

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 117

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

AN ACT

RELATING TO TAXATION; AMENDING THE LODGERS' TAX ACT TO ALTER
CERTAIN EXEMPTIONS; CHANGING THE ALLOWABLE USES OF OCCUPANCY
TAX REVENUE.

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

SECTION 1. Section 3-38-13 NMSA 1978 (being Laws 1969,
Chapter 199, Section 1, as amended) is amended to read:

"3-38-13. SHORT TITLE.--Sections 3-38-13 through
~~[3-38-24]~~ 3-38-25 NMSA 1978 may be cited as the "Lodgers' Tax
Act"."

SECTION 2. Section 3-38-14 NMSA 1978 (being Laws 1969,
Chapter 199, Section 2, as amended) is amended to read:

"3-38-14. DEFINITIONS.--As used in the Lodgers' Tax Act:

A. "gross taxable rent" means the total amount of
rent paid for lodging, not including the state gross receipts

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underscored material = new
[bracketed material] = delete

1 tax or local sales taxes;

2 B. "lodging" means the transaction of furnishing
3 rooms or other accommodations by a vendor to a vendee who for
4 rent uses, possesses or has the right to use or possess the
5 rooms or other units of accommodations in or at a taxable
6 premises;

7 C. "lodgings" means the rooms or other
8 accommodations furnished by a vendor to a vendee by a taxable
9 service of [~~lodgings~~] lodging;

10 D. "occupancy tax" means the tax on lodging
11 authorized by the Lodgers' Tax Act;

12 E. "person" means a corporation, firm, other body
13 corporate, partnership, association or individual. "Person"
14 includes an executor, administrator, trustee, receiver or other
15 representative appointed according to law and acting in a
16 representative capacity. "Person" does not include the United
17 States of America, the state of New Mexico, any corporation,
18 department, instrumentality or agency of the federal government
19 or the state government or any political subdivision of the
20 state;

21 F. "rent" means the consideration received by a
22 vendor in money, credits, property or other consideration
23 valued in money for lodgings subject to an occupancy tax
24 authorized in the Lodgers' Tax Act;

25 G. "taxable premises" means a hotel, [~~apartment,~~

1 ~~apartment hotel, apartment house, lodge, lodging house, rooming~~
 2 ~~house, motor hotel, guest house, guest ranch, ranch resort,~~
 3 ~~guest resort, mobile home, motor court, auto court, auto camp,~~
 4 ~~trailer court, trailer camp, trailer park, tourist camp, cabin~~
 5 ~~or other premises used for lodging] motel or other premises~~

6 used for lodging that is not the vendee's household or primary
 7 residence;

8 H. "temporary lodging" means lodgings for the
 9 purpose of housing a vendee within proximity of the vendee's
 10 employment or job location;

11 [~~H.~~] I. "tourist" means a person who travels for
 12 the purpose of business, pleasure or culture to a municipality
 13 or county imposing an occupancy tax;

14 [~~I.~~] J. "tourist-related events" means events that
 15 are planned for, promoted to and attended by tourists;

16 [~~J.~~] K. "tourist-related facilities and
 17 attractions" means facilities and attractions that are intended
 18 to be used by or visited by tourists;

19 [~~K.~~] L. "tourist-related transportation systems"
 20 means transportation systems that provide transportation for
 21 tourists to and from tourist-related facilities and attractions
 22 and tourist-related events;

23 [~~L.~~] M. "vendee" means a natural person to whom
 24 lodgings are furnished in the exercise of the taxable service
 25 of lodging; and

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1 [M-] N. "vendor" means a person or [~~his~~] the
2 person's agent furnishing lodgings in the exercise of the
3 taxable service of lodging."

4 **SECTION 3.** Section 3-38-15 NMSA 1978 (being Laws 1969,
5 Chapter 199, Section 3, as amended) is amended to read:

6 "3-38-15. AUTHORIZATION OF TAX--LIMITATIONS ON USE OF
7 PROCEEDS.--

8 A. A municipality may impose by ordinance an
9 occupancy tax for revenues on lodging within the municipality,
10 and the board of county commissioners of a county may impose by
11 ordinance an occupancy tax for revenues on lodging within that
12 part of the county outside of the incorporated limits of a
13 municipality.

14 B. The occupancy tax shall not exceed five percent
15 of the gross taxable rent.

16 C. Every vendor who is furnishing any lodgings
17 within a municipality or county is exercising a taxable
18 privilege.

19 D. The following portions of the proceeds from the
20 occupancy tax that are collected based on the first thirty days
21 a vendee rents lodgings in taxable premises shall be used only
22 for advertising, publicizing and promoting tourist-related
23 facilities and attractions [~~facilities~~] and tourist-related
24 events:

- 25 (1) if the municipality or county imposes an

1 occupancy tax of no more than two percent, not less than one-
2 fourth of the proceeds shall be used for those purposes;

3 (2) if the occupancy tax imposed is more than
4 two percent and the municipality is not located in a class A
5 county or the county is not a class A county, not less than
6 one-half of the proceeds from the first three percent of the
7 occupancy tax and not less than one-fourth of the proceeds from
8 the occupancy tax in excess of three percent shall be used for
9 those purposes; and

10 (3) if the occupancy tax imposed is more than
11 two percent and the municipality is located in a class A county
12 or the county is a class A county, not less than one-half of
13 the proceeds from the occupancy tax shall be used for those
14 purposes.

15 E. The proceeds from the occupancy tax that are
16 collected based on the first thirty days a vendee rents
17 lodgings in taxable premises in excess of the amount required
18 to be used for advertising, publicizing and promoting
19 tourist-related facilities and attractions [~~facilities~~] and
20 tourist-related events may be used for any purpose authorized
21 in Section 3-38-21 NMSA 1978.

22 F. The proceeds from the occupancy tax that are
23 required to be used to advertise, publicize and promote
24 tourist-related facilities and attractions [~~facilities~~] and
25 tourist-related events shall be used within two years of the

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1 close of the fiscal year in which they were collected and shall
2 not be accumulated beyond that date or used for any other
3 purpose.

4 G. Notwithstanding the provisions of Paragraph (2)
5 of Subsection D of this section, any use by a municipality or
6 county of occupancy tax proceeds on January 1, 1996 may
7 continue to be so used after July 1, 1996 in accordance with
8 the provisions of this section and Section 3-38-21 NMSA 1978 as
9 they were in effect prior to July 1, 1996; provided, any change
10 in the use of those occupancy tax proceeds after July 1, 1996
11 is subject to the limitations of that paragraph.

12 H. Notwithstanding the provisions of Paragraph (2)
13 of Subsection D of this section, the payment of principal and
14 interest on outstanding bonds issued prior to January 1, 1996
15 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made
16 in accordance with the retirement schedules of the bonds
17 established at the time of issuance. The amount of
18 expenditures required under Paragraph (2) of Subsection D of
19 this section shall be reduced each year, if necessary, to make
20 the required payments of principal and interest of all
21 outstanding bonds issued prior to January 1, 1996."

22 SECTION 4. Section 3-38-16 NMSA 1978 (being Laws 1969,
23 Chapter 199, Section 4, as amended) is amended to read:

24 "3-38-16. EXEMPTIONS.--The occupancy tax shall not apply:

25 A. if a vendee:

1 (1) has been a permanent resident of the
2 taxable premises for a period of at least thirty consecutive
3 days, unless those premises are temporary lodging; or

4 (2) enters into or has entered into a written
5 agreement for lodgings at the taxable premises for a period of
6 at least thirty consecutive days, unless those premises are
7 temporary lodging;

8 B. if the rent paid by a vendee is less than two
9 dollars (\$2.00) a day;

10 C. to lodging accommodations at institutions of the
11 federal government, the state or any political subdivision
12 thereof;

13 D. to lodging accommodations at religious,
14 charitable, educational or philanthropic institutions,
15 including accommodations at summer camps operated by such
16 institutions;

17 E. to clinics, hospitals or other medical
18 facilities; or

19 F. to privately owned and operated convalescent
20 homes or homes for the aged, infirm, indigent or chronically
21 ill."

22 SECTION 5. Section 3-38-21 NMSA 1978 (being Laws 1969,
23 Chapter 199, Section 9, as amended) is amended to read:

24 "3-38-21. ELIGIBLE USES OF TAX PROCEEDS.--

25 A. Subject to the limitations contained in Section

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1 3-38-15 NMSA 1978, a municipality or county imposing an
2 occupancy tax may use the proceeds from the occupancy tax that
3 are collected based on the first thirty days a vendee rents
4 lodgings in taxable premises to defray costs of:

5 (1) collecting and otherwise administering the
6 occupancy tax, including the performance of audits required by
7 the Lodgers' Tax Act pursuant to guidelines issued by the
8 department of finance and administration;

9 (2) establishing, operating, purchasing,
10 constructing, otherwise acquiring, reconstructing, extending,
11 improving, equipping, furnishing or acquiring real property or
12 any interest in real property for the site or grounds for
13 tourist-related facilities and attractions or tourist-related
14 transportation systems of the municipality, the county in which
15 the municipality is located or the county;

16 (3) the principal of and interest on any prior
17 redemption premiums due in connection with and any other
18 charges pertaining to revenue bonds authorized by Section
19 3-38-23 or 3-38-24 NMSA 1978;

20 (4) advertising, publicizing and promoting
21 tourist-related attractions, facilities and events of the
22 municipality or county and tourist-related facilities,
23 attractions and events within the area;

24 (5) providing police and fire protection and
25 sanitation service for tourist-related facilities, attractions

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1 and events located in the respective municipality or county;

2 (6) providing a required minimum revenue
3 guarantee for air service to the municipality or county to
4 increase the ability of tourists to easily access the
5 municipality's or county's tourist-related facilities,
6 attractions and events; or

7 (7) any combination of the foregoing purposes
8 or transactions stated in this section, but for no other
9 municipal or county purpose.

10 B. A municipality or county imposing an occupancy
11 tax may use the proceeds from the occupancy tax that are
12 collected based on the thirty-first and subsequent days a
13 vendee rents lodgings in taxable premises for any municipality
14 or county purpose; provided that the use is stated in the
15 ordinance imposing the tax.

16 [~~B.~~] C. As used in this section, "minimum revenue
17 guarantee" is the amount of money guaranteed by a municipality
18 or county to be earned by an airline providing air services to
19 and from that municipality or county, which is the difference
20 between the minimum flight charge revenue specified in the
21 contract between the municipality or county and the airline and
22 the amount of actual flight charge revenue received by the
23 airline that is less than that contractual amount."

24 **SECTION 6.** A new section of the Lodgers' Tax Act, Section
25 3-38-25 NMSA 1978, is enacted to read:

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