

## **7-9B-4. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 80, § 2, repealed 7-9B-4, as enacted by Laws 1992, ch. 47, § 4, relating to filmmaker's credit, amount, effective July 1, 1996. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **7-9B-5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 80, § 2, repealed 7-9B-5, as enacted by Laws 1992, ch. 47, § 5, relating to qualifying and applying for the filmmaker's credit, effective July 1, 1996. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **7-9B-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 80, § 2, repealed 7-9B-6, as enacted by Laws 1992, ch. 47, § 6, relating to application of filmmaker's credit to tax liability, effective July 1, 1996. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **7-9B-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 80, § 2, repealed 7-9B-7, as enacted by Laws 1992, ch. 47, § 7, relating to administration of the Filmmaker's Credit Act, effective July 1, 1996. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 9C**

## **Interstate Telecommunications Gross Receipts Tax**

### **7-9C-1. Short title.**

Chapter 7, Article 9C NMSA 1978 may be cited as the "Interstate Telecommunications Gross Receipts Tax Act".

**History:** Laws 1992, ch. 50, § 1 and Laws 1992, ch. 67, § 1; 1993, ch. 30, § 15.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "Chapter 7, Article 9C NMSA 1978" for "Sections 1 through 11 of this act".

## **7-9C-2. Definitions.**

As used in the Interstate Telecommunications Gross Receipts Tax Act:

A. "charges for mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "engaging in interstate telecommunications business" means carrying on or causing to be carried on the business of providing interstate telecommunications service;

D. "home service provider" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

E. "interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing:

(1) interstate telecommunications services, other than mobile telecommunications services, that either originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico, regardless of where the bill for such services is actually delivered; and

(2) mobile telecommunications services that originate in one state and terminate in any location outside that state, whether within or outside the United States, to a customer with a place of primary use in New Mexico. "Interstate telecommunications gross receipts" excludes mobile telecommunications services provided to a customer with a place of primary use outside of New Mexico, cash discounts allowed and taken and interstate telecommunications gross receipts tax payable for the reporting period. Also excluded from "interstate telecommunications gross receipts" are any gross receipts or sales taxes imposed by any Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

F. "interstate telecommunications service" means the service of originating or receiving in New Mexico interstate and international telephone and telegraph service, including but not limited to the transmission of voice, messages and data by way of

electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite or similar facilities;

G. "mobile telecommunications services" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other entity; the United States or any agency or instrumentality of the United States; or the state of New Mexico or any political subdivision of the state;

I. "place of primary use" has the meaning given in the federal Mobile Telecommunications Sourcing Act;

J. "private communications service" means a dedicated service for a single customer that entitles the customer to exclusive or priority use of a communications channel or group of channels between a location within New Mexico and one or more specified locations outside New Mexico; and

K. "wide-area telephone service" means a telephone service that entitles the subscriber, upon payment of a flat rate charge dependent on the total duration of all such calls and the geographic area selected by the subscriber, to either make or receive a large volume of telephonic communications to or from persons located in specified geographical areas.

**History:** Laws 1992, ch. 50, § 2 and Laws 1992, ch. 67, § 2; 1993, ch. 30, § 16; 2002, ch. 18, § 4.

## **ANNOTATIONS**

**Cross references.** — For the federal Mobile Telecommunications Sourcing Act, see 4 U.S.C.S. § 116 et seq.

**The 2002 amendment**, effective August 1, 2002, added Subsections A, D, G, and I and redesignated the remaining subsections accordingly; in Paragraph E(1) added "other than mobile telecommunication services" and at the end substituted "and" for "but excludes"; and added the first phrase of Paragraph E(2) ending with "outside of New Mexico".

**The 1993 amendment**, effective June 18, 1993, inserted "limited liability company" in Subsection E.

**7-9C-3. Imposition and rate of tax; denomination as interstate telecommunications gross receipts tax.**

A. For the privilege of engaging in interstate telecommunications business, an excise tax equal to four and one-fourth percent of interstate telecommunications gross receipts is imposed upon any person engaging in interstate telecommunications business in New Mexico.

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

**History:** Laws 1992, ch. 50, § 3 and Laws 1992, ch. 67, § 3.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1992, ch. 50, § 3 and Laws 1992, ch. 67, § 3 enacted identical versions of this section, effective July 1, 1992.

### **7-9C-4. Presumption of taxability.**

A. To prevent evasion of the interstate telecommunications gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in interstate telecommunications business are subject to the interstate telecommunications gross receipts tax.

B. If receipts from nontaxable charges for mobile telecommunications services are aggregated with and not separately stated from taxable charges for mobile telecommunications services, then the charges for nontaxable mobile telecommunications services shall be subject to interstate telecommunications gross receipts tax unless the home service provider can reasonably identify nontaxable charges in its books and records that are kept in the regular course of business.

**History:** Laws 1992, ch. 50, § 4 and Laws 1992, ch. 67, § 4; 2002, ch. 18, § 5.

#### **ANNOTATIONS**

**The 2002 amendment**, effective August 1, 2002, added the Subsection A designation; and added Subsection B.

### **7-9C-5. Date payment due.**

The interstate telecommunications gross receipts tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

**History:** Laws 1992 ch. 50, § 5 and Laws 1992, ch. 67, § 5.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1992, ch. 50, § 5 and Laws 1992, ch. 67, § 5 enacted identical versions of this section, effective July 1, 1992.

### **7-9C-6. Deduction; certain telephone services.**

Receipts from the provision of wide-area telephone service and private communications service in this state may be deducted from interstate telecommunications gross receipts.

**History:** Laws 1992, ch. 50, § 6 and Laws 1992, ch. 67, § 6; 1993, ch. 30, § 17.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "Deduction" for "Exemption" in the section heading; and rewrote this section, which read "Exempted from the interstate telecommunications gross receipts tax are receipts from the provision of wide-area telephone service and private communications service."

### **7-9C-7. Deduction; sale of a service for resale.**

A. Receipts from providing an interstate telecommunications service in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax or to the gross receipts tax or the compensating tax.

B. Receipts during the period July 1, 1998 through June 30, 2000 from providing leased telephone lines, telecommunications services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax, the gross receipts tax or the compensating tax.

**History:** Laws 1992, ch. 50, § 7 and Laws 1992, ch. 67, § 7; 1998, ch. 92, § 6.

#### **ANNOTATIONS**

**The 1998 amendment**, effective July 1, 1998, designated Subsection A, and added Subsection B.

### **7-9C-8. Deductions; telecommunications providers.**

A. Receipts from interstate telecommunications services that are provided by a corporation to itself or to an affiliated corporation may be deducted from interstate telecommunications gross receipts.

B. For the purposes of this section:

(1) "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation; and

(2) "control" means ownership of stock in a corporation that represents at least eighty percent of the total voting power of the corporation and has a value equal to at least eighty percent of the total value of the stock of that corporation.

**History:** Laws 1992, ch. 50, § 8 and Laws 1992, ch. 67, § 8; 1993, ch. 30, § 18.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, inserted "interstate telecommunications" in Subsection A.

#### **7-9C-9. Deduction; bad debts.**

Refunds and allowances made to buyers of interstate telecommunications services or amounts written off the books as an uncollectible debt by a person reporting interstate telecommunications gross receipts tax on an accrual basis may be deducted from interstate telecommunications gross receipts. If debts reported as uncollectible are subsequently collected, such receipts shall be included in interstate telecommunications gross receipts in the month of collection.

**History:** Laws 1992, ch. 50, § 9 and Laws 1992, ch. 67, § 9.

#### **ANNOTATIONS**

**Duplicate laws.** — Laws 1992, ch. 50, § 9 and Laws 1992, ch. 67, § 9 enacted identical versions of this section, effective July 1, 1992.

#### **7-9C-10. Credit; services performed outside the state.**

To prevent actual multi-jurisdictional taxation of the privilege of engaging in business of providing interstate telecommunications services, any taxpayer, upon proof that the taxpayer has paid a sales, use, gross receipts or similar tax on the same interstate telecommunications gross receipts subject to the interstate telecommunications gross receipts tax, shall be allowed a credit against the interstate telecommunications gross receipts tax to the extent of the amount of sales, use, gross receipts or similar tax properly due and paid to such other state or political subdivision of that state.

**History:** Laws 1992, ch. 50, § 10 and Laws 1992, ch. 67, § 10.

#### **ANNOTATIONS**