and Compensating Tax Act, and required to be collected  
5 by the department at the same time and in the same manner as  
6 the gross receipts tax; "local option gross receipts tax"  
7 includes the taxes imposed pursuant to the Municipal Local  
8 Option Gross Receipts Taxes Act, Supplemental Municipal Gross  
9 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,  
10 Local Hospital Gross Receipts Tax Act, County Correctional  
11 Facility Gross Receipts Tax Act and such other acts as may be  
12 enacted authorizing counties or municipalities to impose taxes  
13 on gross receipts, which taxes are to be collected by the  
14 department in the same time and in the same manner as it  
15 collects the gross receipts tax;

16           I. "managed audit" means a review and analysis  
17 conducted by a taxpayer under an agreement with the department  
18 to determine the taxpayer's compliance with a tax administered  
19 pursuant to the Tax Administration Act and the presentation of  
20 the results to the department for assessment of tax found to be  
21 due;

22           J. "net receipts" means the total amount of money  
23 paid by taxpayers to the department in a month pursuant to a  
24 tax or tax act less any refunds disbursed in that month with  
25 respect to that tax or tax act;

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1           K. "overpayment" means an amount paid, pursuant to  
2 any law subject to administration and enforcement under the  
3 provisions of the Tax Administration Act, by a person to the  
4 department or withheld from the person in excess of tax due  
5 from the person to the state at the time of the payment or at  
6 the time the amount withheld is credited against tax due;

7           L. "paid" includes the term "paid over";

8           M. "pay" includes the term "pay over";

9           N. "payment" includes the term "payment over";

10          O. "person" means any individual, estate, trust,  
11 receiver, cooperative association, club, corporation, company,  
12 firm, partnership, limited liability company, limited liability  
13 partnership, joint venture, syndicate, other association or  
14 gas, water or electric utility owned or operated by a county or  
15 municipality; "person" also means, to the extent permitted by  
16 law, a federal, state or other governmental unit or  
17 subdivision, or an agency, department or instrumentality  
18 thereof; and "person", as used in Sections 7-1-72 through  
19 7-1-74 NMSA 1978, also includes an officer or employee of a  
20 corporation, a member or employee of a partnership or any  
21 individual who, as such, is under a duty to perform any act in  
22 respect of which a violation occurs;

23          P. "property" means property or rights to property;

24          Q. "property or rights to property" means any  
25 tangible property, real or personal, or any intangible property

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1 of a taxpayer;

2 R. "return" means any tax or information return,  
3 declaration of estimated tax or claim for refund, including any  
4 amendments or supplements to the return, required or permitted  
5 pursuant to a law subject to administration and enforcement  
6 pursuant to the Tax Administration Act and filed with the  
7 secretary or the secretary's delegate by or on behalf of any  
8 person;

9 S. "return information" means a taxpayer's name,  
10 address, government-issued identification number and other  
11 identifying information; any information contained in or  
12 derived from a taxpayer's return; any information with respect  
13 to any actual or possible administrative or legal action by an  
14 employee of the department concerning a taxpayer's return, such  
15 as audits, managed audits, denial of credits or refunds,  
16 assessments of tax, penalty or interest, protests of  
17 assessments or denial of refunds or credits, levies or liens;  
18 or any other information with respect to a taxpayer's return or  
19 tax liability that was not obtained from public sources or that  
20 was created by an employee of the department; but "return  
21 information" does not include statistical data or other  
22 information that cannot be associated with or directly or  
23 indirectly identify a particular taxpayer;

24 T. "secretary" means the secretary of taxation and  
25 revenue and, except for purposes of Subsection B of Section

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1 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978,  
2 also includes the deputy secretary or a division director or  
3 deputy division director delegated by the secretary;

4 U. "secretary or the secretary's delegate" means  
5 the secretary or any employee of the department exercising  
6 authority lawfully delegated to that employee by the secretary;

7 V. "security" means money, property or rights to  
8 property or a surety bond;

9 W. "state" means any state of the United States,  
10 the District of Columbia, the commonwealth of Puerto Rico and  
11 any territory or possession of the United States;

12 X. "tax" means the total amount of each tax imposed  
13 and required to be paid, withheld and paid or collected and  
14 paid under provision of any law made subject to administration  
15 and enforcement according to the provisions of the Tax  
16 Administration Act and, unless the context otherwise requires,  
17 includes the amount of any interest or civil penalty relating  
18 thereto; "tax" also means any amount of any abatement of tax  
19 made or any credit, rebate or refund paid or credited by the  
20 department under any law subject to administration and  
21 enforcement under the provisions of the Tax Administration Act  
22 to any person contrary to law and includes, unless the context  
23 requires otherwise, the amount of any interest or civil penalty  
24 relating thereto;

25 Y. "taxpayer" means a person liable for payment of

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1 any tax, a person responsible for withholding and payment or  
2 for collection and payment of any tax [~~or~~], a person to whom an  
3 assessment has been made, if the assessment remains unabated or  
4 the amount thereof has not been paid, or a person who entered  
5 into a special agreement to assume the liability of gross  
6 receipts tax or governmental gross receipts tax of another  
7 person and the special agreement was approved by the secretary  
8 pursuant to the Tax Administration Act; and

9 Z. "tax return preparer" means a person who  
10 prepares for others for compensation or who employs one or more  
11 persons to prepare for others for compensation any return of  
12 income tax, a substantial portion of any return of income tax,  
13 any claim for refund with respect to income tax or a  
14 substantial portion of any claim for refund with respect to  
15 income tax; provided that a person shall not be a "tax return  
16 preparer" merely because such person:

17 (1) furnishes typing, reproducing or other  
18 mechanical assistance;

19 (2) is an employee who prepares an income tax  
20 return or claim for refund with respect to an income tax return  
21 of the employer, or of an officer or employee of the employer,  
22 by whom the person is regularly and continuously employed; or

23 (3) prepares as a trustee or other fiduciary  
24 an income tax return or claim for refund with respect to income  
25 tax for any person."

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1           SECTION 3. Section 7-9-46 NMSA 1978 (being Laws 1969,  
2 Chapter 144, Section 36, as amended) is amended to read:

3           "7-9-46. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL  
4 GROSS RECEIPTS--SALES TO MANUFACTURERS.--

5           A. Receipts from selling tangible personal property  
6 may be deducted from gross receipts or from governmental gross  
7 receipts if the sale is made to a person engaged in the  
8 business of manufacturing who delivers a nontaxable transaction  
9 certificate to the seller. The buyer delivering the nontaxable  
10 transaction certificate must incorporate the tangible personal  
11 property as an ingredient or component part of the product that  
12 the buyer is in the business of manufacturing.

13           B. Receipts from selling tangible personal property  
14 that is used in such a way that it is consumed in the  
15 manufacturing process of a product, provided that the tangible  
16 personal property is not a tool or equipment used to create the  
17 manufactured product, to a person engaged in the business of  
18 manufacturing that product and who delivers a nontaxable  
19 transaction certificate to the seller may be deducted in the  
20 following percentages from gross receipts or from governmental  
21 gross receipts:

22                   (1) twenty percent of receipts received prior  
23 to January 1, 2014;

24                   (2) forty percent of receipts received in  
25 calendar year 2014;

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1 (3) sixty percent of receipts received in  
2 calendar year 2015;

3 (4) eighty percent of receipts received in  
4 calendar year 2016; and

5 (5) one hundred percent of receipts received  
6 on or after January 1, 2017.

7 C. The purpose of the deductions provided in this  
8 section is to encourage manufacturing businesses to locate in  
9 New Mexico and to reduce the tax burden, including reducing  
10 pyramiding, on the tangible personal property that is consumed  
11 in the manufacturing process and that is purchased by  
12 manufacturing businesses in New Mexico.

13 ~~[D. The department shall annually report to the~~  
14 ~~revenue stabilization and tax policy committee the aggregate~~  
15 ~~amount of deductions taken pursuant to this section, the number~~  
16 ~~of taxpayers claiming each of the deductions and any other~~  
17 ~~information that is necessary to determine that the deductions~~  
18 ~~are performing the purposes for which they are enacted.~~

19 ~~E. A taxpayer deducting gross receipts pursuant to~~  
20 ~~this section shall report the amount deducted separately for~~  
21 ~~each deduction provided in this section and attribute the~~  
22 ~~amount of the deduction to the appropriate authorization~~  
23 ~~provided in this section in a manner required by the department~~  
24 ~~that facilitates the evaluation by the legislature of the~~  
25 ~~benefit to the state of these deductions.]"~~

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SECTION 4. APPLICABILITY.--The provisions of this act apply to gross receipts or governmental gross receipts received in tax periods beginning on or after May 1, 2013.

SECTION 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.