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**HOUSE BILL 293**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Donald L. Whitaker**

**FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**AN ACT**

**RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX CREDIT FOR A PORTION OF NAVAJO NATION TAXES PAID ON RECEIPTS FROM SELLING COAL; ENACTING AN INTERGOVERNMENTAL TAX CREDIT FOR THE SEVERANCE OF COAL ON TRIBAL LAND; AUTHORIZING THE SECRETARY OF TAXATION AND REVENUE TO ENTER INTO COOPERATIVE AGREEMENTS WITH THE NAVAJO NATION; ENACTING SECTIONS OF THE NMSA 1978.**

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

**Section 1. A new section of the Gross Receipts and Compensating Tax Act, Section 7-9-88.2 NMSA 1978, is enacted to read:**

**"7-9-88.2. [NEW MATERIAL] CREDIT--GROSS RECEIPTS TAX-- TAX PAID TO NAVAJO NATION ON RECEIPTS FROM SELLING COAL. --**

**A. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales,**

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1 business activity or similar tax has been levied by the Navajo  
2 Nation, the amount of the Navajo Nation tax paid and not  
3 refunded may be credited against any gross receipts tax due  
4 this state or its political subdivisions pursuant to the Gross  
5 Receipts and Compensating Tax Act and any local option gross  
6 receipts tax on the same receipts. The amount of the credit  
7 shall be equal to the lesser of seventy-five percent of the  
8 tax imposed by the Navajo Nation on the receipts or seventy-  
9 five percent of the revenue produced by the sum of the rate of  
10 tax imposed pursuant to the Gross Receipts and Compensating  
11 Tax Act and the total of the rates of local option gross  
12 receipts taxes imposed on the same receipts. Notwithstanding  
13 any other provision of law to the contrary, the amount of  
14 credit taken and allowed shall be applied proportionately  
15 against the amounts of the distributions made pursuant to  
16 Section 7-1-6.1 NMSA 1978 of the gross receipts tax and local  
17 option gross receipts taxes imposed on those receipts.

18 B. A qualifying gross receipts, sales, business  
19 activity or similar tax levied by the Navajo Nation shall be  
20 limited to a tax that:

21 (1) is substantially similar to the gross  
22 receipts tax imposed by the Gross Receipts and Compensating  
23 Tax Act;

24 (2) does not unlawfully discriminate among  
25 persons or transactions based on membership in the Navajo

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1 Nation;

2 (3) is levied on the receipts from selling  
3 coal at a rate not greater than the total of the gross  
4 receipts tax rate and local option gross receipts tax rates  
5 imposed by this state and its political subdivisions located  
6 within the exterior boundaries of the Navajo Nation;

7 (4) provides a credit against the Navajo  
8 Nation tax equal to the lesser of twenty-five percent of the  
9 tax imposed by the Navajo Nation on the receipts from selling  
10 coal severed from Navajo Nation land or twenty-five percent of  
11 the tax revenue produced by the sum of the rate of tax imposed  
12 pursuant to the Gross Receipts and Compensating Tax Act and  
13 the total of the rates of the local option gross receipts  
14 taxes imposed on the same receipts;

15 (5) is not used to calculate an  
16 intergovernmental coal severance tax credit with respect to  
17 the same receipts or time period; and

18 (6) is subject to a cooperative agreement  
19 between the Navajo Nation and the secretary entered into  
20 pursuant to Section 9-11-12.2 NMSA 1978 and in effect at the  
21 time of the taxable transaction.

22 C. For purposes of the tax credit allowed by this  
23 section, "Navajo Nation land" means all land in New Mexico  
24 that, on March 1, 2001, was located within the exterior  
25 boundaries of the Navajo Nation reservation or within a

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1 dependent community of the Navajo Nation or was land held by  
2 the United States in trust for the Navajo Nation. "

3 Section 2. A new Section 7-29C-2 NMSA 1978 is enacted to  
4 read:

5 "7-29C-2. [NEW MATERIAL] INTERGOVERNMENTAL TAX CREDIT--  
6 SEVERANCE TAX ON COAL. --

7 A. Any person who is liable pursuant to Section  
8 7-26-6 NMSA 1978 for the payment of the severance tax on coal  
9 severed and saved from tribal land is entitled to a credit to  
10 be computed under this section and to be deducted from the  
11 payment of the indicated tax. The credit provided by this  
12 section may be referred to as the "intergovernmental coal  
13 severance tax credit".

14 B. For the purposes of this section, "tribal land"  
15 means all land in New Mexico that, on March 1, 2001, was  
16 within the exterior boundaries of the reservation or pueblo  
17 grant of an Indian nation, tribe or pueblo, was within a  
18 dependent Indian community of the Indian nation, tribe or  
19 pueblo or was held in trust by the United States for the  
20 Indian nation, tribe or pueblo.

21 C. The intergovernmental coal severance tax credit  
22 shall be determined separately for each calendar month and  
23 shall be equal to seventy-five percent of the lesser of:

24 (1) the aggregate amount of tax due under one  
25 or more taxes in effect on March 1, 2001 imposed by the Indian

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1 nation, tribe or pueblo upon coal severed and saved from the  
2 tribal land of that Indian nation, tribe or pueblo, the value  
3 of coal severed and saved, the privilege of severing coal or  
4 the value of the leasehold interest; or

5 (2) the aggregate amount of severance tax and  
6 surtax due the state pursuant to Section 7-26-6 NMSA 1978 upon  
7 coal severed and saved from the tribal land of the Indian  
8 nation, tribe or pueblo.

9 D. If, after March 1, 2001, an Indian nation,  
10 tribe or pueblo increases any severance, privilege, possessory  
11 interest or similar tax applicable to coal to which the tax  
12 credits provided by this section apply, the amount of the  
13 intergovernmental coal severance tax credit for any month to  
14 which the increase applies shall be reduced by the difference  
15 between the aggregate amount of tax due to the Indian nation,  
16 tribe or pueblo for the month and the aggregate amount of tax  
17 that would have been imposed by the terms of the tax or taxes  
18 in effect on March 1, 2001. The expiration of a partial or  
19 total waiver from the tribal tax granted prior to March 1,  
20 2001 does not constitute an increase in the tribal tax.

21 E. Notwithstanding any other provision of law to  
22 the contrary, the amount of credit taken and allowed shall be  
23 applied proportionately against the amount of severance tax  
24 and the amount of surtax due.

25 F. The burden of showing entitlement to a credit

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1 authorized by this section is on the taxpayer claiming it, and  
2 the taxpayer shall furnish to the appropriate tax collecting  
3 agency, in the manner determined by the taxation and revenue  
4 department, proof of payment of any tribal tax on which the  
5 credit is based.

6 G. The taxation and revenue department is  
7 authorized to promulgate rules or instructions prescribing the  
8 method by which a taxpayer may allocate credit for a tax  
9 imposed by the Indian nation, tribe or pueblo on a basis other  
10 than monthly against the monthly amounts of severance tax and  
11 surtax due. "

12 Section 3. A new section of the Taxation and Revenue  
13 Department Act, Section 9-11-12.2 NMSA 1978, is enacted to  
14 read:

15 "9-11-12.2. [NEW MATERIAL] COOPERATIVE AGREEMENTS WITH  
16 NAVAJO NATION. --

17 A. The secretary may enter into cooperative  
18 agreements with the Navajo Nation for the exchange of  
19 information and the reciprocal, joint or common enforcement,  
20 administration, collection, remittance and audit of tax  
21 revenues of the party jurisdictions.

22 B. Money collected by the department on behalf of  
23 the Navajo Nation in accordance with an agreement entered into  
24 pursuant to this section is not money of this state and shall  
25 be collected and disbursed in accordance with the terms of the

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1 agreement, notwithstanding any other provision of law.

2 C. The secretary is empowered to promulgate such  
3 rules and to establish such procedures as the secretary deems  
4 appropriate for the collection and disbursement of funds due  
5 the Navajo Nation and for the receipt of money collected by  
6 the Navajo Nation for the account of this state under the  
7 terms of a cooperative agreement entered into under the  
8 authority of this section, including procedures for  
9 identification of taxpayers or transactions that are subject  
10 only to the taxing authority of the Navajo Nation, taxpayers  
11 or transactions that are subject only to the taxing authority  
12 of this state and taxpayers or transactions that are subject  
13 to the taxing authority of both party jurisdictions.

14 D. Nothing in an agreement entered into pursuant  
15 to this section shall be construed as authorizing this state  
16 or the Navajo Nation to tax persons or transactions that  
17 federal law prohibits that government from taxing, or as  
18 authorizing a state or tribal court to assert jurisdiction  
19 over persons who are not otherwise subject to that court's  
20 jurisdiction or as affecting any issue of the respective civil  
21 or criminal jurisdictions of this state or the Navajo Nation.  
22 Nothing in an agreement entered into pursuant to this section  
23 shall be construed as an assertion or an admission by either  
24 this state or the Navajo Nation that the taxes of one have  
25 precedence over the taxes of the other when the person or

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1 transaction is subject to the taxing authority of both  
2 governments. An agreement entered into pursuant to this  
3 section shall be construed solely as an agreement between the  
4 two party governments and shall not alter or affect the  
5 government-to-government relations between this state and any  
6 other Indian nation, tribe or pueblo. "

7 Section 4. EFFECTIVE DATE. -- The effective date of the  
8 provisions of this act is July 1, 2001.

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