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SENATE BILL 148

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO TAXATION; PROVIDING A PHASED-IN CREDIT AGAINST THE STATE PORTION OF GROSS RECEIPTS TAX FOR RECEIPTS FROM THE SALE OF FOOD AT RETAIL FOOD STORES; PROVIDING A PHASED-IN INCREASE IN THE CIGARETTE TAX; MODIFYING PERCENTAGES OF DISTRIBUTIONS OF THE CIGARETTE TAX; MODIFYING THE GROSS RECEIPTS TAX MUNICIPAL DISTRIBUTION AND COUNTY EQUALIZATION DISTRIBUTION.

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 is enacted to read:

"[NEW MATERIAL] FOOD CREDIT--GROSS RECEIPTS TAX--RECEIPTS FROM SALE OF FOOD AT RETAIL FOOD STORES. --The credit provided for in this section may be referred to as the "food credit". A credit shall be allowed for each reporting period against the gross receipts tax as follows:

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A. for a taxpayer located in the unincorporated area of a county:

(1) on or after July 1, 2002 and before July 1, 2003, an amount equal to one and two-thirds percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period;

(2) on or after July 1, 2003, an amount equal to three and one-third percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period; and

(3) on or after January 1, 2005, an amount equal to five percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period, provided that the distributions to the general fund from August 1, 2003 to July 31, 2004 attributable to cigarette tax revenue less the distributions to the general fund from August 1, 2001 to July 31, 2002 attributable to cigarette tax revenue is equal to or greater than one hundred fifty percent of the total amount of the food credit claimed and allowed for fiscal year 2004; and

B. for a taxpayer located in a municipality:

(1) on or after July 1, 2002 and before July 1, 2003, an amount equal to one and ninety-two thousandths percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period;

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(2) on or after July 1, 2003, an amount equal to two and one hundred eighty-four thousandths percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period; and

(3) on or after January 1, 2005, an amount equal to three and two hundred seventy-five thousandths percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period, provided that the distribution to the general fund attributable to cigarette tax revenue from August 1, 2003 to July 31, 2004 less the distribution to the general fund attributable to cigarette tax revenue from August 1, 2001 to July 31, 2002 is equal to or greater than one hundred fifty percent of the amount of the food credit claimed and allowed in fiscal year 2004. "

Section 2. Section 7-1-6.4 NMSA 1978 (being Laws 1983, Chapter 211, Section 9, as amended) is amended to read:

"7-1-6.4. DISTRIBUTION--MUNICIPALITY FROM GROSS RECEIPTS TAX. --

A. Except as provided in Subsection B of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of one and two hundred twenty-five thousandths percent divided by the tax

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1 rate imposed by Section 7-9-4 NMSA 1978 times the sum of the
2 net receipts for the month plus the amount of the food credit
3 for the month attributable to the gross receipts tax from
4 business locations:

- 5 (1) within that municipality;
- 6 (2) on land owned by the state, commonly
7 known as the "state fair grounds", within the exterior
8 boundaries of that municipality;
- 9 (3) outside the boundaries of any
10 municipality on land owned by that municipality; and
11 (4) on an Indian reservation or pueblo grant
12 in an area that is contiguous to that municipality and in
13 which the municipality performs services pursuant to a
14 contract between the municipality and the Indian tribe or
15 Indian pueblo if:

- 16 (a) the contract describes an area in
17 which the municipality is required to perform services and
18 requires the municipality to perform services that are
19 substantially the same as the services the municipality
20 performs for itself; and

- 21 (b) the governing body of the
22 municipality has submitted a copy of the contract to the
23 secretary.

24 B. If the reduction made by Laws 1991, Chapter 9,
25 Section 9 to the distribution under this section impairs the

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1 ability of a municipality to meet its principal or interest
2 payment obligations for revenue bonds outstanding prior to
3 July 1, 1991 that are secured by the pledge of all or part of
4 the municipality's revenue from the distribution made under
5 this section, then the amount distributed pursuant to this
6 section to that municipality shall be increased by an amount
7 sufficient to meet any required payment, provided that the
8 distribution amount does not exceed the amount that would have
9 been due that municipality under this section as it was in
10 effect on June 30, 1992. "

11 Section 3. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
12 Chapter 211, Section 16, as amended) is amended to read:

13 "7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES. --

14 A. Except as provided in Subsection E of this
15 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978
16 shall be made to the county and municipality recreational fund
17 in an amount equal to [~~four and three-quarters percent~~] the
18 following percentages of the net receipts, exclusive of
19 penalties and interest, attributable to the cigarette tax:

20 (1) before August 1, 2002, four and three-
21 fourths percent;

22 (2) on or after August 1, 2002 and before
23 August 1, 2003, two and three hundred seventy thousandths
24 percent; and

25 (3) on or after August 1, 2003, one and five

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1 hundred five thousandths percent.

2 B. Except as provided in Subsection E of this
3 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978
4 shall be made to the county and municipal cigarette tax fund
5 in an amount equal to [~~nine and one-half percent~~] the
6 following percentages of the net receipts, exclusive of
7 penalties and interest, attributable to the cigarette tax:

8 (1) before August 1, 2002, nine and one-half
9 percent;

10 (2) on or after August 1, 2002 and before
11 August 1, 2003, four and seven hundred thirty-nine thousandths
12 percent; and

13 (3) on or after August 1, 2003, three and ten
14 thousandths percent.

15 C. Except as provided in Subsection E of this
16 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978
17 shall be made to the cancer center at the university of New
18 Mexico school of medicine in an amount equal to [~~four and~~
19 ~~three-quarters percent~~] the following percentages of the net
20 receipts, exclusive of penalties and interest, attributable to
21 the cigarette tax:

22 (1) before August 1, 2002, four and three-
23 fourths percent;

24 (2) on or after August 1, 2002 and before
25 August 1, 2003, two and three hundred seventy thousandths

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1 percent; and

2 (3) on or after August 1, 2003, one and five
3 hundred five thousandths percent.

4 D. Except as provided in Subsection E of this
5 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978
6 shall be made to the New Mexico finance authority in an amount
7 equal to [~~seven and one-eighth percent~~] the following
8 percentages of the net receipts, exclusive of penalties and
9 interest, attributable to the cigarette tax:

10 (1) before August 1, 2002, seven and one-
11 eighth percent;

12 (2) on or after August 1, 2002 and before
13 August 1, 2003, three and five hundred fifty-four thousandths
14 percent; and

15 (3) on or after August 1, 2003, two and two
16 hundred fifty-eight thousandths percent.

17 E. If the amount of distributions in any fiscal
18 year pursuant to Subsection A, B, C or D of this section is
19 less than the amount of the distributions made pursuant to
20 that subsection in fiscal year 2002, the amount distributed
21 pursuant to that subsection shall be increased by an amount
22 sufficient to result in a total distribution for the fiscal
23 year equal to the amount distributed in fiscal year 2002. "

24 Section 4. Section 7-1-6.16 NMSA 1978 (being Laws 1983,
25 Chapter 213, Section 27, as amended) is amended to read:

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1 "7-1-6. 16. COUNTY EQUALIZATION DISTRIBUTION. --

2 A. Beginning on September 15, 1989 and on
3 September 15 of each year thereafter, the department shall
4 distribute to any county that has imposed or continued in
5 effect during the state's preceding fiscal year a county gross
6 receipts tax pursuant to [~~the County Gross Receipts Tax Act~~]
7 Section 7-20E-9 NMSA 1978 an amount equal to:

8 (1) the product of a fraction, the numerator
9 of which is the county's population and the denominator of
10 which is the state's population, multiplied by the annual sum
11 for the county; less

12 (2) the net receipts received by the
13 department during the report year, including any increase or
14 decrease made pursuant to Section 7-1-6. 15 NMSA 1978,
15 attributable to the county gross receipts tax at a rate of
16 one-eighth percent. Provided that for any month in the report
17 year, if no county gross receipts tax was in effect in the
18 county in the previous month, the net receipts, for the
19 purposes of this section, for that county for that month shall
20 be zero.

21 B. If the amount determined by the calculation in
22 Subsection A of this section is zero or a negative number for
23 a county, no distribution shall be made to that county.

24 C. As used in this section:

25 (1) "annual sum" means for each county the

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1 sum of the monthly amounts for those months in the report year
2 which follow a month in which the county had in effect a
3 county gross receipts tax;

4 (2) "monthly amount" means an amount equal to
5 the product of the sum of the net receipts received by the
6 department in the month attributable to the state gross
7 receipts tax plus the amount of the food credit claimed for
8 the month multiplied by a fraction, the numerator of which is
9 one-eighth percent and the denominator of which is the tax
10 rate imposed by Section 7-9-4 NMSA 1978 in effect on the last
11 day of the previous month;

12 (3) "population" means the most recent
13 official census or estimate determined by the bureau of the
14 census for the unit or, if neither is available, the most
15 current estimated population for the unit provided in writing
16 by the bureau of business and economic research at the
17 university of New Mexico; and

18 (4) "report year" means the twelve-month
19 period ending on the July 31 immediately preceding the date
20 upon which a distribution pursuant to this section is required
21 to be made. "

22 Section 5. Section 7-9-3 NMSA 1978 (being Laws 1978,
23 Chapter 46, Section 1, as amended by Laws 2001, Chapter 65,
24 Section 1 and by Laws 2001, Chapter 343, Section 1) is amended
25 to read:

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1 "7-9-3. DEFINITIONS. --As used in the Gross Receipts and
2 Compensating Tax Act:

3 A. "department" means the taxation and revenue
4 department, the secretary of taxation and revenue or any
5 employee of the department exercising authority lawfully
6 delegated to that employee by the secretary;

7 B. "buying" or "selling" means any transfer of
8 property for consideration or any performance of service for
9 consideration;

10 C. "construction" means building, altering,
11 repairing or demolishing in the ordinary course of business
12 any:

13 (1) road, highway, bridge, parking area or
14 related project;

15 (2) building, stadium or other structure;

16 (3) airport, subway or similar facility;

17 (4) park, trail, athletic field, golf course
18 or similar facility;

19 (5) dam, reservoir, canal, ditch or similar
20 facility;

21 (6) sewerage or water treatment facility,
22 power generating plant, pump station, natural gas compressing
23 station, gas processing plant, coal gasification plant,
24 refinery, distillery or similar facility;

25 (7) sewerage, water, gas or other pipeline;

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- 1 (8) transmission line;
- 2 (9) radio, television or other tower;
- 3 (10) water, oil or other storage tank;
- 4 (11) shaft, tunnel or other mining
- 5 appurtenance;
- 6 (12) microwave station or similar facility;
- 7 (13) retaining wall, wall, fence gate or
- 8 similar structure; or
- 9 (14) similar work;
- 10 "construction" also means:
- 11 (15) leveling or clearing land;
- 12 (16) excavating earth;
- 13 (17) drilling wells of any type, including
- 14 seismograph shot holes or core drilling; or
- 15 (18) similar work;

16 D. "financial corporation" means any savings and
17 loan association or any incorporated savings and loan company,
18 trust company, mortgage banking company, consumer finance
19 company or other financial corporation;

20 E. "engaging in business" means carrying on or
21 causing to be carried on any activity with the purpose of
22 direct or indirect benefit, except that:

- 23 (1) "engaging in business" does not include
- 24 having a worldwide web site as a third-party content provider
- 25 on a computer physically located in New Mexico but owned by

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1 another nonaffiliated person; and

2 (2) "engaging in business" does not include
3 using a nonaffiliated third-party call center to accept and
4 process telephone or electronic orders of tangible personal
5 property or licenses primarily from non-New Mexico buyers,
6 which orders are forwarded to a location outside New Mexico
7 for filling, or to provide services primarily to non-New
8 Mexico customers;

9 F. "gross receipts" means the total amount of
10 money or the value of other consideration received from
11 selling property in New Mexico, from leasing property employed
12 in New Mexico, from selling services performed outside New
13 Mexico the product of which is initially used in New Mexico or
14 from performing services in New Mexico. In an exchange in
15 which the money or other consideration received does not
16 represent the value of the property or service exchanged,
17 "gross receipts" means the reasonable value of the property or
18 service exchanged.

19 (1) "Gross receipts" includes:
20 (a) any receipts from sales of tangible
21 personal property handled on consignment;
22 (b) the total commissions or fees
23 derived from the business of buying, selling or promoting the
24 purchase, sale or leasing, as an agent or broker on a
25 commission or fee basis, of any property, service, stock, bond

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1 or security;

2 (c) amounts paid by members of any
3 cooperative association or similar organization for sales or
4 leases of personal property or performance of services by such
5 organization; and

6 (d) amounts received from transmitting
7 messages or conversations by persons providing telephone or
8 telegraph services.

9 (2) "Gross receipts" excludes:

10 (a) cash discounts allowed and taken;

11 (b) New Mexico gross receipts tax,
12 governmental gross receipts tax and leased vehicle gross
13 receipts tax payable on transactions for the reporting period;

14 (c) taxes imposed pursuant to the
15 provisions of any local option gross receipts tax that is
16 payable on transactions for the reporting period;

17 (d) any gross receipts or sales taxes
18 imposed by an Indian nation, tribe or pueblo; provided that
19 the tax is approved, if approval is required by federal law or
20 regulation, by the secretary of the interior of the United
21 States; and provided further that the gross receipts or sales
22 tax imposed by the Indian nation, tribe or pueblo provides a
23 reciprocal exclusion for gross receipts, sales or gross
24 receipts-based excise taxes imposed by the state or its
25 political subdivisions;

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(e) any type of time-price differential; and
(f) amounts received solely on behalf of another in a disclosed agency capacity.

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential;

G. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

H. "person" means:
(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated

1 by a county, municipality or other political subdivision of
2 the state; or

3 (2) a national, federal, state, Indian or
4 other governmental unit or subdivision, or an agency,
5 department or instrumentality of any of the foregoing;

6 I. "property" means real property, tangible
7 personal property, licenses, franchises, patents, trademarks
8 and copyrights. Tangible personal property includes
9 electricity and manufactured homes;

10 J. "leasing" means an arrangement whereby, for a
11 consideration, property is employed for or by any person other
12 than the owner of the property, except that the granting of a
13 license to use property is the sale of a license and not a
14 lease;

15 K. "service" means all activities engaged in for
16 other persons for a consideration, which activities involve
17 predominantly the performance of a service as distinguished
18 from selling or leasing property. "Service" includes
19 activities performed by a person for its members or
20 shareholders. In determining what is a service, the intended
21 use, principal objective or ultimate objective of the
22 contracting parties shall not be controlling. "Service"
23 includes construction activities and all tangible personal
24 property that will become an ingredient or component part of a
25 construction project. Such tangible personal property retains

1 its character as tangible personal property until it is
2 installed as an ingredient or component part of a construction
3 project in New Mexico. However, sales of tangible personal
4 property that will become an ingredient or component part of a
5 construction project to persons engaged in the construction
6 business are sales of tangible personal property;

7 L. "use" or "using" includes use, consumption or
8 storage other than storage for subsequent sale in the ordinary
9 course of business or for use solely outside this state;

10 M "secretary" means the secretary of taxation and
11 revenue or the secretary's delegate;

12 N. "manufactured home" means a movable or portable
13 housing structure for human occupancy that exceeds either a
14 width of eight feet or a length of forty feet constructed to
15 be towed on its own chassis and designed to be installed with
16 or without a permanent foundation;

17 O. "initial use" or "initially used" means the
18 first employment for the intended purpose and does not include
19 the following activities:

20 (1) observation of tests conducted by the
21 performer of services;

22 (2) participation in progress reviews,
23 briefings, consultations and conferences conducted by the
24 performer of services;

25 (3) review of preliminary drafts, drawings

1 and other materials prepared by the performer of the services;

2 (4) inspection of preliminary prototypes
3 developed by the performer of services; or

4 (5) similar activities;

5 P. "research and development services" means an
6 activity engaged in for other persons for consideration, for
7 one or more of the following purposes:

8 (1) advancing basic knowledge in a recognized
9 field of natural science;

10 (2) advancing technology in a field of
11 technical endeavor;

12 (3) the development of a new or improved
13 product, process or system with new or improved function,
14 performance, reliability or quality, whether or not the new or
15 improved product, process or system is offered for sale, lease
16 or other transfer;

17 (4) the development of new uses or
18 applications for an existing product, process or system,
19 whether or not the new use or application is offered as the
20 rationale for purchase, lease or other transfer of the
21 product, process or system;

22 (5) analytical or survey activities
23 incorporating technology review, application, trade-off study,
24 modeling, simulation, conceptual design or similar activities,
25 whether or not offered for sale, lease or other transfer; or

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1 (6) the design and development of prototypes
2 or the integration of systems incorporating advances,
3 developments or improvements included in Paragraphs (1)
4 through (5) of this subsection;

5 Q. "local option gross receipts tax" means a tax
6 authorized to be imposed by a county or municipality upon the
7 taxpayer's gross receipts and required to be collected by the
8 department at the same time and in the same manner as the
9 gross receipts tax; "local option gross receipts tax" includes
10 the taxes imposed pursuant to the Municipal Local Option Gross
11 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
12 Act, County Local Option Gross Receipts Taxes Act, Local
13 Hospital Gross Receipts Tax Act, County Correctional Facility
14 Gross Receipts Tax Act and such other acts as may be enacted
15 authorizing counties or municipalities to impose taxes on
16 gross receipts, which taxes are to be collected by the
17 department;

18 R. "prescription drugs" means insulin and
19 substances that are:

20 (1) dispensed by or under the supervision of
21 a licensed pharmacist or by a physician or other person
22 authorized under state law to do so;

23 (2) prescribed for a specified person by a
24 person authorized under state law to prescribe the substance;
25 and

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1 (3) subject to the restrictions on sale
2 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;
3 [~~and~~]

4 S. "construction material" means tangible personal
5 property that becomes or is intended to become an ingredient
6 or component part of a construction project, but "construction
7 material" does not include a replacement fixture when the
8 replacement is not construction or a replacement part for a
9 fixture;

10 T. "food" means any food or food product for home
11 consumption that meets the definition of food in 7 USCA
12 2012(g)(1) for purposes of the federal food stamp program; and

13 U. "retail food store" means an establishment that
14 sells food for home preparation and consumption that meets the
15 definition of retail food store in 7 USCA 2012(k)(1) for
16 purposes of the federal food stamp program, whether or not the
17 establishment participates in the food stamp program "

18 Section 6. Section 7-12-3 NMSA 1978 (being Laws 1971,
19 Chapter 77, Section 3, as amended) is amended to read:

20 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

21 A. For the privilege of selling, giving or
22 consuming cigarettes in New Mexico, there is levied an excise
23 tax at the rate of:

24 (1) before July 1, 2002, one and five
25 hundredths cents (\$.0105) for each cigarette sold, given or

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consumed in this state;

(2) on or after July 1, 2002 and before July 1, 2003, two and three-tenths cents (\$.023) for each cigarette sold, given or consumed in this state; and

(3) on or after July 1, 2003 and before July 1, 2004, four and five hundredths cents (\$.0405) for each cigarette sold, given or consumed in this state.

B. The tax imposed by this section shall be referred to as the "cigarette tax". "

Section 7. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2002.