

SENATE/HOUSE BILL

56TH LEGISLATURE – STATE OF NEW MEXICO – FIRST REGULAR SESSION, 2023

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; PROVIDING FOR ORIGIN-BASED SOURCING FOR SERVICES AND FOR BUSINESSES THAT PERFORM BOTH SERVICES AND SALE OF PERSONAL TANGIBLE PROPERTY.

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]~~ SOURCING RULES FOR 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 or compensating tax, a person that has gross receipts and a person using property or services in New Mexico in a taxable manner shall report the gross receipts to the proper business location as provided in this section.

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

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

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

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

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

(4) if Paragraphs (1) through (3) of this subsection do not apply, the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith; or

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

D. The business location for gross receipts from the lease of tangible personal property, including vehicles, other transportation equipment and other mobile tangible personal property, and any related deductions, shall be the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this

address does not constitute bad faith. The primary business location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

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

F. The business location for gross receipts from the performance or sale of the following services, and any related deductions, shall be at the following locations:

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

(2) for construction services and construction-related services performed for a construction project in New Mexico, the location of the construction site;

(3) for services with respect to the selling of real estate located in New Mexico, the location of the real estate;

(4) for transportation of persons or property in, into or from New Mexico, the location where the person or property enters the vehicle; and

(5) for a seller that performs both services in New Mexico, other than construction-related services, and sales or licenses tangible personal property, having an annual taxable gross receipts volume for the preceding calendar year which does not exceed one million dollars (\$1,000,000), the location of the performer of the service or seller of the product of the property.

(6) for services other than those described in Paragraphs (1) through (4) of this subsection, the location where the product of the service is delivered.

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

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

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

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

K. As used in this section:

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

(2) “gross receipts” means, as applicable, “gross receipts” as used in the Gross Receipts and Compensating Tax Act and the Leased Vehicle Gross Receipts Tax Act and “interstate telecommunications gross receipts” in the Interstate Telecommunications Gross Receipts Tax Act; and

(3) “in-person service” means a service physically provided in person by the service provider, where the customer or the customer’s real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed; and

~~(4) “professional service” means a service, other than an in-person service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform.”~~

SECTION 2. EFFECTIVE DATE. - - The effective date of the provisions of this act is July 1, 2023.