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# F I S C A L I M P A C T R E P O R T

**ORIGINAL DATE** 2/7/18
**SPONSOR** Gonzales **LAST UPDATED** **HB** 198

**SHORT TITLE** Tax Code Cleanup And Reform **SB**

**ANALYST** Graeser/Clark

## APPROPRIATION (dollars in thousands)

| Appropriation | | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| FY18 | FY19 | FY20 | FY21 | FY22 | | |
| | N/A | N/A | N/A | N/A | N/A | N/A |

Parenthesis ( ) indicate expenditure decreases

Bill title indicates there is an appropriation. Section 21 of the bill (Section 7-1-6.41 NMSA 1978) provides for a 3 percent administrative fee to be transferred to the General Fund. The specific appropriation language in that section is deleted here.

## REVENUE (dollars in thousands)

| Estimated Revenue | | | | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| FY18 | FY19 | FY20 | FY21 | FY22 | | |
| | See Discussion at "Fiscal Implications" below | | | | Recurring | General Fund |
| | See Discussion at "Fiscal Implications" below | | | | Recurring | Small Counties Assistance Fund |
| | See Discussion at "Fiscal Implications" below | | | | Recurring | County Equalization |
| | See Discussion at "Fiscal Implications" below | | | | Recurring | Municipalities |
| | See Discussion at "Fiscal Implications" below | | | | Recurring | Counties |
| | See Discussion at "Fiscal Implications" below | | | | Recurring | Various other state funds |

Parenthesis ( ) indicate revenue decreases

## ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY18 | FY19 | FY20 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|---|---|---|
| **Total** | | | | | | |

Parenthesis ( ) indicate expenditure decreases

This bill would have major impact on TRD's IT division and would have significant impact on TRD's operations division and audit. TRD will have to quantify these impacts.

Duplicates, Relates to, Conflicts with, Companion to: Many other bills introduced this session, including HB-4, HB-206, SB-162, SB-175, SB-263.

**SOURCES OF INFORMATION**
LFC Files
Description prepared by James P. O'Neill, former official of TRD.

Responses Received From
New Mexico Attorney General's Office (NMAG)
New Mexico Finance Authority (NMFA)
Regulation and Licensing Department (RLD)
New Mexico Municipal League

**SUMMARY**

Synopsis of Bill

House Bill 198 proposes another path toward tax reform, with major emphasis on the effects on local governments.

A summary prepared by Mr. P. O'Neill identifies the main ideas included in the bill:

- Thoroughly revise "take-back" rules (7-1-6.15).
- Revise allocation/apportionment rules on services for income taxes (as proposed in 2017 bills).
- Require allocation/apportionment of income received from pass-through entities to be allocated and apportioned based on commercial domicile and factors of the PTEs.
- Apply GRT to sales by out-of-state vendors to NM buyers:
  - Tangible property sold by vendors like Amazon and their marketplace associates (as proposed in 2017 bills but fully-taxing sales through multi-vendor platforms);
  - Services performed out-of-state.
- Convert the food (Section, NMSA 1979 7-9-92) and medical (Section NMSA, 1979 7-9-93) deductions to credits against state tax liability and dumping the hold-harmless distributions;
- Impose the GRT on larger 501( c)(3) non-profit hospitals and other revenue generating non-profit entities;
- Define (for the first time) deductible exports: property, licenses, franchises and services (general & transportation).
- Expand compensating tax to license, franchises and services used in NM.
- Allow local option GRTs to apply to intrastate cross-county, cross-municipality transportation services.
- Provide local compensating taxes.
- Winnow out obsolete or unused sections of statute.

Of the many changes proposed in this bill, those that broaden the state tax base are: (1) applying the GRT to sales of out-of-state vendors; (2) imposing the GRT on larger 501(c)(3) non-profits, including hospitals; (3) expanding the compensating tax to licenses, franchises and services used in New Mexico. Measures that expand the local tax base include the three listed above and (4) repealing the deductions for food and some medical services and replacing this with a credit against state tax; and (5) imposing a municipal and county compensating tax at the same rate as the gross receipts tax imposed in that same jurisdiction. When the food and medical deductions are repealed for the local jurisdictions, the food and medical hold harmless payments are repealed. Another significant change is to repeal the 1.225 percent state share of gross receipts tax and convert this into a .98 percent municipal local option rate that would be automatically

added to the various optional rates. This is expected to be revenue neutral for the municipalities taken together, Finally, a significant change is to drop the effective state rate in municipal areas and county remainder areas to 3.9 percent for the transition year and thence to 3.1 percent as the expected tax base expansions take place. This latter rate could be adjusted in the 2019 session as data on the effect of the tax base expansions and other changes is accumulated through the first few months of the changes.

Various provisions of the bill have various effective dates. A number of sections have delayed repeal dates. The income tax sections have applicability dates for taxable years beginning January 1, 2019.

## FISCAL IMPLICATIONS

Partial estimates applicable to the fiscal impacts of this bill include:

Food hold harmless payments for FY 17 = $99 million declining by an average 5 percent per year
Medical hold harmless payments for FY 17 = $27.7 million declining by an average 2 percent per year.

| | FY | Food HH | YoY% | Medical HH | YoY% |
|---|---|---|---|---|---|
| Actuals | 2009 | $ 93,441,572 | | $ 27,511,554 | |
| | 2010 | $ 97,170,431 | 4.0% | $ 29,748,340 | 8.1% |
| | 2011 | $ 98,808,038 | 1.7% | $ 31,914,031 | 7.3% |
| | 2012 | $ 103,153,647 | 4.4% | $ 34,590,285 | 8.4% |
| | 2013 | $ 104,484,247 | 1.3% | $ 34,687,916 | 0.3% |
| | 2014 | $ 107,063,781 | 2.5% | $ 32,839,883 | -5.3% |
| | 2015 | $ 103,649,252 | -3.2% | $ 31,249,077 | -4.8% |
| | 2016 | $ 104,276,960 | 0.6% | $ 28,554,257 | -8.6% |
| | 2017 | $ 99,146,631 | -4.9% | $ 27,737,946 | -2.9% |
| Forecast | 2018 | $ 94,907,758 | -4.3% | $ 30,422,521 | 9.7% |
| | 2019 | $ 91,366,193 | -3.7% | $ 29,855,907 | -1.9% |
| | 2020 | $ 87,875,686 | -3.8% | $ 29,206,457 | -2.2% |
| | 2021 | $ 83,217,711 | -5.3% | $ 23,961,320 | -2.1% |
| | 2022 | $ 78,207,477 | -6.0% | $ 22,721,535 | -2.1% |

| | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 |
|---|---|---|---|---|---|
| Matched Txbl | $51.5 bln | $55.4 bln | $57.6 bln | $60.9 bln | $64.5 bln |
| Total Non-Profit (1/3 total) | | | $2.0 bln | $2.1 bln | $$2.2 bln |
| Hospitals w/ 50% deduction | | | $2.2 bln+ | $2.2 bln+ | $2.2 bln+ |
| Internet & comp on services | | | $2.0 bln | $2.0 bln | $2.0 bln |
| % expansion of base | | | 11% | | |

Expected increase in base from the combination of inclusion of the non-profits, hospitals and non-hospital non-profits.

## SIGNIFICANT ISSUES

Although the state rate is reduced to reflect the expansion of the base and repeal of the hold harmless distributions, the municipal and county rates have not been altered. The municipal and county revenues will expand from the inclusion of the food and medical services in the base, as well as the municipal and county compensating tax, the tax on internet sales and the inclusion of receipts of the non-profits in their revenues. There are no planned reductions in municipal or county tax rates.

## ADMINISTRATIVE IMPLICATIONS

TRD will testify that the proposed changes in this bill will be complex and costly.

LG&JC/al

# Section by Section Description and Analysis of HB-198

Section 1: New Definitions for Small Counties Assistance Act. "Tax rate factor means 1.225 percent." This is a change from 5.125/5 = 1.025, a .2 percent increase.

Section 2: adds Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act to TAA applicability (Technical Change) and adds local option compensating tax act (substantive change).

Section 3: adds "local option compensating tax" to TAA definitions and recognizes the new "Municipal Local Option Gross Receipts and Compensating Tax Act".

Section 4: adds "Distribution amounts withheld pursuant to Section 7-1-6.15 NMSA 1978" to the sixty day rule -- "remittances received within the previous two months that are unidentified as to source or disposition" as amounts to retain in the TAA each month. 7-1-6.15 NMSA 1978 is the (particularly) local government distributions adjustment section (see below at Section 8).

Section 5: retains the state share 1.225 percent gross receipts tax distribution in 7-1-6.4 NMSA 1978 for state fairgrounds, land owned by a municipality outside the incorporation limits, Indian reservation land in which the municipality performs services (the Espanola/Santa Clara agreement), and deletes the 1.225 percent state share for receipts attributable to transactions within municipal boundaries.

O'Neill notes for Sections 6, 7, 58, 61, 65, 67, 69 and 73E the following:

> Clean-up of transfers of local option gross receipts tax revenue. Instructions for disbursing the revenue collected by TRD from local option gross receipts and compensating taxes appear in (i) the TAA, specifically at **Section 7-1-6.12** (municipalities), **Section 7-1-6.13** (counties generally) and **Section 7-1-6.60** (county business retention gross receipts tax), and (ii) the several acts authorizing imposition of those taxes. While the instructions are largely duplicative, there are some differences. Clarity of administration suggests that there should be only one set of instructions. Since the TAA is concerned with tax administration, which includes sending revenues to their proper destinations, the instructions should appear only in Sections 7-1-6.12 and 7-1-6.13.
>
> Note: Only Lincoln County had permission to levy a county business retention gross receipts tax and that was confined to one five-year ordinance. The ordinance was duly levied and has expired. Therefore the tax at 7-20E-27 NMSA 1978 and the section disposing of the funds at 7-1-6.60 NMSA 1978 are obsolete. They are proposed for repeal.

O'Neill also notes for Sections 6, 7, 11, 58, 61, 65, 67 and 69 the following:

> Consolidating administrative fee provisions. Instructions for imposition and collection of the administrative fee are found in three places, in (i) **Sections 7-1-6.12 and 7-1-6.13** which transfer local option gross receipts tax funds, (ii) **Section 7-1-6.41**—almost all of which is obsolete—which discusses several different (now expired) administrative fees and (iii) the local option gross receipts taxes. Again, one comprehensive statement is all that is required and that should be in Section 7-1-6.41. Language referring to the administrative fee is stripped from the acts authorizing imposition of local option gross receipts taxes, retaining only those restrictions on fee imposition in current law.

Section 6: adds local option compensating tax and clarifies that TRD may adjust these distributions based on the revised 7-1-6.15 rules and deduct an administrative fee imposed through the action of 7-1-6.41 NMSA 1978.

Section 7: provides the same language as Section 6 for county local option gross receipts or compensating taxes. See sidebar for suggested correction.

> Section 6 of the bill does not amend the TIDD portion of 7-1-6.12 but Section 7 of the bill does change "distribution" to "transfer" in 7-1-6.13. These sections should be made parallel. LFC staff suggest that the changes in section 7 relative to the transfer be eliminated.

Section 8 contains multiple amendments to the distribution adjustment authority of 7-1-6.15.

- Clarifies that any change to a previously filed return that alters the amount of money due to a local government may and should be included in the next distribution to that local government. There is an extensive list of situations that should be included in the next distribution. It is worthwhile to repeat this list here:

  "The department is authorized to include within current distributions or transfers to local governments amounts, whether positive or negative, not reported on returns as pertaining to the current period, whether the amount reflects the granting of a refund claim, an amendment of one or more returns filed in prior periods, filing of late-filed returns, a change in reporting location, an audit of a taxpayer by the department or any other process connected with information on returns submitted for prior periods and on which distributions and transfers for those prior periods to local governments were determined."

- Further note that this list restates and reiterates the principles determined in the Eunice lawsuit published May 2014.
- Modifies the gasoline tax adjustments from the principally local option gross receipts tax adjustment procedures of 7-1-6.15.
- Returns the look-back period to one-year plus current year (12 to 23 months) from the three-year look-back period of the 2015 legislation.
- In the new Subsection J establishes an annual procedure for truing up the gasoline tax distributions to the local governments.
- Changes the language from "municipality or county" to local governments to include TIDDs (and perhaps Indian tribes, nations and pueblos, although the new definition of "local government" does not include these entities.)

Section 9: amends the county equalization distribution of 7-1-6.16 by removing reference to the food and medical deductions which are being modified in this bill, by converting the deductions into credits against the state gross receipts tax.

Section 10: amends the solid waste assessment fee to remove obsolete administrative fee authority that was included to help fund the TRIMS effort in the early 2000s.

Section 11: rewrites for clarity and effect the administrative fee section 7-1-6.41. First, all of the special administrative fee used to help fund the TRIMS effort in the early 2000s has been eliminated. The regular administrative fee is set at three percent of the amount to be transferred. All of the local government GRT option sections of the bill now consistently reference this administrative fee section.

Section 12: clarifies that the money sent to tax increment development districts (TIDDs) is a

transfer, not a distribution. This is technical.

Section 13: adds to the TAA the distribution authority for the local liquor excise tax. The local liquor excise tax is a TAA tax in 7-1-6.2 NMSA 1978 (see section 2 of this bill).

Section 14: amends one of the confidentiality sections of the tax administration act: In favor of a hard prohibition in the section that permits TRD to disclose information to local governments, the amendment defines a "maximum period." It also removes the instruction that information may only be disclosed by the TRD to local governments when the IRS has provided authorization. This is a contentious issue. The maximum period has been increased from 12 months to seven years, to conform to the statute of limitations for tax fraud.

Section 15: introduces the instruction that the reporting location for transactions involving selling property or a product of a service into New Mexico is where the property or product of the service is delivered. This is a core principle if the state is to begin collecting tax from remote sellers (internet sales). In another break with tradition, a person engaged in the business of transporting of a person or property will now report for GRT purposes the place where the transport originates. In interstate commerce, this reporting location will be out-of-state and there will be no GRT. A transport originating within the state will be taxed to the local jurisdiction of origination. This point should be further researched to identify the conventional deduction of a continuous transport in interstate commerce. There may be an unintended consequence here that must also be researched. Conventionally, the state share 1.225 percent means that the state rate is 3.90 percent in municipal areas and 5.125 percent in county remainder areas. To the extent that out-of-state internet sellers are beginning to collect and remit gross receipts taxes to the state at the 5.125 percent rate, there will be a loss of state revenue for any transaction reclassified to a municipal reporting location. However, the conversion of the1.225 percent state share to a .98 percent municipal option may solve this revenue loss. The following explanation is from O'Neill.

> Receipts from transportation services today are reported from the taxpayer's place(s) of business because nothing requires any other method of reporting. This is much like taxing construction at the construction company's headquarters, not by construction site.
>
> Looking at the transportation service itself, there are three general ways to tax the service of transporting persons or property from one jurisdiction to another. Tax could be imposed on the entire receipts at the place where service begins or the place where it ends. Alternatively, receipts can be allocated to each jurisdiction in which the service takes place, with each jurisdiction taxing (or not) its piece of the pie.
>
> Taking as a given that the allocation approach would be administratively troublesome for the taxpayers, the jurisdictions and the tax collector, that leaves, as rational choices, imposing the gross receipts tax at either the point of origin or the point of destination. HB-198 opts for the point of origin of the transportation as being more in line with the general structure of the tax.

Section 37 of this bill explains that if the transportation of persons and property is in interstate commerce, then we cannot tax it. However, the change in this Section 15 refers to the treatment of receipts from transportation in intrastate commerce.

Section 16: somewhat changes the provisions for disputing liabilities. The Department may

request addition relevant documentation from a taxpayer who has submitted a claim for refund, but would not reset the 180 days trigger for resolution. Failing resolution within the 180 day period, the disputant may refile the claim or commence a civil action in district court. O'Neill explains:

> The current versions of Subsections B and C directly contradict each other. Since giving taxpayers finality in the process is highly desirable, the conflict is resolved is favor of deeming a claim for refund to be properly before TRD, if the claim meets stated requirements, even when TRD has asked for additional information.

Section 17: adds a provision to the refund contribution section (7-2-31.1) that allows the secretary to cancel a refund designation program if less than $5,000 had been so designated for three consecutive years. The Department must post on its website the total amount contributed. O'Neill comments:

> Proliferation of Optional Contributions of Refunds -- sixteen Income Tax Act provisions allow taxpayers to donate all or part of any income tax refund due the taxpayer to a cause (some of which aim at remedying underfunding of state agencies). In any event, **Section 7-2-31.1** requires that TRD kick off a process to repeal any one of these optional contributions if less than $5,000 is donated to the cause in each of three successive tax years. TRD has never initiated this process. To shine a light on the value of these provisions, the bill requires that TRD begin posting on its website, the amount donated under each provision each tax year.

Section 18: removes an obsolete section of the Corporate Income Tax Act referring to carryovers of net operating losses attributable to taxable years beginning prior to 1991. Section 18 also provides that taxpayers filing a consolidated or combined must designate as agent the corporation in whose name the consolidated or combined return is filed.

Section 19: changes the allocation and apportionment rules for a pass-through entity under the Corporate Income and Franchise Tax Act. All other income of a corporation is subject to the UDITPA rules of 7-4-1 through 7-4-21 NMSA 1978. Income received from pass-through entities shall be allocated and apportioned pursuant to UDITPA separately from all other income of the taxpayer using the commercial domicile and apportionment factors of the pass-through entities. This is an important provision for New Mexico, as a substantial portion of crude oil and natural gas extraction is conducted by limited liability companies, limited liability partnerships and sub-chapter S corporations where the allocation and apportionment of income of the pass-through entity may be very much different than that of the multistate, multinational operating company.

Section 20: adjusts the UDITPA rules for services and tangible and non-tangible property. O'Neill explains:

> Modernizes the apportionment of income derived from intangible property or services in **Section 7-4-18**. Like proposals made in the 2017 session, this replaces the existing rule awarding income to the state in which the greatest portion of the production activity takes place with rules centered on where the products are used or delivered. Since NM is a market state, this should benefit NM.

A number of changes to the Gross Receipts and Compensating Tax Act are included in this bill; O'Neill explains:

> Sections 15, 23, 24, 27 & 34 -- Just as in bills debated in the 2017 session, several

sections are amended to pick up sales into NM by out-of-state sellers, including sales over multi-vendor marketplace platforms. Sets a *de minimis* rule of $100,000 in combined sales of an out-of-state seller and its affiliates, but this rule does not apply to sales through multi-vendor platforms.

Section 21: modifies some definitions in the Gross Receipts and Compensating Tax Act; moves the definition of “affiliate” from **Section 7-9-69** to Section 7-9-3, the general definitions section.

Section 22 removes the governmental gross receipts exemption at **Section 7-9-3.2** for university bookstore sales. This would impose the 5 percent governmental gross receipts tax on the sales of books and other tangible personal property at a state- or local government-owned college bookstores.

Section 23: clarifies that physical presence is not necessary to the concept of “engaging in business.” This section also honors the exclusion of receipts from operating a website as a third-party content provider on a computer physically located in New Mexico. This section also provides a $100,000 annual gross receipts exception. This section also includes sales of any affiliates the potential taxpayer may have. The $100,000 floor is determined in look-back fashion, based on the prior calendar year’s sales. This specification eliminates a “gotcha”, where a taxpayer starts a year claiming in good faith the floor exemption, but in the course of the year exceeded the $100,000 floor. The following year, all sales would be taxable. This would allow the taxpayer to adjust their processes to collect the gross receipts tax from New Mexico taxpayers. If in the course of that year, sales did not exceed the $100,000 floor amount, the taxpayer could legitimately claim exemption for the entire year following.

Section 24: restates that liability is established when sales are made into New Mexico on multi-vendor marketplace platforms such as Amazon.com. The Section 23 $100,000 annual floor receipts then would control whether such sales were taxable in New Mexico. Because of the Section 23 look-back, this does not set up a “tax cliff.”

Section 25: adjusts the state tax rate from the current 5.125 percent to a new 3.9 percent for the period from January 1, 2019 through July 1, 2020. After July 1, 2020, the state rate will become 3.1 percent. This is a complicated section to understand. The current 1.225 percent municipal state share causes the state rate to be 3.9 percent in municipal areas. (5.125 percent - 1.225 percent = 3.9 percent). The 1.225 percent is changed in this bill to municipal local option rate of .98 percent (Section 62). For municipalities, then, this change may not change state revenues. However, Counties do not have a state share rate. The reduction of the GRT rate to 3.9 percent will mean a reduction of state revenues collected in county remainder areas of 1.225 percent. More work must be done to understand this change. Further work will need to be done to understand if the .8 percent reduction in the state rate after July 1, 2020 will gain or lose state revenue.

Section 26: the rate of the compensating tax is tied to the rate imposed for the gross receipts tax in Section 7-9-4 NMSA 1978, which is Section 25 of this bill. This section also imposes the compensating tax on using a license or franchise in New Mexico. The license or franchise must be sold by an out-of-state firm and the transaction would have to be taxable under the gross receipts tax if it had been conducted solely within the state. The tax is imposed on the New Mexico person using the intangible property. Similarly, services sold to a person or location in New Mexico by an out-of-state vendor without nexus in the state would be taxable as compensating tax and the liability would be that of the in-state purchaser of the services.

Section 27: the compensating tax estoppel of 7-9-7.1 NMSA 1978 is divided into two parts. The traditional enforcement estoppel was applied to nonbusiness purchases by individuals and was first enacted in 1993. These purchases become nominally taxable after July 1, 2019; the other half of the estoppel is for business taxpayers who previously or currently lacked physical presence in the state. TRD may not look back to transactions before July 1, 2018.

Section 28: amends Section 7-9-12 to allow taxpayers that can validly claim exemption for the Gross Receipts and Compensating Tax Act to deduct these receipts, providing the taxpayer retains documentation that the exemption was valid. This change will not be welcomed by the revenue estimators, but will be welcomed by TRD audit staff.

Section 29: adds use of services to the compensating tax exemption for state and local governments and Indian tribes, nations and pueblos. This provision may be somewhat controversial from the equity and incentive points of view, but is certainly required relative to the federal government. The state cannot tax the federal government, but can tax vendors of goods and services to the federal government. Under current law, tangible property sold by an in-state retailer to a listed government entity is deductible from gross receipts. Tangible property sold by an out-of-state retailer to a listed government entity is exempt from gross receipts per 7-9-14 NMSA 1978 (section 29 of this bill). However, services sold by an in-state vendor to a listed government entity are taxable if sold by an in-state vendor. This proposed change would not change that taxability for the in-state vendor, but would exempt the receipts of the in-state listed government purchaser for the purchase of services from an out-of-state provider. The issue is that the government entity would be the compensating taxpayer. This exemption is required for the federal government, but is not required for state and local governments. It is likely that a court would require an exemption of Indian tribes, nations and pueblos. In a side note, the gross receipts tax liabilities of the in-state service provider to state, local and the federal governments are routinely reimbursed.

Section 30: similar to Section 29, this section provides an compensating tax exemption provided that a 501(c)(3) non-profit organization has gross receipts of less than $100,000 the previous year.

Section 31 changes the "food stamp exemption" to the proper reference of "supplemental nutrition assistance exemption." The section also recognizes that these benefits are now administered with electronic benefit transfer cards (EBT). This is a technical change.

Section 32: this is the companion to the change of section 30. This section imposes the gross receipts tax on 501(c)(3) non-profit organizations with annual gross receipts in excess of $100,000. This would probably impose tax on the Santa Fe Opera, most of the non-profit hospitals operating in the state, most private, non-profit and parochial schools and colleges, the Santa Fe Symphony and Chorus, New Mexico Philharmonic, the Vortex and other theater groups, YMCA, YWCA, Girl's and Boy's clubs and many other non-profit organizations. It is unlikely this provision would tax religious organizations.

The definition of "gross receipts" means "the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico." In the opinion of LFC staff, donations made to organizations without anything given in return would not be considered

“gross receipts.”

> "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico.

Thus, donations to support the ACLU, Special Olympics, Audubon Society, Nature Conservancy, Voices for Children and similar organizations would probably not be taxable. The “adoption fees” collected by various non-profit animal shelter and rescue organizations in the state would become taxable if the total annual fees collected exceeded $100,000. If non-profits conduct benefits, such as silent auctions, casino nights or similar activities, these receipts could be taxable. This provision would require an significant amount of rule-making and compliance enforcement.

Those not entitled to the exemption may deduct up to $100,000 annually under new deductions 7-9-60.1 and 7-9-60.2.

Section 33: amends an exemption first granted in 1970. This is an exemption for the receipts of horsemen, jockeys and trainers derived from race purses. The underlying rationale for this exemption was that the race purses derived from a tax on the pari-mutuel handle at a licensed racetrack and the purses were directly tied to the total amounts retained by the track from the bets. The argument was that taxing the purses, no matter have they were divvied up, would be double taxation. This deduction is quite venerable. The amendment, however, lets the receipts of horsemen, jockeys and trainers remain exempt, but clarifies that the exemption for racetracks is limited to those receipts related to the daily pari-mutuel tax and the retainage allowed by 60-1A-19. This is a technical change, but may bring back admission fees and food sales into taxability.

Section 34: this is new material to provide further guidance for out-of-state taxpayers selling via unaffiliated multi-vendor platforms, such as Amazon.com. Apparently, the intent is to impose the gross receipts on the unaffiliated vendor is the vendor and the multi-vendor platform operator together exceeded the $100,000 floor. Thus, all vendors selling on Amazon and similar multi-vendor platforms would have taxable sales, even if the selling vendor had annual receipts less than $100,000.

Section 35: requires substantially more reporting to TRD when claiming gross receipts or compensating tax deductions. The state has exerted significant effort legislatively to understand the costs and benefits of tax expenditures, particularly economic development tax deductions, credits or exemptions. This bill suggests aggregating a number of separate tax expenditures into groups for reporting purposes. In the first place, deductions that are currently required in statute to be separately reported must be separately reported. Then:

(1) Deductions requiring an NTTC (including those for which alternative evidence is allowed) shall be reported in the aggregate as a separate group;
(2) Deductions allowed pursuant to Sections 7-9-60, 7-9-60.2 and 7-9-85 NMSA 1978 shall be reported in the aggregate as a separate group. These are sales of tangible personal property to 501( c)(3) organizations, deductions allowed 501( c)(3) organizations in the new section 7-9-60.2 and receipts from not more than two

fundraising events annually conducted by a non-profit (not necessarily a 501( c)(3)) organization;

(3) Deductions allowed pursuant to Sections 7-9-54.2, 7-9-94 and 7-9-115 NMSA 1978 shall be reported in the aggregate as a separate group. These are sales at the Spaceport, military transformational acquisition and department of defense related to directed energy and satellites;

(4) Deductions pursuant to Sections 7-9-73, 7-9-73.2, 7-9-73.3 and 7-9-111 NMSA 1978 shall be reported in the aggregate as a separate group. These are deductions accorded to hospitals, prescription drugs, durable medical equipment and hearing aids. 8;

(5) Deductions pursuant to Sections 7-9-73.1, 7-9-77.1 and 7-9-109 NMSA 1978 shall be reported in the aggregate as a separate group. These are deductions for for-profit hospitals, extensive medical services deduction of 7-9-91 which already require separate reporting and veterinary medical services and supplies for treating cattle. Inclusion of 7-9-73 in this group is slightly inconsistent since these services require separate reporting in current statute, so would be included in the first category above , but not the payment of medical services hold-harmless payments under 7-9-93 NMSA 1978; and

(6) All deductions not specified in Paragraphs (1) through (5) of this subsection shall be reported in the aggregate as a separate group.

Section 36: deductible sales to manufacturers includes the traditional materials incorporated in the manufactured product and the 2012 addition of consumable tangible personal property. This technical amendment deletes the obsolete phase-in provisions. This section also removes the separate reporting provisions. The manufacturing consumable property deduction is now covered by the omnibus reporting requirement in 7-9-45 C(6) NMSA 1978.

Section 37: expands the interstate commerce clause deduction to include international commerce which may not be taxed by New Mexico because of federal law. This section also clarifies that sales by a New Mexico resident seller to a buyer outside the state is a deductible transaction, provided that the first use of the property or product of the service is not initially used in the State. This section also contains language to prevent paper transactions in Interstate commerce with the physical delivery of the goods remaining in New Mexico. This may serve to estop the "high-end art" loophole. In something of a conflict with Section 15 above, receipts from transportation services are considered to be deductible in interstate commerce if the transportation either originates in New Mexico and terminates outside New Mexico, originates outside New Mexico and terminates in New Mexico or originates and terminates outside New Mexico, regardless in all cases of any intermediate stops in New Mexico. Apparently Section 15 applies only to intrastate transportation.

Section 38: amends the trade support in a border zone deduction. This section removes the separate reporting requirement in favor of aggregating with similar deductions in Section 35 above.

Section 39 and Section 51 convert exemptions (**Section 7-9-18** for agricultural products and **Section 7-9-26.1** for space vehicle fuel) into deductions to get an estimate of fiscal magnitudes.

Sections 40 and 41: adds a new deductions – 7-9-60.1 adds a $100,000 deduction for compensating tax imposed on 501( c)(3) organizations. 7-9-60.2 adds a similar $100,000 deduction from gross receipts tax for 501( c)(3) and 501( c)(6) organizations.

Sections 42, 43, 45, 47, 48 & 54 – Strips the "separate reporting" requirements added to new or recently-amended deductions (not all of which are primarily aimed at economic development) in favor of more aggregated separate reporting categories, which may be of more use, at **Section 7-9-45**.

Section 44: removes the restriction that chemicals used in mining, oil and gas production must be sold in 18-ton lots. It also clarifies that chemicals used as fuel may not be deducted pursuant to this section. There is considerable current controversy over this section and the sponsors may choose to delay consideration of this item until protests have been resolved.

Section 46: redrafts the venerable and somewhat controversial anti-pyramiding administrative and accounting services deduction. Section A retains the overall guideline that administrative or accounting services performed for an "affiliate" are deductible. The bill then removes the restrictive definition of "affiliate." What remains is, perhaps, a workable deduction. If the administrative or accounting services are provided to anyone on a non-profit or cost basis and the business entity is a corporation, limited liability company, partnership, limited partnership, limited liability partnership or real estate invest trust, then the deduction would be allowed.

Section 49: this expands the interstate credit provision to include the new Municipal and County Compensating Tax. It is a core provision of all tax law that there can be only one "bite of the apple." In this case, if another state taxes a transaction nominally taxed by the provisions of this bill, then the amount of tax paid to the out-of-state jurisdiction becomes a 100 percent credit against any tax imposed by New Mexico.

Section 50: this section provides a similar interstate credit in case an out-of-state taxpayer has paid a tax similar to the gross receipts tax. And in similar fashion the tax paid becomes a credit against the New Mexico imposition. The credit must be split between the state and any local jurisdiction.

Sections 52, 53 and 76 – Converts the deductions for receipts from sale of food at **Section 7-9-92** and from services of health care practitioners at **Section 7-9-93** into credits against state gross receipts tax. Municipal and county local option taxes would then apply to such receipts. The related hold harmless distributions are repealed. The conversion is mindful of the SNAP exemption of Section 31 above amending **Section 7-9-18.1 NMSA 1978.**

Section 55: changes the credit rate for private hospitals from 3.75 percent to 3.9 percent for hospitals located in either municipal or county remainder areas for FY 19 and to 3.1 percent for FY 20 and thereafter, as specified in 7-9-4 NMSA 1978.

Section 56: conforms the credit rate for advanced energy combined tax credit to that specified in 7-9-4.

Section 57: again removes the specific exemption for the supplemental municipal gross receipts tax for transporting persons or property from a point within the municipality to a point outside the municipality. See also Sections 60 and 75C.

Section 58: repeals the specific order to allow the Department to withhold an administrative fee is favor of the general requirement of 7-1-6.12 NMSA 1978 which references the administrative fee authority referenced in Section 7-1-6.41 NMSA 1978.

Sections 59, 61 are technical.

Sections 5, 62, 64 and 75B – Converts the 1.225 percent distribution at **Section 7-1-6.4** to

municipalities from the state's share of gross receipts taxes into an imposed municipal gross receipts tax at **Section 7-19D-9** of 0.98 percent (lower rate to neutralize tax base expansion). Also merges municipal environmental (at a rate of one-sixteenth percent), infrastructure and capital outlay gross receipts taxes into the municipal gross receipts tax.

Sections 63 and 68 – Imposes the municipal and county compensating taxes.

Sections 65, 66, 67 and 69 are technical.

Section 70 adds language associated with Section 13 of this bill referencing the distribution of receipts from the Local Liquor Excise Tax Act.

Sections 71 and 72 are temporary provisions that are primarily technical.

Section 73: repeals a number of sections. All the following are in reference to NMSA 1978.

| Section 73 (A) | |
|---|---|
| 7-1-6.52 | Distribution adjustment; tax administration suspense fund; credit for certain sales of services for resale. (2005) |
| 7-1-6.57 | Distribution adjustment; tax administration suspense fund; credit for receipts of hospitals. |
| 7-1-6.60 | Distribution; county business retention gross receipts tax (provisions expired 2016) |
| Section 73 (B) | |
| 7-2D-1 through 7-2D-14 | Venture Capital Investment Act repealed |
| Section 73 (C) | |
| 7-9-13.4 | Exemption; gross receipts tax; sale of textbooks from certain bookstores to enrolled students. |
| 7-9.16 | Exemption; gross receipts tax; nonprofit entities from the operation of facilities designed and used for providing accommodations for retired elderly persons. |
| 7-9-74 | Deduction; gross receipts tax; sale of property used in the manufacture of jewelry. The deduction allowed a seller shall not exceed five thousand dollars ($5,000) during any twelve-month period attributable to purchases by a single purchaser. |
| 7-9-95 | Deduction; gross receipts tax; back-to-school three-day tax free sales |
| 7-9-96 | 10% credit; gross receipts tax; sales of service for resale. |
| 7-9-97 | Deduction; gross receipts tax; receipts from property or services purchased by or on behalf of the state from funds obtained from the forfeiture of financial assurance pursuant to the New Mexico Mining Act or the forfeiture of financial responsibility pursuant to the Water Quality Act |
| 7-9-99 | Deduction; gross receipts tax; sale of engineering, architectural and new facility construction services used in construction of sole community provider hospital. |
| 7-9-100 | Deduction; gross receipts tax; sale of construction equipment and construction materials used in new facility construction of a sole community provider hospital. |
| 7-9-101 | Deduction; gross receipts; equipment for certain electric |

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| | transmission or storage facilities; New Mexico renewable energy transmission authority |
| 7-9-102 | Deduction; compensating tax; equipment for certain electric transmission or storage facilities; New Mexico renewable energy transmission authority |
| 7-9-103 | Deduction; gross receipts; services provided for certain electric transmission and storage facilities; New Mexico renewable energy transmission authority |
| 7-9-103.1 | Deduction; gross receipts tax; converting electricity |
| 7-9-103.2 | Deduction; gross receipts; electricity exchange |
| 7-9-105 | Credit for penalty pursuant to Section 7-1-71.2 – misstatement of food & medical deductions |
| 7-9-106 | Deduction; military construction services -- special operations mission transition projects |
| 7-9-107 | Deduction; gross receipts tax; production or staging of a professional boxing, wrestling or martial arts contest. |
| 7-9-114 | Advanced energy deduction; gross receipts and compensating taxes |
| Section 73 (D) | |
| 7-19D-14 | Quality of life gross receipts tax; authority to impose; ordinance requirements; use of revenue; election (new enactments not allowed after January 1, 2016) |
| Section 73 ( E) | |
| 7-20E-27 | County business retention gross receipts tax; imposition; rate (Lincoln County authorized the tax in 2011. Tax expired 2016. |

Section 74: provides a delayed repeal effective January 1, 2019. All the following are NMSA 1978.

| Section 74 (A) – Personal Income Tax Act | |
|---|---|
| 7-2.5.9 | Exemption; unreimbursed or uncompensated medical care expenses of individuals sixty-five years of age or older |
| 7-2-7.2 | Tax rebate; 2005 taxable year. (Effective for 2005 tax year.) |
| 7-2-7.3 | Exemption; 2005 taxable year rebate. (Effective for 2005 tax year.) |
| 7-2-18.5 | Welfare-to-work tax credit (federal companion credit expired) |
| 7-2-18.8 | Credit; certain electronic equipment used to verify age |
| 7-2-18.14 | Solar market development tax credit; residential and small business solar thermal and photovoltaic market development tax credit |
| 7-2-18.19 | Sustainable building tax credit (expired for 2017 tax year and beyond) |
| 7-2-18.21 | Credit; blended biodiesel fuel (expired December 31, 2012) |
| 7-2-18.23 | Refundable credit; 2007 taxable year |
| 7-2-18.25 | Advanced energy income tax credit |
| 7-2-18.27 | Credit; physician participation in cancer treatment clinical trials |
| Section 74 (B) – Corporate Income Tax | |
| 7-2A-8.8 | Welfare-to-work tax credit |
| 7-2A-18 | Credit; certain electronic equipment used to verify age |
| 7-2A-21 | Sustainable building tax credit (expired for 2017 tax year and beyond) |

| | |
|---|---|
| 7-2A-23 | Credit; blended biodiesel fuel |
| 7-2A-25 | Advanced energy corporate income tax credit |

Section 75 – Delayed repeal effective January 1, 2019. Repeals the general exemption at **Section 7-9-13.1** for services performed outside New Mexico, the product of which is used initially in NM. Currently only some R&D services performed outside NM can be subject to gross receipts tax. This could expand the services base significantly. This package needs to be discussed separately and thoroughly.

| Section 75 (A) – Gross Receipts & Compensating Tax Act | |
|---|---|
| 7-9-13.1 | Exemption; gross receipts tax; services performed outside the state the product of which is initially used in New Mexico; exceptions |
| 7-9-54.1 | Deduction; gross receipts from sale of aerospace services to 501( c)(3) organizations |
| 7-9-57 | Deduction; gross receipts tax; sale of services to an out-of-state buyer. This provision requires more extensive analysis |
| Section 75 (B) -- Municipal Local Option Taxes | |
| 7-19D-11 | Municipal infrastructure gross receipts tax; authority by municipality to impose; ordinance requirements; election |
| 7-19D-12 | Municipal capital outlay gross receipts tax; purposes; referendum |
| Section 75 (C) | |
| 7-20C-5 | Specific exemptions; transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county |
| 7-20E-5 | Specific exemptions; transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county. |
| 7-20F-6 | Specific exemptions; transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county. |
| Section 75 (D) | |
| 7-1-6.55 | Distribution to municipality equivalent to a portion of compensating tax (municipal equivalent distribution) |

Section 76: Delayed repeal effective February 1, 2019

| | |
|---|---|
| 7-1-6.46 | Distribution to municipalities; offset for food deduction and health care practitioner services deduction (muni food and medical hold harmless distributions) |
| 7-1-6.47 | Distribution to counties; offset for food deduction and health care practitioner services deduction (county food and medical hold harmless distributions) |

Section 77: Applicability

A. Section 16, which changes the provisions for disputing liabilities, apply to claims for refund submitted on or after July 1, 2018.

B. Provisions of Sections 18-20 and 75 apply to taxable years beginning on or after January 1, 2019. In particular, Section 19 changes the allocation and apportionment rules for a pass-through entity under the Corporate Income and Franchise Tax Act. (Why include Section 75 here?)
C. Provisions of Section 76 apply to Gross receipts tax reporting periods beginning on or after February 1, 2019.

# Explaining HB-198

Prepared by James P. O'Neill

## Introduction

HB-198 suggests a possible avenue for reforming New Mexico's tax system, concentrating mainly on gross receipts taxes. It covers a lot of ground of direct or indirect concern to local governments.

The main ideas are these:

- Thoroughly revise "take-back" rules (7-1-6.15).
- Revise allocation/apportionment rules on services for income taxes (as proposed in 2017 bills).
- Require allocation/apportionment of income received from pass-through entities to be allocated and apportioned based on commercial domicile and factors of the PTEs.
- Apply GRT to sales by out-of-state vendors to NM buyers:
  - Tangible property sold by vendors like Amazon and their marketplace associates (as proposed in 2017 bills but fully-taxing sales through multi-vendor platforms);
  - Services performed out-of-state.
- Convert the food (7-9-92) and medical (7-9-93) deductions to credits against *state* tax liability and dumping the hold-harmless distributions;
- Impose the GRT on larger 501( c)(3) non-profit hospitals and other revenue generating non-profit entities;
- Define (for the first time) deductible exports: property, licenses, franchises and services (general & transportation).
- Expand compensating tax to license, franchises and services used in NM.
- Allow local option GRTs to apply to intrastate cross-county, cross-municipality transportation services.
- Provide local compensating taxes.
- Winnow out obsolete or unused sections of statute.

## Main ideas:

### A. Tax Administration Act

1. Section 8 -- Fix **7-1-6.15**, which allows TRD to make adjustments to current distributions and transfers for changes in information relating to prior distributions and transfers.

- As determined in court, TRD has no authority to adjust distributions and transfers other than Section 7-1-6.15. Language is added to Subsection A to make this point clear.
- The list of distributions and transfers is re-organized somewhat to add references to the municipal and county compensating taxes and transfers to tax increment development districts (TIDDS) and to gather together the provisions relating to distributions of gasoline taxes.
- Throughout the section, the term "local government" replaces "municipality or county" because TIDDs also receive distributions and transfers.
- Because the current adjustment procedures (in Subsections B through F) relate primarily to gross receipts taxes and do not align with how gasoline taxes are collected and

distributed, a second adjustment mechanism is proposed for those taxes. Essentially new Subsection J requires a once-annual make-up distribution correcting for all changes occurring throughout the year, with some safeguards for municipalities and counties when really large negative adjustments are calculated.

- The present mechanism for adjusting gross receipts distributions and transfers is amended by restoring the "look back period" to the original period of 12 to 23 months (from the current maximum of 47 months) and defining the "average distribution or transfer amount" to be based on monthly (not annual) distribution or transfer amounts.

2. Section 14 – **Section 7-1-8.9**. Extend the period for which municipal and county officials may request taxpayer names, addresses and identification numbers, ranges of gross receipts tax reported or information on whether identified taxpayers have reported tax to TRD but not for that municipality from one year to seven years. Also eliminates language requiring authorization from the Internal Revenue Service.

3. Section 15 – **Section 7-1-14** is amended for two major purposes. First, the place where imported property or products of services are delivered is a "place of business". The second spreads the taxes related to transportation among those places served by the transportation. It also makes statutory the places of business hitherto left to TRD's discretion.

Receipts from transportation services today are reported from the taxpayer's place(s) of business because nothing requires any other method of reporting. This is much like taxing construction at the construction company's headquarters, not by construction site.

Looking at the transportation service itself, there are three general ways to tax the service of transporting persons or property from one jurisdiction to another. Tax could be imposed on the entire receipts at the place where service begins or the place where it ends. Alternatively, receipts can be allocated to each jurisdiction in which the service takes place, with each jurisdiction taxing (or not) its piece of the pie.

Taking as a given that the allocation approach would be administratively troublesome for the taxpayers, the jurisdictions and the tax collector, that leaves, as rational choices, imposing the gross receipts tax at either the point of origin or the point of destination. HB-198 opts for the point of origin of the transportation as being more in line with the general structure of the tax.

4. Section 16 – **Section 7-1-26** describes the claim for refund procedures. The current versions of Subsections B and C directly contradict each other. Since giving taxpayers finality in the process is highly desirable, the conflict is resolved is favor of deeming a claim for refund to be properly before TRD, if the claim meets stated requirements, even when TRD has asked for additional information.

**B. Income Taxes**

1. Section 19 – **Section 7-2A-8** is amended to require corporations to determine separately the allocation and apportionment of income received from pass-through entities, based on the commercial domiciles and factors of the PTEs. This is to avoid the income being allocated and apportioned on the corporation's own factors, since the point of conducting business in NM through PTEs may be to avoid the corporation accruing NM factors of its own. (An alternative is to add the factors of the PTEs to those of the owning corporation.)

2. Section 20 – Modernizes the apportionment of income derived from intangible property or

services in **Section 7-4-18**. Like proposals made in the 2017 session, this replaces the existing rule awarding income to the state in which the greatest portion of the production activity takes place with rules centered on where the products are used or delivered. Since NM is a market state, this should benefit NM.

**C. Gross Receipts and Compensating Tax Act**

1. Sections 15, 23, 24, 27 & 34 -- Just as in bills debated in the 2017 session, several sections are amended to pick up sales into NM by out-of-state sellers, including sales over multi-vendor marketplace platforms. Sets a *de minimis* rule of $100,000 in combined sales of an out-of-state seller and its affiliates, but this rule does not apply to sales through multi-vendor platforms.

2. Section 25 – **Section 7-9-4** lowers the state gross receipts tax in two steps.

• Rate drops from 5.125 percent to 3.9 percent on January 1, 2019 as a result of the conversion of the 1.225 percent distribution of state gross receipts taxes to municipalities into a tax rate deemed imposed by the municipalities.

• The second cut on July 1, 2020 is intended to neutralize the expansion of the gross receipts tax base. It is approximately a 20 percent cut, but whether this actually will match the base expansion is unknown.

3. Section 26 – Coverage of the compensating tax at **Section 7-9-7** expands to include use of licenses, franchises and services in New Mexico. The property or service must have been sold by an out-of-state person and the receipts subject to the gross receipts tax if the sale had been by a person with nexus with NM. Rate made automatically equal to the gross receipts tax rate.

4. Sections 30, 32, 40 & 41 – Limits the exemption from compensating tax (**Section 7-9-15**) and gross receipts (**Section 7-9-29**) for charitable 501(c)(3) organizations to those with gross receipts of less than $100,000 in the prior calendar year. Those not entitled to the exemption may deduct up to $100,000 annually under new deductions 7-9-60.1 and 7-9-60.2. 11. This Imposes GRT on hospitals, performing arts organizations and some non-profit social services organizations. Because of definition of "gross receipts", donations would remain exempt, but fees for services would become taxable. The two fundraisers a year deduction is retained for all non-profits.

5. Sections 39 and 51 – Convert exemptions (**Section 7-9-18** for agricultural products and **Section 7-9-26.1** for space vehicle fuel) into deductions to get an estimate of fiscal magnitudes.

6. Sections 35, 36, 42, 43, 45, 47, 48 & 54 – Strips the "separate reporting" requirements added to new or recently-amended deductions (not all of which are primarily aimed at economic development) in favor of more aggregated separate reporting categories, which may be of more use, at **Section 7-9-45**.

7. Section 37 – **Section 7-9-55** is expanded to give specific guidance for the first time on what transactions in interstate or foreign commerce are deductible.

8. Section 44 – Corrects **Section 7-9-65**, deduction for chemicals and reagents, to eliminate the deduction for fuels. Also eliminates reference to 18 ton truckloads of chemicals.

9. Sections 52, 53 and 76 – Converts the deductions for receipts from sale of food at **Section 7-9-92** and from services of health care practitioners at **Section 7-9-93** into credits against state gross receipts tax. Municipal and county local option taxes would then apply to such receipts. The related hold harmless distributions are repealed.

10. Section 75 – Repeals the general exemption at **Section 7-9-13.1** for services performed outside New Mexico, the product of which is used initially in NM. Currently only some R&D services performed outside NM can be subject to gross receipts tax. This could expand the services base significantly.

**D. Local Taxes**

1. Sections 57, 60 and 75C – Removes exemption from local option gross receipts taxes for receipts from transportation across municipal or county lines.

2. Sections 5, 62, 64 and 75B – Converts the 1.225 percent distribution at **Section 7-1-6.4** to municipalities from the state's share of gross receipts taxes into an imposed municipal gross receipts tax at **Section 7-19D-9** of 0.98 percent (lower rate to neutralize tax base expansion). Also merges municipal environmental (at a rate of one-sixteenth percent), infrastructure and capital outlay gross receipts taxes into the municipal gross receipts tax.

3. Sections 63 and 68 – Imposes the municipal and county compensating taxes.

## Smaller ideas. (Items I. thru III. are not meant to have a fiscal impact.)

**I. Tax Administration Act:**

1. Section 4 -- Authority to hold money in tax administration suspense fund. **Section 7-1-6.1** directs TRD to disburse the entire balance of the tax administration suspense fund at the end of every month—except for certain unidentified remittances. Under Subsection I of 7-1-6.15, however, DFA may direct TRD to withhold temporarily certain distributions to local governments and to keep the withheld amounts in the tax administration suspense fund. The draft accounts for this second exception.

2. deleted

3. Sections 6, 7, 58, 61, 65, 67, 69 and 73E -- Clean-up of transfers of local option gross receipts tax revenue. Instructions for disbursing the revenue collected by TRD from local option gross receipts and compensating taxes appear in (i) the TAA, specifically at **Section 7-1-6.12** (municipalities), **Section 7-1-6.13** (counties generally) and **Section 7-1-6.60** (county business retention gross receipts tax), and (ii) the several acts authorizing imposition of those taxes. While the instructions are largely duplicative, there are some differences. Clarity of administration suggests that there should be only one set of instructions. Since the TAA is concerned with tax administration, which includes sending revenues to their proper destinations, the instructions should appear only in Sections 7-1-6.12 and 7-1-6.13.

Note: Only Lincoln County had permission to levy a county business retention gross receipts tax and that was confined to one five-year ordinance. The ordinance was duly levied and has expired. Therefore the tax at 7-20E-27 NMSA 1978 and the section disposing of the funds at 7-1-6.60 NMSA 1978 are obsolete. They are proposed for repeal.

4. Sections 6, 7, 11, 58, 61, 65, 67 and 69 -- Consolidating administrative fee provisions. Instructions for imposition and collection of the administrative fee are found in three places, in

(i) **Sections 7-1-6.12 and 7-1-6.13** which transfer local option gross receipts tax funds, (ii) **Section 7-1-6.41**—almost all of which is obsolete—which discusses several different (now expired) administrative fees and (iii) the local option gross receipts taxes. Again, one comprehensive statement is all that is required and that should be in Section 7-1-6.41. Language referring to the administrative fee is stripped from the acts authorizing imposition of local option gross receipts taxes, retaining only those restrictions on fee imposition in current law.

**II. Income Tax Act:**

Section 17 -- Proliferation of Optional Contributions of Refunds: Sixteen Income Tax Act provisions allow taxpayers to donate all or part of any income tax refund due the taxpayer to a cause (some of which aim at remedying underfunding of state agencies). In any event, **Section 7-2-31.1** requires that TRD kick off a process to repeal any one of these optional contributions if less than $5,000 is donated to the cause in each of three successive tax years. TRD has never initiated this process. To shine a light on the value of these provisions, the bill requires that TRD begin posting on its website, the amount donated under each provision each tax year.

**III. Gross Receipts and Compensating Tax Act:**

1. Section 21- -Moves the definition of "affiliate" from **Section 7-9-69** to Section 7-9-3, the general definitions section.

2. Section 22 – Removes the governmental gross receipts exemption at **Section 7-9-3.2** for university bookstore sales.

3. Section 31 -- In **Section 7-9-18.1**, updates the terminology referencing the federal Supplemental Nutritional Assistance Program (used to be "food stamps").

4. Section 33 -- Updates statutory references in **Section 7-9-40**, exemption for purses and jockey remuneration.

**IV. Gross receipts repeals:** (Section 73C & 75A)

7-9-13.4 Exemption - textbook sales of university bookstores
7-9-16 Exemption - operating nonprofit facility accommodating retired elderly persons
7-9-54.1 Deduction - USAF "aerospace services"
7-9-57 Deduction - sales of services to out-of-state buyers (provisions merged into 7-9-55)
7-9-74 Limited deduction - sales to manufacturers of jewelry
7-9-95 Deduction - "back-to-school" sales
7-9-96 Limited credit - certain sales for resale
7-9-97 Deduction - state purchases from financial assurance forfeitures
7-9-99 Deduction - certain services for sole community hospitals
7-9-100 Deduction - certain equipment and materials for sole community hospitals
7-9-101 Deduction – Sales of equipment to NM Renewable Energy Transmission Authority
7-9-102 Deduction (comp tax) – use of equipment by NM RETA
7-9-103 Deduction – services for NM RETA
7-9-103.1 Deduction – converting electricity
7-9-103.2 Deduction – operating an electricity exchange
7-9-105 Credit – refund of a (long-dead) penalty

| | |
|---|---|
| 7-9-106 | Deduction (expired) – military construction services |
| 7-9-107 | Deduction – professional boxing, wrestling |
| 7-9-114 | Deduction – advanced energy |