

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 515

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Cathrynn N. Brown

AN ACT

RELATING TO TAXATION; CLARIFYING THAT A DIRECT SALES COMPANY
MAY ASSUME LIABILITY FOR CERTAIN TAXES OWED BY ITS
DISTRIBUTORS.

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

SECTION 1. Section 7-1-21.1 NMSA 1978 (being Laws 2013,
Chapter 87, Section 1) is amended to read:

"7-1-21.1. SPECIAL AGREEMENTS--ALTERNATIVE GROSS RECEIPTS
TAXPAYER.--

A. To allow the payment of gross receipts tax by a
person who is not the liable taxpayer, the secretary may
approve a request by a person to assume the liability for gross
receipts tax or governmental gross receipts tax owed by
another; provided that the person requesting approval agrees to
assume the rights and responsibilities as taxpayer pursuant to

.198599.3

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 the Tax Administration Act for:

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

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

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

12 (b) in which the direct sales company
13 agrees to pay the gross receipts tax liability of the
14 distributor, including liability incurred from the sale of that
15 property and from sales commissions paid by the direct sales
16 company to its distributor, at the same time the company remits
17 its own gross 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;

.198599.3

underscoring material = new
~~[bracketed material] = delete~~

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

.198599.3

underscoring material = new
~~[bracketed material]~~ = delete

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."