



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 148

SENATE BILL 326, as amended,

with emergency clause

EMERGENCY CLAUSE

Introduced by

SENATOR STUART INGLE

SENATOR TIMOTHY Z. JENNINGS



Chapter 148

AN ACT

RELATING TO TAXATION; PROVIDING THAT THE SECRETARY OF TAXATION AND REVENUE IN CERTAIN TRANSACTIONS PURSUANT TO THE GROSS RECEIPTS AND COMPENSATING TAX ACT MAY APPROVE SATISFACTORY EVIDENCE OF DEDUCTIBILITY OTHER THAN NONTAXABLE TRANSACTION CERTIFICATES; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS.--

A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed except as provided in Subsection E of this section. The nontaxable transaction certificates shall

1 contain the information and be in a form prescribed by the
2 department. The department by regulation may deem to be
3 nontaxable transaction certificates documents issued by other
4 states or the multistate tax commission to taxpayers not
5 required to be registered in New Mexico. Only buyers or
6 lessees who have a registration number or have applied for a
7 registration number and have not been refused one under
8 Subsection C of Section 7-1-12 NMSA 1978 shall execute
9 nontaxable transaction certificates issued by the department.
10 If the seller or lessor has been given an identification
11 number for tax purposes by the department, the seller or
12 lessor shall disclose that identification number to the buyer
13 or lessee prior to or upon acceptance of a nontaxable
14 transaction certificate. When the seller or lessor accepts a
15 nontaxable transaction certificate within the required time
16 and in good faith that the buyer or lessee will employ the
17 property or service transferred in a nontaxable manner, the
18 properly executed nontaxable transaction certificate shall be
19 conclusive evidence, and the only material evidence, that the
20 proceeds from the transaction are deductible from the
21 seller's or lessor's gross receipts.

22 B. Properly executed documents required to support
23 the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74
24 NMSA 1978 should be in the possession of the seller at the
25 time the return is due for receipts from the transactions.

1 If the seller is not in possession of these documents within
2 sixty days from the date that the notice requiring possession
3 of these documents is given to the seller by the department,
4 deductions claimed by the seller or lessor that require
5 delivery of these documents shall be disallowed. These
6 documents shall contain the information and be in a form
7 prescribed by the department. When the seller accepts these
8 documents within the required time and in good faith that the
9 buyer will employ the property or service transferred in a
10 nontaxable manner, the properly executed documents shall be
11 conclusive evidence, and the only material evidence, that the
12 proceeds from the transaction are deductible from the
13 seller's gross receipts.

14 C. Notice, as used in this section, is sufficient
15 if the notice is mailed or served as provided in Subsection A
16 of Section 7-1-9 NMSA 1978. Notice by the department under
17 this section shall not be given prior to the commencement of
18 an audit of the seller required to be in possession of the
19 documents.

20 D. To exercise the privilege of executing
21 appropriate nontaxable transaction certificates, a buyer or
22 lessee shall apply to the department for permission to
23 execute nontaxable transaction certificates, except with
24 respect to documents issued by other states or the multistate
25 tax commission that the department has deemed to be

1 nontaxable transaction certificates. If a person is shown on
2 the department's records to be a delinquent taxpayer or to
3 have a non-filed period, the department may refuse to approve
4 the application of the person until the person has filed
5 returns for all non-filed periods and is no longer shown to
6 be a delinquent taxpayer, and the taxpayer may protest that
7 refusal pursuant to Section 7-1-24 NMSA 1978. Upon the
8 department's approval of the application, the buyer or lessee
9 may request appropriate nontaxable transaction certificates
10 for execution by the buyer or lessee; provided that if a
11 person is shown on the department's records to be a
12 delinquent taxpayer or to have a non-filed period, the
13 department may refuse to issue nontaxable transaction
14 certificates to the person until the person has filed returns
15 for all non-filed periods and is no longer shown to be a
16 delinquent taxpayer. The taxpayer may protest that refusal
17 pursuant to Section 7-1-24 NMSA 1978. The department may
18 require a buyer or lessee requesting and receiving nontaxable
19 transaction certificates for execution by that buyer or
20 lessee to report to the department the names, addresses and
21 identification numbers assigned by the department of the
22 sellers and lessors to whom they have delivered nontaxable
23 transaction certificates. The department may require a
24 seller or lessor engaged in business in New Mexico to report
25 to the department the names, addresses and federal employer

1 identification numbers or state identification numbers for
2 tax purposes issued by the department of the buyers or
3 lessees from whom the seller or lessor has accepted
4 nontaxable transaction certificates.

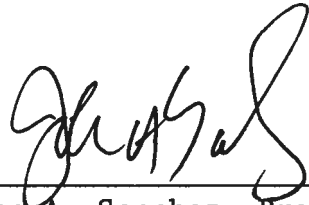
5 E. The secretary or secretary's delegate may
6 accept other evidence, as specified by rule, to support the
7 deduction provided pursuant to Section 7-9-47 NMSA 1978 for
8 the sale of tangible personal property if a taxpayer is
9 unable to provide a nontaxable transaction certificate within
10 the sixty-day period specified in Subsection A of this
11 section:

12 (1) prior to the issuance of an audit
13 assessment; or

14 (2) if the audit assessment is protested,
15 prior to either the taxpayer's withdrawal of the protest or
16 the formal hearing of the protest; provided, however, that
17 the protest in this paragraph is acknowledged by the
18 department prior to December 31, 2011."

19 SECTION 2. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect
21 immediately. _____

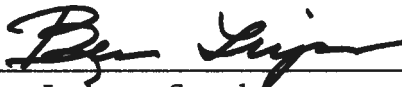
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John A. Sanchez, President
Senate



Lenore M. Naranjo, Chief Clerk
Senate



Ben Lujan, Speaker
House of Representatives



Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 7th day of April, 2011



Governor Susana Martinez
State of New Mexico

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