

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILLS 5, 44, 49 & 108

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO TAXATION; EXEMPTING SOCIAL SECURITY INCOME FROM
INCOME TAX FOR CERTAIN INDIVIDUALS; EXTENDING THE NEW SOLAR
MARKET DEVELOPMENT INCOME TAX CREDIT, INCREASING THE ANNUAL
AGGREGATE CAP FOR THE CREDIT AND MAKING THE CREDIT REFUNDABLE
AND TRANSFERABLE; DEFINING "DISCLOSED AGENCY" IN THE GROSS
RECEIPTS AND COMPENSATING TAX ACT; REDUCING THE RATES OF THE
GROSS RECEIPTS TAX AND THE COMPENSATING TAX; PROVIDING FOR AN
INCREASE IN THE GROSS RECEIPTS TAX AND THE COMPENSATING TAX IF
GROSS RECEIPTS TAX REVENUES DECREASE.

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

SECTION 1. A new section of the Income Tax Act is enacted
to read:

"[NEW MATERIAL] EXEMPTION--SOCIAL SECURITY INCOME.--An
individual may claim an exemption in an amount equal to the
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underscored material = new
[bracketed material] = delete

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1 amount included in adjusted gross income pursuant to Section 86
2 of the Internal Revenue Code, as that section may be amended or
3 renumbered, of income includable except for this exemption in
4 net income; provided that the individual's adjusted gross
5 income shall not exceed:

6 A. seventy-five thousand dollars (\$75,000) for
7 married individuals filing separate returns;

8 B. one hundred fifty thousand dollars (\$150,000)
9 for heads of household, surviving spouses and married
10 individuals filing joint returns; and

11 C. one hundred thousand dollars (\$100,000) for
12 single individuals."

13 SECTION 2. Section 7-2-18.31 NMSA 1978 (being Laws 2020,
14 Chapter 13, Section 1) is amended to read:

15 "7-2-18.31. NEW SOLAR MARKET DEVELOPMENT INCOME TAX
16 CREDIT.--

17 A. For taxable years prior to January 1, [2028]
18 2036, a taxpayer who is not a dependent of another individual
19 and who, on or after March 1, 2020, purchases and installs a
20 solar thermal system or a photovoltaic system in a residence,
21 business or agricultural enterprise in New Mexico owned by that
22 taxpayer, may apply for, and the department may allow, a credit
23 against the taxpayer's tax liability imposed pursuant to the
24 Income Tax Act in an amount provided in Subsection C of this
25 section. The tax credit provided by this section may be

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1 referred to as the "new solar market development income tax
2 credit".

3 B. The purpose of the new solar market development
4 income tax credit is to encourage the installation of solar
5 thermal and photovoltaic systems in residences, businesses and
6 agricultural enterprises.

7 C. The department may allow a new solar market
8 development income tax credit of ten percent of the purchase
9 and installation costs of a solar thermal or photovoltaic
10 system.

11 D. The new solar market development income tax
12 credit shall not exceed six thousand dollars (\$6,000) per
13 taxpayer per taxable year. The department shall allow a tax
14 credit only for solar thermal and photovoltaic systems
15 certified pursuant to Subsection E of this section.

16 E. A taxpayer shall apply for certification of
17 eligibility for the new solar market development income tax
18 credit from the energy, minerals and natural resources
19 department on forms and in the manner prescribed by that
20 department. The aggregate amount of credits that may be
21 certified as eligible in any calendar year is [~~eight million~~
22 ~~dollars (\$8,000,000)~~] twelve million dollars (\$12,000,000).
23 Completed applications shall be considered in the order
24 received. Applications for certification received after this
25 limitation has been met in a calendar year shall not be

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1 approved. The application shall include proof of purchase and
2 installation of a solar thermal or photovoltaic system, that
3 the system meets technical specifications and requirements
4 relating to safety, code and standards compliance, solar
5 collector orientation and sun exposure, minimum system sizes,
6 system applications and lists of eligible components and any
7 additional information that the energy, minerals and natural
8 resources department may require to determine eligibility for
9 the credit. A dated certificate of eligibility shall be issued
10 to the taxpayer providing the amount of the new solar market
11 development income tax credit for which the taxpayer is
12 eligible and the taxable year in which the credit may be
13 claimed. A certificate of eligibility for a new solar market
14 development income tax credit may be sold, exchanged or
15 otherwise transferred to another taxpayer for the full value of
16 the credit. The parties to such a transaction shall notify the
17 department of the sale, exchange or transfer within ten days of
18 the sale, exchange or transfer.

19 F. A taxpayer may claim a new solar market
20 development income tax credit for the taxable year in which the
21 taxpayer purchases and installs a solar thermal or photovoltaic
22 system. To receive a new solar market development income tax
23 credit, a taxpayer shall apply to the department on forms and
24 in the manner prescribed by the department within twelve months
25 following the calendar year in which the system was installed.

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1 The application shall include a certification made pursuant to
2 Subsection E of this section.

3 G. That portion of a new solar market development
4 income tax credit that exceeds a taxpayer's tax liability in
5 the taxable year in which the credit is claimed [~~may be carried~~
6 ~~forward for a maximum of five consecutive taxable years~~] shall
7 be refunded to the taxpayer.

8 H. Married individuals filing separate returns for
9 a taxable year for which they could have filed a joint return
10 may each claim only one-half of the new solar market
11 development income tax credit that would have been claimed on a
12 joint return.

13 I. A taxpayer may be allocated the right to claim a
14 new solar market development income tax credit in proportion to
15 the taxpayer's ownership interest if the taxpayer owns an
16 interest in a business entity that is taxed for federal income
17 tax purposes as a partnership or limited liability company and
18 that business entity has met all of the requirements to be
19 eligible for the credit. The total credit claimed by all
20 members of the partnership or limited liability company shall
21 not exceed the allowable credit pursuant to this section.

22 J. A taxpayer allowed a tax credit pursuant to this
23 section shall report the amount of the credit to the taxation
24 and revenue department in a manner required by that department.

25 K. The taxation and revenue department shall

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1 compile an annual report on the new solar market development
2 income tax credit that shall include the number of taxpayers
3 approved by the department to receive the credit, the aggregate
4 amount of credits approved and any other information necessary
5 to evaluate the credit. The department shall present the
6 report to the revenue stabilization and tax policy committee
7 and the legislative finance committee with an analysis of the
8 cost of the tax credit.

9 L. As used in this section:

10 (1) "photovoltaic system" means an energy
11 system that collects or absorbs sunlight for conversion into
12 electricity; and

13 (2) "solar thermal system" means an energy
14 system that collects or absorbs solar energy for conversion
15 into heat for the purposes of space heating, space cooling or
16 water heating."

17 SECTION 3. Section 7-9-3 NMSA 1978 (being Laws 1978,
18 Chapter 46, Section 1, as amended by Laws 2021, Chapter 65,
19 Section 11 and by Laws 2021, Chapter 66, Section 1) is amended
20 to read:

21 "7-9-3. DEFINITIONS.--As used in the Gross Receipts and
22 Compensating Tax Act:

23 A. "buying" or "selling" means a transfer of
24 property for consideration or the performance of service for
25 consideration;

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

5 C. "digital good" means a digital product delivered
6 electronically, including software, music, photography, video,
7 reading material, an application and a ringtone;

8 D. "disclosed agency" means an agent receiving
9 money on behalf of a principal if the agent or the agent's
10 principal disclosed the agency relationship to a third party
11 from which the agent receives money, or if the third party
12 otherwise has actual knowledge that the agent receives money on
13 behalf of the principal;

14 ~~[D.]~~ E. "financial corporation" means a savings and
15 loan association or an incorporated savings and loan company,
16 trust company, mortgage banking company, consumer finance
17 company or other financial corporation;

18 ~~[E.]~~ F. "initial use" or "initially used" means the
19 first employment for the intended purpose and does not include
20 the following activities:

21 (1) observation of tests conducted by the
22 performer of services;

23 (2) participation in progress reviews,
24 briefings, consultations and conferences conducted by the
25 performer of services;

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

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

5 (5) similar activities;

6 [~~F.~~] G. "lease" or "leasing" means an arrangement
7 whereby, for a consideration, the owner of property grants
8 another person the exclusive right to possess and use the
9 property for a definite term;

10 [~~G.~~] H. "licensing" or "license" means an
11 arrangement whereby, for a consideration, the owner of property
12 grants another person a revocable, non-exclusive right to use
13 the property;

14 [~~H.~~] I. "local option gross receipts tax" means a
15 tax authorized to be imposed by a county or municipality upon a
16 taxpayer's gross receipts and required to be collected by the
17 department at the same time and in the same manner as the gross
18 receipts tax;

19 [~~I.~~] J. "manufactured home" means a movable or
20 portable housing structure for human occupancy that exceeds
21 either a width of eight feet or a length of forty feet
22 constructed to be towed on its own chassis and designed to be
23 installed with or without a permanent foundation;

24 [~~J.~~] K. "manufacturing" means combining or
25 processing components or materials to increase their value for

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1 sale in the ordinary course of business, but does not include
2 construction services; farming; electric power generation;
3 processing of natural resources, including hydrocarbons; or the
4 processing or preparation of meals for immediate consumption;

5 ~~[K.]~~ L. "manufacturing service" means the service
6 of combining or processing components or materials owned by
7 another, but does not include construction services; farming;
8 electric power generation; processing of natural resources,
9 including hydrocarbons; or the processing or preparation of
10 meals for immediate consumption;

11 ~~[L.]~~ M. "marketplace provider" means a person who
12 facilitates the sale, lease or license of tangible personal
13 property or services or licenses for use of real property on a
14 marketplace seller's behalf, or on the marketplace provider's
15 own behalf, by:

16 (1) listing or advertising the sale, lease or
17 license, by any means, whether physical or electronic,
18 including by catalog, internet website or television or radio
19 broadcast; and

20 (2) either directly or indirectly, through
21 agreements or arrangements with third parties collecting
22 payment from the customer and transmitting that payment to the
23 seller, regardless of whether the marketplace provider receives
24 compensation or other consideration in exchange for the
25 marketplace provider's services;

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1 [M-] N. "marketplace seller" means a person who
2 sells, leases or licenses tangible personal property or
3 services or who licenses the use of real property through a
4 marketplace provider;

5 [N-] O. "person" means:

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

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

16 [Ø-] P. "property" means:

17 (1) real property;
18 (2) tangible personal property, including
19 electricity and manufactured homes;
20 (3) licenses, including licenses of digital
21 goods, but not including the licenses of copyrights, trademarks
22 or patents; and
23 (4) franchises;

24 [P-] Q. "research and development services" means
25 an activity engaged in for other persons for consideration, for

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1 one or more of the following purposes:

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

4 (2) advancing technology in a field of
5 technical endeavor;

6 (3) developing a new or improved product,
7 process or system with new or improved function, performance,
8 reliability or quality, whether or not the new or improved
9 product, process or system is offered for sale, lease or other
10 transfer;

11 (4) developing new uses or applications for an
12 existing product, process or system, whether or not the new use
13 or application is offered as the rationale for purchase, lease
14 or other transfer of the product, process or system;

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

19 (6) designing and developing prototypes or
20 integrating systems incorporating the advances, developments or
21 improvements included in Paragraphs (1) through (5) of this
22 subsection;

23 [~~Q-~~] R. "secretary" means the secretary of taxation
24 and revenue or the secretary's delegate;

25 [~~R-~~] S. "service" means all activities engaged in

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

17 ~~[S-]~~ T. "use" or "using" includes use, consumption
18 or storage other than storage for subsequent sale in the
19 ordinary course of business or for use solely outside this
20 state."

21 **SECTION 4.** Section 7-9-4 NMSA 1978 (being Laws 1966,
22 Chapter 47, Section 4, as amended) is amended to read:

23 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
24 "GROSS RECEIPTS TAX".--

25 A. For the privilege of engaging in business, an

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1 excise tax equal to [~~five and one-eighth~~] four and seven-
2 eighths percent, except as provided in Subsection C of this
3 section, of gross receipts is imposed on any person engaging in
4 business in New Mexico.

5 B. The tax imposed by this section shall be
6 referred to as the "gross receipts tax".

7 C. If, for a fiscal year occurring after fiscal
8 year 2023 and prior to fiscal year 2028, gross receipts tax
9 revenues are less than ninety-five percent of the gross
10 receipts tax revenues for the previous fiscal year, as
11 determined by the secretary of finance and administration, the
12 rate of the gross receipts tax shall be five and one-eighth
13 percent beginning on the July 1 following the determination
14 made by the secretary of finance and administration.

15 D. On or before February 1 of each year, the
16 secretary of finance and administration shall make a
17 determination for the purposes of Subsection C of this section.
18 If the rate of tax is adjusted pursuant to that subsection, the
19 secretary shall certify to the secretary of taxation and
20 revenue that the rate of the gross receipts tax shall be five
21 and one-eighth percent, effective on the following July 1.

22 E. As used in this section, "gross receipts tax
23 revenues" means the net receipts attributable to the gross
24 receipts tax and distributed to the general fund."

25 SECTION 5. Section 7-9-7 NMSA 1978 (being Laws 1966,

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1 Chapter 47, Section 7, as amended) is amended to read:

2 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
3 "COMPENSATING TAX".--

4 A. For the privilege of making taxable use of
5 tangible personal property in New Mexico, there is imposed on
6 the person using the property an excise tax equal to [~~five and~~
7 ~~one-eighth~~] four and seven-eighths percent, except as provided
8 in Subsection G of this section, of the value of tangible
9 property that was:

10 (1) manufactured by the person using the
11 property in the state; or

12 (2) acquired in a transaction for which the
13 seller's receipts were not subject to the gross receipts tax.

14 B. For the purpose of Subsection A of this section,
15 value of tangible personal property shall be the adjusted basis
16 of the property for federal income tax purposes determined as
17 of the time of acquisition or introduction into this state or
18 of conversion of the property to taxable use, whichever is
19 later. If no adjusted basis for federal income tax purposes is
20 established for the property, a reasonable value of the
21 property shall be used.

22 C. For the privilege of making taxable use of a
23 license or franchise in New Mexico, there is imposed on the
24 person using the license or franchise an excise tax equal to
25 the rate provided in Subsection A or G of this section, as

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1 applicable, against the value of the license or franchise in
2 its use in this state. The department by rule, ruling or
3 instruction shall fairly apportion, where appropriate, the
4 value of a license or franchise to its value in use in New
5 Mexico. The tax shall apply only to the value of a license or
6 franchise used in New Mexico where the license or franchise was
7 acquired in a transaction the receipts from which were not
8 subject to the gross receipts tax.

9 D. For the privilege of making taxable use of
10 services in New Mexico, there is imposed on the person using
11 the services an excise tax equal to the rate provided in
12 Subsection A or G of this section, as applicable, against the
13 value of the services at the time the services were performed
14 or the product of the service was acquired. For use of
15 services to be a taxable use pursuant to this subsection, the
16 services shall have been acquired in a transaction the receipts
17 from which were not subject to the gross receipts tax.

18 E. For purposes of this section, receipts are not
19 subject to the gross receipts tax if the person responsible for
20 the gross receipts tax on those receipts lacked nexus in New
21 Mexico or the receipts were exempt or allowed to be deducted
22 pursuant to the Gross Receipts and Compensating Tax Act.

23 F. The tax imposed by this section shall be
24 referred to as the "compensating tax".

25 G. If the gross receipts tax is increased to five

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1 and one-eighth percent pursuant to Section 7-9-4 NMSA 1978, the
2 rate of the compensating tax shall be five and one-eighth
3 percent.

4 [~~G.~~] H. As used in this section, "taxable use"
5 means use by a person who acquires tangible personal property,
6 a license, a franchise or a service, and the use of which would
7 not have qualified for an exemption or deduction pursuant to
8 the Gross Receipts and Compensating Tax Act."

9 **SECTION 6. APPLICABILITY.--**

10 A. The provisions of Section 1 of this act apply to
11 taxable years beginning on or after January 1, 2022.

12 B. The provisions of Section 2 of this act apply to
13 the purchase and installation of a solar thermal system or a
14 photovoltaic system in taxable years beginning on or after
15 January 1, 2022.

16 **SECTION 7. EFFECTIVE DATE.--**The effective date of the
17 provisions of this act is July 1, 2022.

underscoring material = new
[bracketed material] = delete