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SENATE BILL 5

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

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO TAXATION; REDUCING THE RATES OF THE GROSS RECEIPTS TAX AND THE COMPENSATING TAX; DEFINING "DISCLOSED AGENCY" IN THE GROSS RECEIPTS AND COMPENSATING TAX ACT.

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

SECTION 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 2021, Chapter 65, Section 11 and by Laws 2021, Chapter 66, Section 1) is amended to read:

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

A. "buying" or "selling" means a transfer of property for consideration or the performance of service for consideration;

B. "department" means the taxation and revenue

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1 department, the secretary of taxation and revenue or an
2 employee of the department exercising authority lawfully
3 delegated to that employee by the secretary;

4 C. "digital good" means a digital product delivered
5 electronically, including software, music, photography, video,
6 reading material, an application and a ringtone;

7 D. "disclosed agency" means an agent receiving
8 money on behalf of a principal if the agent or the agent's
9 principal disclosed the agency relationship to a third party
10 from which the agent receives money, or if the third party
11 otherwise has actual knowledge that the agent receives money on
12 behalf of the principal;

13 [~~D.~~] E. "financial corporation" means a savings and
14 loan association or an incorporated savings and loan company,
15 trust company, mortgage banking company, consumer finance
16 company or other financial corporation;

17 [~~E.~~] F. "initial use" or "initially used" means the
18 first employment for the intended purpose and does not include
19 the following activities:

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

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

25 (3) review of preliminary drafts, drawings and

1 other materials prepared by the performer of services;

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

4 (5) similar activities;

5 [~~F.~~] G. "lease" or "leasing" means an arrangement
6 whereby, for a consideration, the owner of property grants
7 another person the exclusive right to possess and use the
8 property for a definite term;

9 [~~G.~~] H. "licensing" or "license" means an
10 arrangement whereby, for a consideration, the owner of property
11 grants another person a revocable, non-exclusive right to use
12 the property;

13 [~~H.~~] I. "local option gross receipts tax" means a
14 tax authorized to be imposed by a county or municipality upon a
15 taxpayer's gross receipts and required to be collected by the
16 department at the same time and in the same manner as the gross
17 receipts tax;

18 [~~I.~~] J. "manufactured home" means a movable or
19 portable housing structure for human occupancy that exceeds
20 either a width of eight feet or a length of forty feet
21 constructed to be towed on its own chassis and designed to be
22 installed with or without a permanent foundation;

23 [~~J.~~] K. "manufacturing" means combining or
24 processing components or materials to increase their value for
25 sale in the ordinary course of business, but does not include

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1 construction services; farming; electric power generation;
2 processing of natural resources, including hydrocarbons; or the
3 processing or preparation of meals for immediate consumption;

4 ~~[K.]~~ L. "manufacturing service" means the service
5 of combining or processing components or materials owned by
6 another, but does not include construction services; farming;
7 electric power generation; processing of natural resources,
8 including hydrocarbons; or the processing or preparation of
9 meals for immediate consumption;

10 ~~[L.]~~ M. "marketplace provider" means a person who
11 facilitates the sale, lease or license of tangible personal
12 property or services or licenses for use of real property on a
13 marketplace seller's behalf, or on the marketplace provider's
14 own behalf, by:

15 (1) listing or advertising the sale, lease or
16 license, by any means, whether physical or electronic,
17 including by catalog, internet website or television or radio
18 broadcast; and

19 (2) either directly or indirectly, through
20 agreements or arrangements with third parties collecting
21 payment from the customer and transmitting that payment to the
22 seller, regardless of whether the marketplace provider receives
23 compensation or other consideration in exchange for the
24 marketplace provider's services;

25 ~~[M.]~~ N. "marketplace seller" means a person who

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1 sells, leases or licenses tangible personal property or
2 services or who licenses the use of real property through a
3 marketplace provider;

4 ~~[N.]~~ O. "person" means:

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

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

15 ~~[O.]~~ P. "property" means:

16 (1) real property;
17 (2) tangible personal property, including
18 electricity and manufactured homes;

19 (3) licenses, including licenses of digital
20 goods, but not including the licenses of copyrights, trademarks
21 or patents; and

22 (4) franchises;

23 ~~[P.]~~ Q. "research and development services" means
24 an activity engaged in for other persons for consideration, for
25 one or more of the following purposes:

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

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

5 (3) developing a new or improved product,
6 process or system with new or improved function, performance,
7 reliability or quality, whether or not the new or improved
8 product, process or system is offered for sale, lease or other
9 transfer;

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

14 (5) developing analytical or survey activities
15 incorporating technology review, application, trade-off study,
16 modeling, simulation, conceptual design or similar activities,
17 whether or not offered for sale, lease or other transfer; or

18 (6) designing and developing prototypes or
19 integrating systems incorporating the advances, developments or
20 improvements included in Paragraphs (1) through (5) of this
21 subsection;

22 ~~[Q.]~~ R. "secretary" means the secretary of taxation
23 and revenue or the secretary's delegate;

24 ~~[R.]~~ S. "service" means all activities engaged in
25 for other persons for a consideration, which activities involve

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

16 ~~[S.]~~ T. "use" or "using" includes use, consumption
17 or storage other than storage for subsequent sale in the
18 ordinary course of business or for use solely outside this
19 state."

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

22 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
23 "GROSS RECEIPTS TAX".--

24 A. For the privilege of engaging in business, an
25 excise tax equal to ~~[five and one-eighth]~~ four and

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1 seven-eighths percent of gross receipts is imposed on any
2 person engaging in business in New Mexico.

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

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

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

9 A. For the privilege of making taxable use of
10 tangible personal property in New Mexico, there is imposed on
11 the person using the property an excise tax equal to [~~five and~~
12 ~~one-eighth~~] four and seven-eighths percent 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 of this section against the
5 value of the license or franchise in its use in this state.
6 The department by rule, ruling or instruction shall fairly
7 apportion, where appropriate, the value of a license or
8 franchise to its value in use in New Mexico. The tax shall
9 apply only to the value of a license or franchise used in New
10 Mexico where the license or franchise was acquired in a
11 transaction the receipts from which were not subject to the
12 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 of this section against the value of the services
17 at the time the services were performed or the product of the
18 service was acquired. For use of services to be a taxable use
19 pursuant to this subsection, the services shall have been
20 acquired in a transaction the receipts from which were not
21 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. As used in this section, "taxable use" means use
5 by a person who acquires tangible personal property, a license,
6 a franchise or a service, and the use of which would not have
7 qualified for an exemption or deduction pursuant to the Gross
8 Receipts and Compensating Tax Act."

9 SECTION 4. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2022.

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