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HOUSE BILL 298

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

TED HOBBS

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FROM GROSS RECEIPTS AND GOVERNMENTAL GROSS RECEIPTS FOR RECEIPTS FROM THE SALE OF PRESCRIPTION DRUGS AND PROSTHETIC DEVICES FOR STATE TAX PURPOSES BUT NOT FOR LOCAL OPTION GROSS RECEIPTS TAX PURPOSES; AMENDING THE DISTRIBUTION OF CERTAIN RECEIPTS TO MUNICIPALITIES; AMENDING THE LOCAL OPTION GROSS RECEIPTS TAX ACTS; REPEALING THE INCOME TAX CREDIT FOR PRESCRIPTION DRUGS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 7-1-6.4 NMSA 1978 (being Laws 1983, Chapter 211, Section 9, as amended) is amended to read:

"7-1-6.4. DISTRIBUTION-- MUNICIPALITY FROM GROSS RECEIPTS TAX. --

A. Except as provided in Subsection B of this

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1 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978
2 shall be made to each municipality in an amount, subject to
3 any increase or decrease made pursuant to Section 7-1-6.15
4 NMSA 1978, equal to the product of the quotient of one and two
5 hundred twenty-five thousandths percent divided by the tax
6 rate imposed by Section 7-9-4 NMSA 1978 [~~times~~] multiplied by
7 the net receipts for the month attributable to the gross
8 receipts tax from business locations:

9 (1) within that municipality;

10 (2) on land owned by the state, commonly
11 known as the "state fair grounds", within the exterior
12 boundaries of that municipality;

13 (3) outside the boundaries of any municipality
14 on land owned by that municipality; and

15 (4) on an Indian reservation or pueblo grant
16 in an area that is contiguous to that municipality and in
17 which the municipality performs services pursuant to a
18 contract between the municipality and the Indian tribe or
19 Indian pueblo if:

20 (a) the contract describes an area in
21 which the municipality is required to perform services and
22 requires the municipality to perform services that are
23 substantially the same as the services the municipality
24 performs for itself; and

25 (b) the governing body of the

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1 municipality has submitted a copy of the contract to the
2 secretary.

3 B. If the reduction made by Laws 1991, Chapter 9,
4 Section 9 to the distribution under this section impairs the
5 ability of a municipality to meet its principal or interest
6 payment obligations for revenue bonds outstanding prior to
7 July 1, 1991 that are secured by the pledge of all or part of
8 the municipality's revenue from the distribution made [~~under~~]
9 pursuant to this section, then the amount distributed pursuant
10 to this section to that municipality shall be increased by an
11 amount sufficient to meet any required payment, provided that
12 the distribution amount does not exceed the amount that would
13 have been due that municipality [~~under~~] pursuant to this
14 section as it was in effect on June 30, 1992.

15 C. In addition to the distribution required in
16 Subsection A of this section, a distribution shall be made,
17 subject to any increase or decrease made pursuant to Section
18 7-1-6.15 NMSA 1978, in an amount equal to the product of one
19 and two hundred twenty-five thousandths percent multiplied by
20 the gross receipts subject to a local option gross receipts
21 tax but not subject to the tax imposed by Section 7-9-4 NMSA
22 1978. "

23 Section 2. Section 7-9-3 NMSA 1978 (being Laws 1978,
24 Chapter 46, Section 1, as amended) is amended to read:

25 "7-9-3. DEFINITIONS.--As used in the Gross Receipts and

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1 **Compensating Tax Act:**

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

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

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

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

14 (2) building, stadium or other structure;

15 (3) airport, subway or similar facility;

16 (4) park, trail, athletic field, golf course
17 or similar facility;

18 (5) dam, reservoir, canal, ditch or similar
19 facility;

20 (6) sewerage or water treatment facility,
21 power generating plant, pump station, natural gas compressing
22 station, gas processing plant, coal gasification plant,
23 refinery, distillery or similar facility;

24 (7) sewerage, water, gas or other pipeline;

25 (8) transmission line;

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- 1 (9) radio, television or other tower;
- 2 (10) water, oil or other storage tank;
- 3 (11) shaft, tunnel or other mining

4 appurtenance;

- 5 (12) microwave station or similar facility;

6 or

- 7 (13) similar work;

8 "construction" also means:

- 9 (14) leveling or clearing land;

- 10 (15) excavating earth;

- 11 (16) drilling wells of any type, including
- 12 seismograph shot holes or core drilling; or

- 13 (17) similar work;

14 D. "financial corporation" means any savings and
15 loan association or any incorporated savings and loan company,
16 trust company, mortgage banking company, consumer finance
17 company or other financial corporation;

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

21 F. "gross receipts" means the total amount of
22 money or the value of other consideration received from
23 selling property in New Mexico, from leasing property employed
24 in New Mexico, from selling services performed outside New
25 Mexico the product of which is initially used in New Mexico or

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1 from performing services in New Mexico. In an exchange in
2 which the money or other consideration received does not
3 represent the value of the property or service exchanged,
4 "gross receipts" means the reasonable value of the property or
5 service exchanged.

6 (1) "Gross receipts" includes:

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

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

14 (c) amounts paid by members of any
15 cooperative association or similar organization for sales or
16 leases of personal property or performance of services by such
17 organization; and

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

21 (2) "Gross receipts" excludes:

22 (a) cash discounts allowed and taken;

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

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

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

13 (e) any type of time-price
14 differential; and

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

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

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1 leasing contract amount, excluding any type of time-price
2 differential;

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

7 H. "person" means:

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

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

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

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

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1 lease;

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

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

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

24 N. "manufactured home" means a moveable or
25 portable housing structure for human occupancy that exceeds

1 either a width of eight feet or a length of forty feet
2 constructed to be towed on its own chassis and designed to be
3 installed with or without a permanent foundation;

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

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

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

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

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

16 (5) similar activities;

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

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

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

24 (3) the development of a new or improved
25 product, process or system with new or improved function,

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1 performance, reliability or quality, whether or not the new or
2 improved product, process or system is offered for sale, lease
3 or other transfer;

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

9 (5) analytical or survey activities
10 incorporating technology review, application, trade-off study,
11 modeling, simulation, conceptual design or similar activities,
12 whether or not offered for sale, lease or other transfer; or

13 (6) the design and development of prototypes
14 or the integration of systems incorporating advances,
15 developments or improvements included in Paragraphs (1)
16 through (5) of this subsection; [~~and~~]

17 Q. "local option gross receipts tax" means a tax
18 authorized to be imposed by a county or municipality upon the
19 taxpayer's gross receipts and required to be collected by the
20 department at the same time and in the same manner as the
21 gross receipts tax; "local option gross receipts tax" includes
22 the taxes imposed pursuant to the Municipal Local Option Gross
23 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
24 Act, Special Municipal Gross Receipts Tax Act, County Local
25 Option Gross Receipts Taxes Act, Local Hospital Gross Receipts

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1 Tax Act, County Correctional Facility Gross Receipts Tax Act
2 and such other acts as may be enacted authorizing counties or
3 municipalities to impose taxes on gross receipts, which taxes
4 are to be collected by the department;

5 R. "prescription drug" means insulin and
6 substances that are:

7 (1) dispensed by or under the supervision of
8 a licensed pharmacist or by a physician or other person
9 authorized under state law to dispense the substance;

10 (2) prescribed for a specific human being by
11 a person authorized under state law to prescribe the
12 substance; and

13 (3) subject to the restrictions on sale
14 contained in 21 USCA 353(b)(1); and

15 S. "prosthetic device" means:

16 (1) orthopedic prosthesis, orthopedic braces
17 and supports and orthopedic shoes;

18 (2) ocular prosthesis;

19 (3) a prosthesis or prosthetic device ordered
20 as a result of surgery;

21 (4) crutches and wheelchairs; and

22 (5) replacement parts or related supplies
23 designed specifically for any of the items specified in
24 Paragraphs (1) through (4) of this subsection. "

25 Section 3. A new section of the Gross Receipts and

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1 Compensating Tax Act is enacted to read:

2 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX AND
3 GOVERNMENTAL GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--
4 PROSTHETIC DEVICES.--Receipts from the following may be
5 deducted from gross receipts or governmental gross receipts:

6 A. sale other than sale for resale of prescription
7 drugs; and

8 B. sale or lease of prosthetic devices when made
9 by a licensed practitioner to the user or consumer of the
10 device and sale or lease of prosthetic devices made by a
11 person on the basis of written order written by a licensed
12 practitioner ordering the device for a specific human being."

13 Section 4. Section 7-19-13 NMSA 1978 (being Laws 1979,
14 Chapter 397, Section 4) is amended to read:

15 "7-19-13. ORDINANCE [~~MUST~~] SHALL CONFORM TO CERTAIN
16 PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND
17 REQUIREMENTS OF THE [~~DIVISION~~] DEPARTMENT.--

18 A. Any ordinance imposing a supplemental municipal
19 gross receipts tax shall adopt by reference the same
20 definitions and the same provisions relating to exemptions and
21 deductions as are contained in the Gross Receipts and
22 Compensating Tax Act then in effect and as it may be amended
23 from time to time, except as otherwise provided in the
24 Supplemental Municipal Gross Receipts Tax Act.

25 B. The governing body of any municipality imposing

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1 or increasing the supplemental municipal gross receipts tax
2 [~~must~~] shall adopt the language of the model ordinance
3 furnished to the municipality by the [~~division~~] department for
4 the portion of the ordinance relating to the tax. "

5 Section 5. A new section of the Supplemental Municipal
6 Gross Receipts Tax Act, Section 7-19-14.1 NMSA 1978, is
7 enacted to read:

8 "7-19-14.1. [NEW MATERIAL] SPECIFIC ADDITIONS. -- A tax
9 authorized by the provisions of the Supplemental Municipal
10 Gross Receipts Tax Act and imposed shall be imposed on the
11 gross receipts arising from:

12 A. sale other than sale for resale of prescription
13 drugs; and

14 B. sale or lease of prosthetic devices when made
15 by a licensed practitioner to the user or consumer of the
16 device and sale or lease of prosthetic devices made by a
17 person on the basis of written order written by a licensed
18 practitioner ordering the device for a specific human being. "

19 Section 6. Section 7-19D-4 NMSA 1978 (being Laws 1993,
20 Chapter 346, Section 4) is amended to read:

21 "7-19D-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS
22 OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND
23 REQUIREMENTS OF THE DEPARTMENT. --

24 A. An ordinance imposing a tax [~~under~~] pursuant to
25 the provisions of the Municipal Local Option Gross Receipts

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1 Taxes Act shall adopt by reference the same definitions and
2 the same provisions relating to exemptions and deductions as
3 are contained in the Gross Receipts and Compensating Tax Act
4 then in effect and as it may be amended from time to time,
5 except as otherwise provided in the Municipal Local Option
6 Gross Receipts Taxes Act.

7 B. The governing body of any municipality imposing
8 a tax ~~[under]~~ pursuant to provisions of the Municipal Local
9 Option Gross Receipts Taxes Act shall impose the tax by
10 adopting the model ordinance with respect to the tax furnished
11 to the municipality by the department. An ordinance that does
12 not conform substantially to the model ordinance of the
13 department is not valid."

14 Section 7. A new section of the Municipal Local Option
15 Gross Receipts Taxes Act, Section 7-19D-5.1 NMSA 1978, is
16 enacted to read:

17 "7-19D-5.1. [NEW MATERIAL] SPECIFIC ADDITIONS.--A tax
18 authorized by the provisions of the Municipal Local Option
19 Gross Receipts Taxes Act and imposed shall be imposed on the
20 gross receipts arising from

21 A. sale other than sale for resale of prescription
22 drugs; and

23 B. sale or lease of prosthetic devices when made
24 by a licensed practitioner to the user or consumer of the
25 device and sale or lease of prosthetic devices made by a

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1 person on the basis of written order written by a licensed
2 practitioner ordering the device for a specific human being. "

3 Section 8. Section 7-20C-4 NMSA 1978 (being Laws 1991,
4 Chapter 176, Section 4) is amended to read:

5 "7-20C-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS
6 OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND
7 REQUIREMENTS OF THE DEPARTMENT. --

8 A. Any ordinance imposing the local hospital gross
9 receipts tax shall adopt by reference the same definitions and
10 the same provisions relating to exemptions and deductions as
11 are contained in the Gross Receipts and Compensating Tax Act
12 then in effect and as it may be amended from time to time,
13 except as otherwise provided in the Local Hospital Gross
14 Receipts Tax Act.

15 B. The governing body of any county imposing the
16 tax shall adopt the model ordinances furnished to the county
17 by the department. "

18 Section 9. A new section of the Local Hospital Gross
19 Receipts Tax Act, Section 7-20C-5.1 NMSA 1978, is enacted to
20 read:

21 "7-20C-5.1. [NEW MATERIAL] SPECIFIC ADDITIONS. -- A tax
22 authorized by the provisions of the Local Hospital Gross
23 Receipts Tax Act and imposed shall be imposed on the gross
24 receipts arising from:

25 A. sale other than sale for resale of prescription

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1 drugs; and

2 B. sale or lease of prosthetic devices when made
3 by a licensed practitioner to the user or consumer of the
4 device and sale or lease of prosthetic devices made by a
5 person on the basis of written order written by a licensed
6 practitioner ordering the device for a specific human being."

7 Section 10. Section 7-20E-4 NMSA 1978 (being Laws 1993,
8 Chapter 354, Section 4) is amended to read:

9 "7-20E-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS
10 OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND
11 REQUIREMENTS OF THE DEPARTMENT. --

12 A. An ordinance imposing a tax [~~under~~] pursuant to
13 the provisions of the County Local Option Gross Receipts Taxes
14 Act shall adopt by reference the same definitions and the same
15 provisions relating to exemptions and deductions as are
16 contained in the Gross Receipts and Compensating Tax Act then
17 in effect and as it may be amended from time to time, except
18 as otherwise provided in the County Local Option Gross
19 Receipts Taxes Act.

20 B. The governing body of any county imposing a tax
21 [~~under~~] authorized by the County Local Option Gross Receipts
22 Taxes Act shall impose the tax by adopting the model ordinance
23 with respect to the tax furnished to the county by the
24 department. An ordinance that does not conform substantially
25 to the model ordinance of the department is not valid."

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1 Section 11. A new section of the County Local Option
2 Gross Receipts Taxes Act, Section 7-20E-5.1 NMSA 1978, is
3 enacted to read:

4 "7-20E-5.1. [NEW MATERIAL] SPECIFIC ADDITIONS. -- A tax
5 authorized by the provisions of the County Local Option Gross
6 Receipts Taxes Act and imposed shall be imposed on the gross
7 receipts arising from:

8 A. sale other than sale for resale of prescription
9 drugs; and

10 B. sale or lease of prosthetic devices when made
11 by a licensed practitioner to the user or consumer of the
12 device and sale or lease of prosthetic devices made by a
13 person on the basis of written order written by a licensed
14 practitioner ordering the device for a specific human being."

15 Section 12. Section 7-20F-4 NMSA 1978 (being Laws 1993,
16 Chapter 303, Section 4) is amended to read:

17 "7-20F-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS
18 OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND
19 REQUIREMENTS OF THE DEPARTMENT. --

20 A. Any ordinance imposing the county correctional
21 facility gross receipts tax shall adopt by reference the same
22 definitions and the same provisions relating to exemptions and
23 deductions as are contained in the Gross Receipts and
24 Compensating Tax Act then in effect and as it may be amended
25 from time to time, except as otherwise provided in the County

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1 Correctional Facility Gross Receipts Tax Act.

2 B. The governing body of any county imposing the
3 county correctional facility gross receipts tax shall adopt
4 the model ordinances furnished to the county by the
5 department. "

6 Section 13. A new section of the County Correctional
7 Facility Gross Receipts Tax Act, Section 7-20F-6.1 NMSA 1978,
8 is enacted to read:

9 "7-20F-6.1. [NEW MATERIAL] SPECIFIC ADDITIONS. -- A tax
10 authorized by the provisions of the County Correctional
11 Facility Gross Receipts Tax Act and imposed shall be imposed
12 on the gross receipts arising from:

13 A. sale other than sale for resale of prescription
14 drugs; and

15 B. sale or lease of prosthetic devices when made
16 by a licensed practitioner to the user or consumer of the
17 device and sale or lease of prosthetic devices made by a
18 person on the basis of written order written by a licensed
19 practitioner ordering the device for a specific human being. "

20 Section 14. REPEAL. -- Section 7-2-18.3 NMSA 1978 (being
21 Laws 1994, Chapter 5, Section 17) is repealed.

22 Section 15. APPLICABILITY. -- The provisions of Section 14
23 of this act are applicable to taxable years beginning on or
24 after January 1, 1999.

25 Section 16. EXISTING ORDINANCES OR RESOLUTIONS. -- Every
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1 municipal ordinance or county resolution in effect on July 1,
2 1998, imposing a local option gross receipts tax is deemed
3 hereby to include imposition of the tax on gross receipts from
4 selling or leasing prescription drugs or prosthetic devices on
5 or after July 1, 1998.

6 Section 17. EFFECTIVE DATE. --

7 A. The effective date of the provisions of Section
8 1 of this act is February 1, 1999.

9 B. The effective date of the provisions of
10 Sections 2 through 13 of this act is January 1, 1999.