AN ACT

RELATING TO TAXATION; CLARIFYING THE DEFINITION IN LAW OF CONSTRUCTION MATERIAL, AS USED IN THE GROSS RECEIPTS AND COMPENSATING TAX ACT; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144, Section 44, as amended by Laws 2003, Chapter 272, Section 6 and by Laws 2003, Chapter 330, Section 2) is amended to read:

"7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

A. Receipts from selling tangible personal property to the United States or New Mexico or a governmental unit, subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts. Unless contrary to federal law, the deduction provided by this subsection does not apply to:

(1) receipts from selling metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling construction

material, excluding tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or ten-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered; or

(4) that portion of the receipts from performing a "service" that reflects the value of tangible personal property utilized or produced in performance of such service.

B. Receipts from selling tangible personal property for any purpose to an Indian tribe, nation or pueblo or a governmental unit, subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. When a seller, in good faith, deducts receipts for tangible personal property sold to the state or a governmental unit, subdivision, agency, department or instrumentality thereof, after receiving written assurances from the buyer's representative that the property sold is not construction material, the department shall not assert in a later assessment or audit of the seller that the receipts are not deductible pursuant to Paragraph (3) of Subsection A of this section."

SECTION 2. Section 7-9-60 NMSA 1978 (being Laws 1970, Chapter 12, Section 4, as amended) is amended to read:

"7-9-60. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--SALES TO CERTAIN ORGANIZATIONS.--

A. Except as provided otherwise in Subsection B of this section, receipts from selling tangible personal property to 501(c)(3) organizations may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

B. The deduction provided by this section does not apply to receipts from selling construction material, excluding tangible personal property, whether removable or non-removable, that is or would be classified for depreciation purposes as three-year property, five-year property, seven-year property or ten-year property, including indirect costs related to the asset basis, by Section 168 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, or from selling metalliferous mineral ore; except that receipts from selling construction material or from selling metalliferous mineral ore to a 501(c)(3) organization that is organized for the purpose of providing homeownership opportunities to low-income families may be deducted from gross receipts. Receipts may be deducted under this subsection only if the buyer delivers a nontaxable transaction certificate to the seller. The buyer shall use the property in the conduct of functions described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not employ the tangible personal property in the conduct of an unrelated trade or business, as defined in Section 513 of that code.

C. For the purposes of this section, "501(c)(3) organization" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered."

SECTION 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.