

1 HOUSE BILL 367

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; REDUCING THE RATES OF THE GROSS RECEIPTS
12 TAX AND THE COMPENSATING TAX; EXPANDING GROSS RECEIPTS TAX AND
13 GOVERNMENTAL GROSS RECEIPTS TAX DEDUCTIONS FOR THE SALE OF
14 PROFESSIONAL SERVICES.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 7-9-4 NMSA 1978 (being Laws 1966,
18 Chapter 47, Section 4, as amended) is amended to read:

19 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
20 "GROSS RECEIPTS TAX".--

21 A. For the privilege of engaging in business, an
22 excise tax equal to [~~the following percentages~~] four and five-
23 eighths percent of gross receipts is imposed on any person
24 engaging in business in New Mexico, [~~(1) prior to July 1,~~
25 ~~2023, five percent; and~~

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1 ~~(2) beginning July 1, 2023, four and seven-~~
2 ~~eighths percent]~~ except as provided in Subsection C of this
3 section.

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

6 C. If, for any single fiscal year occurring after
7 fiscal year 2025 and prior to fiscal year 2030, gross receipts
8 tax revenues are less than ninety-five percent of the gross
9 receipts tax revenues for the previous fiscal year, as
10 determined by the secretary of finance and administration, the
11 rate of the gross receipts tax shall be [~~five and one-eighth]~~
12 four and seven-eighths percent beginning on the July 1
13 following the determination made by the secretary of finance
14 and administration.

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

25 E. As used in this section, "gross receipts tax
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1 revenues" means the net receipts attributable to the gross
2 receipts tax and distributed to the general fund."

3 SECTION 2. Section 7-9-7 NMSA 1978 (being Laws 1966,
4 Chapter 47, Section 7, as amended) is amended to read:

5 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
6 "COMPENSATING TAX".--

7 A. For the privilege of making taxable use of
8 tangible personal property in New Mexico, there is imposed on
9 the person using the property an excise tax equal to [~~five~~
10 ~~percent prior to July 1, 2023 and four and seven-eighths~~] four
11 and five-eighths percent [~~beginning July 1, 2023~~], except as
12 provided in Subsection G of this section, of the value of
13 tangible property that was:

14 (1) manufactured by the person using the
15 property in the state; or

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

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

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1 C. For the privilege of making taxable use of a
2 license or franchise in New Mexico, there is imposed on the
3 person using the license or franchise an excise tax equal to
4 the rate provided in Subsection A or G of this section, as
5 applicable, against the value of the license or franchise in
6 its use in this state. The department by rule, ruling or
7 instruction shall fairly apportion, where appropriate, the
8 value of a license or franchise to its value in use in New
9 Mexico. The tax shall apply only to the value of a license or
10 franchise used in New Mexico where the license or franchise was
11 acquired in a transaction the receipts from which were not
12 subject to the gross receipts tax.

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

22 E. For purposes of this section, receipts are not
23 subject to the gross receipts tax if the person responsible for
24 the gross receipts tax on those receipts lacked nexus in New
25 Mexico or the receipts were exempt or allowed to be deducted

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1 pursuant to the Gross Receipts and Compensating Tax Act.

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

4 G. If the gross receipts tax is increased to [~~five~~
5 ~~and one-eighth~~] four and seven-eighths percent pursuant to
6 Subsection C of Section 7-9-4 NMSA 1978, the rate of the
7 compensating tax shall be [~~five and one-eighth~~] four and seven-
8 eighths percent.

9 H. As used in this section, "taxable use" means use
10 by a person who acquires tangible personal property, a license,
11 a franchise or a service, and the use of which would not have
12 qualified for an exemption or deduction pursuant to the Gross
13 Receipts and Compensating Tax Act."

14 SECTION 3. Section 7-9-46.1 NMSA 1978 (being Laws 2022,
15 Chapter 47, Section 14) is amended to read:

16 "7-9-46.1. DEDUCTION--GROSS RECEIPTS--GOVERNMENTAL GROSS
17 RECEIPTS--SALES OF PROFESSIONAL SERVICES [~~TO MANUFACTURERS~~].--

18 A. Receipts from selling professional services may
19 be deducted from gross receipts or from governmental gross
20 receipts if:

21 (1) the sale is made to a [~~person engaged in~~
22 ~~the business of manufacturing who delivers~~] sole
23 proprietorship, a limited liability company, a partnership or a
24 corporation;

25 (2) the sale is made to a taxpayer registered

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1 with the department for payment of the gross receipts tax or
2 with an equivalent tax program in another state, or is
3 registered as a business in another state; or

4 (3) the purchaser presents a nontaxable
5 transaction certificate to the seller or provides alternative
6 evidence pursuant to Section 7-9-43 NMSA 1978. [The
7 professional services shall be related to the product that the
8 buyer is in the business of manufacturing.

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

14 ~~G.]~~ B. A taxpayer allowed a deduction pursuant to
15 this section shall report the amount of the deduction
16 separately in a manner required by the department.

17 ~~[D.]~~ C. The department shall compile an annual
18 report on the deduction provided by this section that shall
19 include the number of taxpayers that claimed the deduction, the
20 aggregate amount of deductions claimed and any other
21 information necessary to evaluate the effectiveness of the
22 deduction. The department shall compile and present the report
23 to the revenue stabilization and tax policy committee and the
24 legislative finance committee with an analysis of the cost of
25 the deduction and whether the deduction is performing the

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1 purpose for which it was created.

2 ~~[E-]~~ D. As used in this section:

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

18 (2) "architectural services" means services
19 related to the art and science of designing and building
20 structures for human habitation or use and includes planning,
21 providing preliminary studies, designs, specifications and
22 working drawings and providing for general administration of
23 construction contracts;

24 (3) "engineering services" means consultation,
25 the production of a creative work, investigation, evaluation,

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1 planning and design, the performance of studies and reviewing
2 planning documents when performed by, or under the supervision
3 of, a licensed engineer, including the design, development and
4 testing of mechanical, electrical, hydraulic, chemical,
5 pneumatic or thermal machinery or equipment, industrial or
6 commercial work systems or processes and military equipment.
7 "Engineering services" does not include medical or medical
8 laboratory services, any engineering performed in connection
9 with a construction service or the design and installation of
10 computer or computer network infrastructure;

11 (4) "information technology services" means
12 separately stated services for installing and maintaining a
13 business's computers and computer network, including performing
14 computer network design; installing, repairing, maintaining or
15 restoring computer networks, hardware or software; and
16 performing custom software programming or making custom
17 modifications to existing software programming. "Information
18 technology services" does not include:

19 (a) agreements for software maintenance
20 and ~~[update agreements]~~ updates, unless made in conjunction
21 with custom programming;

22 (b) services performed on or for
23 computers, servers, chilling equipment and pre-programmed
24 software; or

25 (c) data processing services or the

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1 processing or storage of information to compile and produce
2 records of transactions for retrieval or use, including data
3 entry, data retrieval, data searches and information
4 compilation [or

5 ~~(d) access to telecommunications or~~
6 ~~internet];~~

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

22 (6) "payroll services" means managing and
23 administering employee payroll, benefits and compensation,
24 including employee withholding; and

25 ~~[(6)]~~ (7) "professional services" means

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1 accounting services, architectural services, engineering
2 services, information technology services, [~~and~~] legal services
3 and payroll services."

4 SECTION 4. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2023.

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