

AN ACT

RELATING TO TAXATION; REDUCING PERSONAL INCOME TAX RATES; INCREASING AND EXPANDING ELIGIBILITY FOR LOW-INCOME TAX REBATES; PROVIDING A DEDUCTION FROM GROSS RECEIPTS AND GOVERNMENTAL GROSS RECEIPTS FOR RECEIPTS FROM THE SALE OF PRESCRIPTION DRUGS; ABOLISHING THE PRESCRIPTION DRUG TAX CREDIT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-2-7 NMSA 1978 (being Laws 1994, Chapter 5, Section 20) is amended to read:

"7-2-7. INDIVIDUAL INCOME TAX RATES.--The tax imposed by Section 7-2-3 NMSA 1978 shall be at the following rates for any taxable year beginning on or after January 1, 1996:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.7% of taxable income
Over \$ 4,000 but not over \$ 8,000	\$ 68.00 plus 3.2% of excess over \$ 4,000
Over \$ 8,000 but not over \$ 12,000	\$ 196 plus 4.7% of excess over \$ 8,000
Over \$ 12,000 but not over \$ 20,000	\$ 384 plus 6.0% of excess over \$ 12,000

Over \$ 20,000 but not over \$ 32,000	\$ 864 plus 7.1% of excess over \$ 20,000
Over \$ 32,000 but not over \$ 50,000	\$ 1,716 plus 7.9% of excess over \$ 32,000
Over \$ 50,000	\$ 3,138 plus 8.2% of excess over \$ 50,000.

B. For surviving spouses and married individuals filing joint returns:

If the taxable income is:	The tax shall be:
Not over \$8,000	1.7% of taxable income
Over \$ 8,000 but not over \$ 16,000	\$ 136 plus 3.2% of excess over \$ 8,000
Over \$ 16,000 but not over \$ 24,000	\$ 392 plus 4.7% of excess over \$ 16,000
Over \$ 24,000 but not over \$ 40,000	\$ 768 plus 6.0% of excess over \$ 24,000
Over \$ 40,000 but not over \$ 64,000	\$ 1,728 plus 7.1% of excess over \$ 40,000
Over \$ 64,000 but not over \$100,000	\$ 3,432 plus 7.9% of excess over \$ 64,000
Over \$100,000	\$ 6,276 plus 8.2% of excess over \$100,000.

C. For single individuals and for estates and

trusts:

If the taxable income is:	The tax shall be:
Not over \$5,500	1.7% of taxable income
Over \$ 5,500 but not over \$ 11,000	\$ 93.50 plus 3.2% of excess over \$ 5,500
Over \$ 11,000 but not over \$ 16,000	\$ 269.50 plus 4.7% of excess over \$ 11,000
Over \$ 16,000 but not over \$ 26,000	\$ 504.50 plus 6.0% of excess over \$ 16,000
Over \$ 26,000 but not over \$ 42,000	\$1,104.50 plus 7.1% of excess over \$ 26,000
Over \$ 42,000 but not over \$ 65,000	\$2,240.50 plus 7.9% of excess over \$ 42,000
Over \$ 65,000	\$4,057.50 plus 8.2% of excess over \$ 65,000.

D. For heads of household filing returns:

If the taxable income is:	The tax shall be:
Not over \$7,000	1.7% of taxable income
Over \$ 7,000 but not over \$ 14,000	\$ 119 plus 3.2% of excess over \$ 7,000
Over \$ 14,000 but not over \$ 20,000	\$ 343 plus 4.7% of excess over \$ 14,000
Over \$ 20,000 but not over \$ 33,000	\$ 625 plus 6.0% of excess over \$ 20,000

Over \$ 33,000 but not over \$ 53,000	\$1,405 plus 7.1% of excess over \$ 33,000
Over \$ 53,000 but not over \$ 83,000	\$2,825 plus 7.9% of excess over \$ 53,000
Over \$ 83,000	\$5,195 plus 8.2% of excess over \$ 83,000.

E. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income. "

Section 2. Section 7-2-14 NMSA 1978 (being Laws 1972, Chapter 20, Section 2, as amended) is amended to read:

"7-2-14. LOW-INCOME COMPREHENSIVE TAX REBATE. --

A. Except as otherwise provided in Subsection B of this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another individual may claim a tax rebate for a portion of state and local taxes to which the resident has been subject during the taxable year for which the return is filed. The

tax rebate may be claimed even though the resident has no income taxable under the Income Tax Act. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

B. No claim for the tax rebate provided in this section shall be filed by a resident who was an inmate of a public institution for more than six months during the taxable year for which the tax rebate could be claimed or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

C. For the purposes of this section, the total number of exemptions for which a tax rebate may be claimed or allowed is determined by adding the number of federal exemptions allowable for federal income tax purposes for each individual included in the return who is domiciled in New Mexico plus two additional exemptions for each individual domiciled in New Mexico included in the return who is sixty-five years of age or older plus one additional exemption for each individual domiciled in New Mexico included in the return who, for federal income tax purposes, is blind plus one exemption for each minor child or stepchild of the resident who would be a dependent for federal income tax

purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

D. The tax rebate provided for in this section may be claimed in the amount shown in the following table:

Modified gross income is:		And the total number of exemptions is:						6
But Not	Over	1	2	3	4	5		
\$ 0	\$ 500	\$ 120	\$ 160	\$ 200	\$ 240	\$ 280	\$ 320	
500	1, 000	135	195	250	310	350	415	
1, 000	1, 500	135	195	250	310	350	435	
1, 500	2, 000	135	195	250	310	350	450	
2, 000	2, 500	135	195	250	310	350	450	
2, 500	3, 000	135	195	250	310	350	450	
3, 000	3, 500	135	195	250	310	350	450	
3, 500	4, 000	135	195	250	310	355	450	
4, 000	4, 500	135	195	250	310	355	450	
4, 500	5, 000	125	190	240	305	355	450	
5, 000	5, 500	115	175	230	295	355	430	
5, 500	6, 000	105	155	210	260	315	410	

6,000	7,000	90	130	170	220	275	370
7,000	8,000	80	115	145	180	225	295
8,000	9,000	70	105	135	170	195	240
9,000	10,000	65	95	115	145	175	205
10,000	11,000	60	80	100	130	155	185
11,000	12,000	55	70	90	110	135	160
12,000	13,000	50	65	85	100	115	140
13,000	14,000	50	65	85	100	115	140
14,000	15,000	45	60	75	90	105	120
15,000	16,000	40	55	70	85	95	110
16,000	17,000	35	50	65	80	85	105
17,000	18,000	30	45	60	70	80	95
18,000	19,000	25	35	50	60	70	80
19,000	20,000	20	30	40	50	60	65
20,000	21,000	15	25	30	40	50	55
21,000	22,000	10	20	25	35	40	45.

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a credit in the amount shown in the first row of the table appropriate for the taxpayer's number of exemptions.

F. The tax rebates provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebates exceed the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident."

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

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

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

- (3) airport, subway or similar facility;
 - (4) park, trail, athletic field, golf course or similar facility;
 - (5) dam, reservoir, canal, ditch or similar facility;
 - (6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;
 - (7) sewerage, water, gas or other pipeline;
 - (8) transmission line;
 - (9) radio, television or other tower;
 - (10) water, oil or other storage tank;
 - (11) shaft, tunnel or other mining appurtenance;
 - (12) microwave station or similar facility;
- or
- (13) similar work;

"construction" also means:

- (14) leveling or clearing land;
- (15) excavating earth;
- (16) drilling wells of any type, including seismograph shot holes or core drilling; or
- (17) similar work;

D. "financial corporation" means any savings and

loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

(1) "Gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any

cooperative association or similar organization for sales or leases of personal property or performance of services by such organization; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price

differential; and

(f) amounts received solely on behalf of another in a disclosed agency capacity.

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential;

G. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

H. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political

subdivision of the state; or

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

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "leasing" means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is the sale of a license and not a lease;

K. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it

is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;

L. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state;

M "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

O. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

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

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

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

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

(5) similar activities;

P. "research and development services" means any activity engaged in for other persons for consideration, for one or more of the following purposes:

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

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

(3) the development of a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

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

(5) analytical or survey activities incorporating technology review, application, trade-off

study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

Q. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, Special Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department; and

R. "prescription drugs" means insulin and substances that are:

(1) 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) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

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

Section 4. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS.--Receipts from the sale of prescription drugs may be deducted from gross receipts and governmental gross receipts. "

Section 5. REPEAL.--Section 7-2-18.3 NMSA 1978 (being Laws 1994, Chapter 5, Section 17) is repealed.

Section 6. APPLICABILITY.--

A. The provisions of Sections 1 and 2 of this act apply to taxable years beginning on or after January 1, 1998.

B. The provisions of Section 5 of this act apply to taxable years beginning on or after January 1, 1999.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of Sections 3 and 4 of this act is January 1, 1999.
