

1 SENATE BILL 95

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Eric G. Griego

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10 AN ACT

11 RELATING TO TAXATION; ESTABLISHING A PRESUMPTION THAT CERTAIN
12 INTERNET SALES OF GOODS AND SERVICES ARE SUBJECT TO THE GROSS
13 RECEIPTS TAX; CLARIFYING NEXUS IN REGARD TO CERTAIN INTERNET
14 SALES.

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

17 SECTION 1. Section 7-9-3.3 NMSA 1978 (being Laws 2003,
18 Chapter 272, Section 4) is amended to read:

19 "7-9-3.3. DEFINITION--ENGAGING IN BUSINESS.--As used in
20 the Gross Receipts and Compensating Tax Act, "engaging in
21 business" means carrying on or causing to be carried on any
22 activity with the purpose of direct or indirect benefit, except
23 that

24 [~~A. "engaging in business" does not include having~~
25 ~~a worldwide web site as a third-party content provider on a~~

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1 ~~computer physically located in New Mexico but owned by another~~
2 ~~nonaffiliated person; and~~

3 B.] "engaging in business" [~~does not include~~]
4 excludes using a nonaffiliated third-party call center to
5 accept and process telephone or electronic orders of tangible
6 personal property or licenses primarily from non-New Mexico
7 buyers, which orders are forwarded to a location outside New
8 Mexico for filling, or to provide services primarily to non-New
9 Mexico customers."

10 SECTION 2. Section 7-9-5 NMSA 1978 (being Laws 1966,
11 Chapter 47, Section 5, as amended) is amended to read:

12 "7-9-5. PRESUMPTION OF TAXABILITY--AGGREGATED
13 TELECOMMUNICATIONS SERVICES--CERTAIN INTERNET SALES.--

14 A. To prevent evasion of the gross receipts tax and
15 to aid in its administration, it is presumed that all receipts
16 of a person engaging in business are subject to the gross
17 receipts tax. [~~Any~~] A person engaged solely in transactions
18 specifically exempt under the provisions of the Gross Receipts
19 and Compensating Tax Act shall not be required to register or
20 file a return under that act.

21 B. If receipts from nontaxable charges for mobile
22 telecommunications services are aggregated with and not
23 separately stated from taxable charges for mobile
24 telecommunications services, [~~then~~] the charges for nontaxable
25 mobile telecommunications services shall be subject to gross

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1 receipts tax unless the home service provider can reasonably
2 identify nontaxable charges in its books and records that are
3 kept in the regular course of business. For the purposes of
4 this subsection, "charges for mobile telecommunications
5 services", "home service provider" and "mobile
6 telecommunications services" have the meanings given in the
7 federal Mobile Telecommunications Sourcing Act.

8 C. A person with a business with no physical
9 presence in New Mexico is presumed to be engaging in business
10 in New Mexico and has nexus with the state for purposes of due
11 process and interstate commerce if:

12 (1) that person enters into an agreement with
13 an affiliate physically present in New Mexico, for a commission
14 or other consideration, to directly or indirectly refer
15 potential customers, whether by link or an internet web site or
16 otherwise, to that person; and

17 (2) the cumulative gross receipts from sales
18 by that person to customers physically present in New Mexico
19 who are referred to that person by all affiliates with an
20 agreement described in this subsection are in excess of ten
21 thousand dollars (\$10,000) during the preceding twelve-month
22 period ending on June 30 of any year.

23 D. The presumption of nexus established in
24 Subsection C of this section may be rebutted by proof that the
25 affiliate made no solicitation in the state that would satisfy

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1 the nexus requirements of the United States constitution on
2 behalf of the person presumed to be engaging in business in New
3 Mexico."

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