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HOUSE BILL 47

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

INTRODUCED BY

Christine Chandler

AN ACT

RELATING TO TAXATION; EXCLUDING PERSONAL CARE SERVICES, HOME HEALTH CARE AND HOSPICE CARE FROM DESTINATION-BASED SOURCING RULES FOR PURPOSES OF DETERMINING GROSS RECEIPTS TAX LIABILITY; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-1-14 NMSA 1978 (being Laws 2020, Chapter 80, Section 1) is amended to read:

"7-1-14. BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF REPORTING GROSS RECEIPTS AND USE--LOCATION-CODE DATABASE AND LOCATION-RATE DATABASE.--

A. For purposes of the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts .221841.2

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1 or compensating tax, a person that has gross receipts and a
2 person using property or services in New Mexico in a taxable
3 manner shall report the gross receipts to the proper business
4 location as provided in this section.

5 B. The business location for gross receipts from
6 the sale, lease or granting of a license to use real property
7 located in New Mexico, and any related deductions, shall be the
8 location of the property.

9 C. The business location for gross receipts from
10 the sale or license of tangible personal property, and any
11 related deductions, shall be at the following locations:

12 (1) if the property is received by the
13 purchaser at the New Mexico business location of the seller,
14 the location of the seller;

15 (2) if the property is not received by the
16 purchaser at a business location of the seller, the location
17 indicated by instructions for delivery to the purchaser, or the
18 purchaser's donee, when known to the seller;

19 (3) if Paragraphs (1) and (2) of this
20 subsection do not apply, the location indicated by an address
21 for the purchaser available from the business records of the
22 seller that are maintained in the ordinary course of business;
23 provided that use of the address does not constitute bad faith;

24 (4) if Paragraphs (1) through (3) of this
25 subsection do not apply, the location for the purchaser

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1 obtained during consummation of the sale, including the address
2 of a purchaser's payment instrument, if no other address is
3 available; provided that use of this address does not
4 constitute bad faith; or

5 (5) if Paragraphs (1) through (4) of this
6 subsection do not apply, including a circumstance in which the
7 seller is without sufficient information to apply those
8 standards, the location from which the property was shipped or
9 transmitted.

10 D. The business location for gross receipts from
11 the lease of tangible personal property, including vehicles,
12 other transportation equipment and other mobile tangible
13 personal property, and any related deductions, shall be the
14 location of primary use of the property, as indicated by the
15 address for the property provided by the lessee that is
16 available to the lessor from the lessor's records maintained in
17 the ordinary course of business; provided that use of this
18 address does not constitute bad faith. The primary business
19 location shall not be altered by intermittent use at different
20 locations, such as use of business property that accompanies
21 employees on business trips and service calls.

22 E. The business location for gross receipts from
23 the sale, lease or license of franchises, and any related
24 deductions, shall be where the franchise is used.

25 F. The business location for gross receipts from

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1 the performance or sale of the following services, and any
2 related deductions, shall be at the following locations:

3 (1) for professional services performed in New
4 Mexico, other than construction-related services, or performed
5 outside New Mexico when the product of the service is initially
6 used in New Mexico, the location of the performer of the
7 service or seller of the product of the service, as
8 appropriate;

9 (2) for home health services, hospice services
10 and personal care services performed in New Mexico, the
11 location of the performer of the service or seller of the
12 product of the service;

13 ~~[(2)]~~ (3) for construction services and
14 construction-related services performed for a construction
15 project in New Mexico, the location of the construction site;

16 ~~[(3)]~~ (4) for services with respect to the
17 selling of real estate located in New Mexico, the location of
18 the real estate;

19 ~~[(4)]~~ (5) for transportation of persons or
20 property in, into or from New Mexico, the location where the
21 person or property enters the vehicle; and

22 ~~[(5)]~~ (6) for services other than those
23 described in Paragraphs (1) through ~~[(4)]~~ (5) of this
24 subsection, the location where the product of the service is
25 delivered.

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1 G. Except as provided in Subsection H of this
2 section, uses of property or services subject to the
3 compensating tax shall be reported at the business location at
4 which gross receipts would have been required to be reported
5 had the transaction been subject to the gross receipts tax.

6 H. If a person subject to the compensating tax can
7 demonstrate that the first use upon which compensating tax is
8 imposed occurred at a time and place different from the time
9 and place of the purchase, then compensating tax shall be
10 reported at the business location of the first use.

11 I. The secretary shall designate codes to identify
12 the business locations for a person's gross receipts, or use
13 for purchases subject to the compensating tax, and deductions
14 related to those receipts or that use shall be reported.

15 J. The secretary shall develop a location-code
16 database that provides the business location codes designated
17 pursuant to Subsection I of this section. The secretary shall
18 also develop and provide to taxpayers a location-rate database
19 that sets out the tax rates applicable to business locations
20 within the state, by address, and sellers who properly rely on
21 this database shall not be liable for any additional tax due to
22 the use of an incorrect rate.

23 K. As used in this section:

24 (1) "business location" means the code
25 designated by the department to identify business locations and
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1 required to be used to report the gross receipts, or use for
2 purchases subject to the compensating tax, and deductions
3 related to those receipts or that use;

4 (2) "gross receipts" means, as applicable,
5 "gross receipts" as used in the Gross Receipts and Compensating
6 Tax Act and the Leased Vehicle Gross Receipts Tax Act and
7 "interstate telecommunications gross receipts" in the
8 Interstate Telecommunications Gross Receipts Tax Act;

9 (3) "home health services" means skilled,
10 intermittent and medically necessary services provided to a
11 person in the person's home;

12 (4) "hospice services" means services
13 furnished to a person that are reasonable and necessary for the
14 palliation or symptom management of a person's terminal illness
15 and related conditions;

16 [~~(3)~~] (5) "in-person service" means a service
17 physically provided in person by the service provider, where
18 the customer or the customer's real or tangible personal
19 property upon which the service is performed is in the same
20 location as the service provider at the time the service is
21 performed; [~~and~~]

22 (6) "personal care services" means services
23 that are provided to the elderly, people with disabilities and
24 people with chronic or temporary conditions that assist those
25 individuals with activities of daily living and to remain in

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1 the individuals' homes and communities; and

2 ~~[(4)]~~ (7) "professional service" means a
3 service, other than an in-person service, that requires either
4 an advanced degree from an accredited post-secondary
5 educational institution or a license from the state to
6 perform."

7 **SECTION 2. EFFECTIVE DATE.--**

8 A. If this act takes effect on or before April 1,
9 2022, the effective date of the provisions of this act is April
10 1, 2022.

11 B. If this act takes effect after April 1, 2022,
12 the effective date of the provisions of this act is June 1,
13 2022.

14 **SECTION 3. EMERGENCY.--**It is necessary for the public
15 peace, health and safety that this act take effect immediately.