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HOUSE BILL 117

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Kristina Ortez

AN ACT

RELATING TO TAXATION; EXCLUDING RECEIPTS OF A PRIME CONTRACTOR THAT ARE DERIVED FROM OPERATING A FACILITY IN NEW MEXICO DESIGNATED AS A NATIONAL LABORATORY BY AN ACT OF CONGRESS OR FROM OPERATING A RESEARCH FACILITY IN NEW MEXICO THAT IS OWNED BY THE STATE FROM CERTAIN GROSS RECEIPTS TAX DEDUCTIONS FOR MANUFACTURERS.

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

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

"7-9-46. DEDUCTION--GROSS RECEIPTS--GOVERNMENTAL GROSS RECEIPTS--SALES TO MANUFACTURERS AND MANUFACTURING SERVICE PROVIDERS.--

A. Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross

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1 receipts if the sale is made to a person engaged in the
2 business of manufacturing who delivers a nontaxable transaction
3 certificate to the seller or provides alternative evidence
4 pursuant to Section 7-9-43 NMSA 1978. The buyer must
5 incorporate the tangible personal property as an ingredient or
6 component part of the product that the buyer is in the business
7 of manufacturing.

8 B. Receipts from selling a manufacturing consumable
9 to a manufacturer or a manufacturing service provider may be
10 deducted from gross receipts or from governmental gross
11 receipts if the buyer delivers a nontaxable transaction
12 certificate to the seller or provides alternative evidence
13 pursuant to Section 7-9-43 NMSA 1978; provided that if the
14 seller is a utility company, an agreement with the department
15 pursuant to Section 7-1-21.1 NMSA 1978 and a nontaxable
16 transaction certificate shall be required.

17 C. Receipts from selling or leasing qualified
18 equipment may be deducted from gross receipts if the sale is
19 made to, or the lease is entered into with, a person engaged in
20 the business of manufacturing or a manufacturing service
21 provider who delivers a nontaxable transaction certificate to
22 the seller or provides alternative evidence pursuant to Section
23 7-9-43 NMSA 1978; provided that a manufacturer or manufacturing
24 service provider delivering a nontaxable transaction
25 certificate or alternative evidence with respect to the

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1 qualified equipment shall not claim an investment credit
2 pursuant to the Investment Credit Act for that same equipment.

3 D. The purpose of the deductions provided in this
4 section is to encourage manufacturing businesses to locate in
5 New Mexico and to reduce the tax burden, including reducing
6 pyramiding, on the tangible personal property that is consumed
7 in the manufacturing process and that is purchased by
8 manufacturing businesses in New Mexico.

9 E. This section does not apply to receipts of a
10 prime contractor that are derived from operating a:

11 (1) facility in New Mexico designated as a
12 national laboratory by an act of congress; or

13 (2) research facility in New Mexico that is
14 owned by the state.

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

21 [~~F.~~] G. A taxpayer deducting gross receipts
22 pursuant to this section shall report the amount deducted
23 separately for each deduction provided in this section and
24 attribute the amount of the deduction to the appropriate
25 authorization provided in this section in a manner required by

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1 the department that facilitates the evaluation by the
2 legislature of the benefit to the state of these deductions.

3 ~~[G.]~~ H. As used in this section:

4 (1) "manufacturing consumable" means tangible
5 personal property, other than qualified equipment or an
6 ingredient or component part of a manufactured product, that is
7 incorporated into, destroyed, depleted or transformed in the
8 process of manufacturing a product, including electricity,
9 fuels, water, manufacturing aids and supplies, chemicals, gases
10 and other tangibles used to manufacture a product;

11 (2) "manufacturing operation" means a plant
12 operated by a manufacturer or manufacturing service provider
13 that employs personnel to perform production tasks to produce
14 goods, in conjunction with machinery and equipment; and

15 (3) "qualified equipment" means machinery,
16 equipment and tools, including component, repair, replacement
17 and spare parts thereof, that are used directly in the
18 manufacturing process of a manufacturing operation. "Qualified
19 equipment" includes computer hardware and software used
20 directly in the manufacturing process of a manufacturing
21 operation but excludes any motor vehicle that is required to be
22 registered in this state pursuant to the Motor Vehicle Code."

23 SECTION 2. Section 7-9-46.1 NMSA 1978 (being Laws 2022,
24 Chapter 47, Section 14) is amended to read:

25 "7-9-46.1. DEDUCTION--GROSS RECEIPTS--GOVERNMENTAL GROSS
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1 RECEIPTS--SALES OF SERVICES TO MANUFACTURERS.--

2 A. Receipts from selling professional services may
3 be deducted from gross receipts or from governmental gross
4 receipts if the sale is made to a person engaged in the
5 business of manufacturing who delivers a nontaxable transaction
6 certificate to the seller or provides alternative evidence
7 pursuant to Section 7-9-43 NMSA 1978. The professional
8 services shall be related to the product that the buyer is in
9 the business of manufacturing.

10 B. The purpose of the deductions provided in this
11 section is to encourage manufacturing businesses to locate in
12 New Mexico and to reduce the tax burden, including reducing
13 pyramiding, on the professional services that are purchased by
14 manufacturing businesses in New Mexico.

15 C. This section does not apply to receipts of a
16 prime contractor that are derived from operating a:

17 (1) facility in New Mexico designated as a
18 national laboratory by an act of congress; or

19 (2) research facility in New Mexico that is
20 owned by the state.

21 [~~C.~~] D. A taxpayer allowed a deduction pursuant to
22 this section shall report the amount of the deduction
23 separately in a manner required by the department.

24 [~~D.~~] E. The department shall compile an annual
25 report on the deduction provided by this section that shall

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1 include the number of taxpayers that claimed the deduction, the
2 aggregate amount of deductions claimed and any other
3 information necessary to evaluate the effectiveness of the
4 deduction. The department shall compile and present the report
5 to the revenue stabilization and tax policy committee and the
6 legislative finance committee with an analysis of the cost of
7 the deduction and whether the deduction is performing the
8 purpose for which it was created.

9 ~~[E-]~~ F. As used in this section:

10 (1) "accounting services" means the systematic
11 and comprehensive recording of financial transactions
12 pertaining to a business entity and the process of summarizing,
13 analyzing and reporting these transactions to oversight
14 agencies or tax collection entities, including certified public
15 auditing, attest services and preparing financial statements,
16 bookkeeping, tax return preparation, advice and consulting and,
17 where applicable, representing taxpayers before tax collection
18 agencies. "Accounting services" does not include, except as
19 provided with respect to financial management services,
20 investment advice, wealth management advice or consulting or
21 any tax return preparation, advice, counseling or
22 representation for individuals, regardless of whether those
23 individuals are owners of pass-through entities, such as
24 partnerships, limited liability companies or S corporations;

25 (2) "architectural services" means services

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1 related to the art and science of designing and building
2 structures for human habitation or use and includes planning,
3 providing preliminary studies, designs, specifications and
4 working drawings and providing for general administration of
5 construction contracts;

6 (3) "engineering services" means consultation,
7 the production of a creative work, investigation, evaluation,
8 planning and design, the performance of studies and reviewing
9 planning documents when performed by, or under the supervision
10 of, a licensed engineer, including the design, development and
11 testing of mechanical, electrical, hydraulic, chemical,
12 pneumatic or thermal machinery or equipment, industrial or
13 commercial work systems or processes and military equipment.
14 "Engineering services" does not include medical or medical
15 laboratory services, any engineering performed in connection
16 with a construction service or the design and installation of
17 computer or computer network infrastructure;

18 (4) "information technology services" means
19 separately stated services for installing and maintaining a
20 business's computers and computer network, including performing
21 computer network design; installing, repairing, maintaining or
22 restoring computer networks, hardware or software; and
23 performing custom software programming or making custom
24 modifications to existing software programming. "Information
25 technology services" does not include:

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1 (a) software maintenance and update
2 agreements, unless made in conjunction with custom programming;

3 (b) computers, servers, chilling
4 equipment and pre-programmed software;

5 (c) data processing services or the
6 processing or storage of information to compile and produce
7 records of transactions for retrieval or use, including data
8 entry, data retrieval, data searches and information
9 compilation; or

10 (d) access to telecommunications or
11 internet;

12 (5) "legal services" means services performed
13 by a licensed attorney or under the supervision of a licensed
14 attorney for a client, regardless of the attorney's form of
15 business entity or whether the services are prepaid, including
16 legal representation before courts or administrative agencies;
17 drafting legal documents, such as contracts or patent
18 applications; legal research; advising and counseling;
19 arbitration; mediation; and notary public and other ancillary
20 legal services performed for a client in conjunction with and
21 under the supervision of a licensed attorney. "Legal services"
22 does not include lobbying or government relations services,
23 title insurance agent services, licensing or selling legal
24 software or legal document templates, insurance investigation
25 services or any legal representation involving financial crimes

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1 or tax evasion in New Mexico; and

2 (6) "professional services" means accounting
3 services, architectural services, engineering services,
4 information technology services and legal services."

5 SECTION 3. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2024.

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