

1 SENATE BILL 386

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Ron Griggs

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10 AN ACT

11 RELATING TO TAXATION; ENACTING THE RECORDATION TAX ACT;
12 ENACTING THE FOOD GROSS RECEIPTS TAX ACT; DISTRIBUTING A
13 PORTION OF THE REVENUE FROM THE FOOD GROSS RECEIPTS TAX TO
14 MUNICIPALITIES AND COUNTIES; PROVIDING AN EXEMPTION FOR SOCIAL
15 SECURITY INCOME FROM INCOME TAX; PROVIDING AN EXEMPTION FOR
16 MILITARY RETIREMENT INCOME FROM INCOME TAX; REPEALING THE HOLD
17 HARMLESS DISTRIBUTIONS TO MUNICIPALITIES AND COUNTIES THAT
18 OFFSET THE FOOD AND HEALTH CARE PRACTITIONER DEDUCTIONS FROM
19 GROSS RECEIPTS.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
23 through 6 of this act may be cited as the "Recordation Tax
24 Act".

25 SECTION 2. [NEW MATERIAL] RECORDATION TAX--TRANSFERS OF
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1 REAL PROPERTY.--

2 A. An excise tax is imposed on all instruments
3 evidencing a transfer of any interest in real property. The
4 rate of tax shall be twenty-five cents (\$.25) on each one
5 hundred dollars (\$100) or fractional part thereof on the value
6 of each instrument transferring the interest, which value shall
7 be based on the prior year's assessed value of the real
8 property being transferred.

9 B. In the event the prior year's assessed value of
10 the real property being transferred is based on undeveloped
11 land that has since been subdivided or otherwise developed, the
12 county shall, upon request, assess the value of the real
13 property since being developed and provide a statement of the
14 value to the taxpayer.

15 C. A person who obtains more than one deed or other
16 instrument of conveyance for the same transfer of the same
17 tract or parcel of real property shall pay the tax imposed by
18 this section only once with respect to that transfer.

19 D. The tax imposed by this section shall be paid by
20 the grantee or transferee of the interest in the real property
21 to the county clerk of the county in which the real property is
22 located. If the instrument transfers a parcel of real property
23 lying in two or more counties, the tax shall be paid to the
24 county clerk of the county in which the greater part of the
25 real property with respect to value lies. The county clerk

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1 shall not record the transfer until the tax has been paid.

2 E. The tax imposed by this section shall not be
3 imposed on the transfer of:

4 (1) a leasehold estate; or

5 (2) real property where such transfer is:

6 (a) the creation or dissolution of a
7 tenancy by the entirety the conveyance from: 1) one spouse to
8 another; 2) one spouse or both spouses to the original grantor
9 in the instrument or the original grantor's spouse; or 3) one
10 spouse or both spouses to a trustee and immediate reconveyance
11 by the trustee in the same instrument as tenants in common,
12 tenants in common with right of survivorship, joint tenants or
13 joint tenants with right of survivorship;

14 (b) a deed of division in kind of real
15 property formerly held by tenants in common;

16 (c) release of a life estate to the
17 beneficiaries of the remainder interest;

18 (d) a deed executed by an executor to
19 implement a testamentary devise;

20 (e) a decree or deed that is an
21 adjustment of property rights between divorcing parties;

22 (f) a transfer by a transferor of real
23 property to a revocable living trust created by the same
24 transferor or by a spouse of the transferor, or a transfer by
25 the trustee of a revocable living trust back to the same

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1 transferor or to the transferor's spouse; or

2 (g) a deed executed by the trustee of a
3 revocable living trust to implement a testamentary devise by
4 the trustor of the trust.

5 SECTION 3. [NEW MATERIAL] RECORDATION TAX--INSTRUMENT OF
6 INDEBTEDNESS ON REAL PROPERTY.--

7 A. An excise tax is imposed on all instruments of
8 indebtedness for real property, including a mortgage, deed of
9 trust or other security device of greater than twenty-five
10 thousand dollars (\$25,000). The rate of tax shall be ten cents
11 (\$.10) on each one hundred dollars (\$100), or fractional part
12 thereof, of the indebtedness above twenty-five thousand dollars
13 (\$25,000).

14 B. The tax imposed by this section shall be paid by
15 the mortgagor, grantor or debtor, as evidenced by the
16 instrument offered for recording. The tax shall be paid to the
17 county clerk of the county in which the real property is
18 located. If the instrument is for a parcel of real property
19 lying in two or more counties, the tax shall be paid to the
20 county clerk of the county in which the greater part of the
21 real property with respect to value lies. If some of the real
22 property lies outside this state, the tax may be paid on the
23 value of real property in this state. The county clerk shall
24 not record the instrument until the tax has been paid.

25 C. If the consideration or stipulation of

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1 indebtedness does not appear on the face of the instrument
2 being offered for recording, the county clerk shall require a
3 separate statement made in recordable form indicating the
4 amount of the indebtedness so secured.

5 D. When the instrument being offered for recording
6 secures, or evidences the securing of, a line of credit or
7 other indebtedness arising from more than one advance or
8 extension of credit, the amount of which may vary from time to
9 time, the tax shall be computed and paid on the maximum amount
10 of the indebtedness as stated in the instrument or the
11 accompanying sworn statement, and the reduction or subsequent
12 increasing of the amount of the indebtedness within such limits
13 shall not result in additional tax.

14 E. As used in this section, "indebtedness" means
15 the principal debt or obligation that is reasonably
16 contemplated by the parties to be included within the terms of
17 the agreement. "Indebtedness" does not include any amount of
18 interest, collection expense, including attorney fees and
19 expenses incurred in preserving, protecting, improving or
20 insuring property that serves as collateral for the
21 indebtedness, or any other amount, other than the principal
22 debt or obligation, for which a debtor becomes liable unless
23 such amount is added to the principal debt or obligation, and
24 is used to calculate additional interest pursuant to
25 refinancing, reamortization, amendment or similar transaction

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1 or occurrence.

2 SECTION 4. [NEW MATERIAL] REPORT TO TAXATION AND REVENUE
3 DEPARTMENT--ADMINISTRATION FEE.--The county clerk shall report
4 all collections of taxes made pursuant to this section on forms
5 prescribed by the taxation and revenue department and shall
6 submit the proceeds of the taxes collected to the taxation and
7 revenue department at the end of each month. A county may
8 withhold an administrative fee of three percent of the net
9 amount of the tax proceeds collected.

10 SECTION 5. [NEW MATERIAL] EXEMPTIONS.--

11 A. Instruments made pursuant to mergers,
12 consolidations, sales or transfers of substantially all of the
13 assets in this state of corporations, pursuant to plans of
14 reorganization, are exempt from the taxes imposed by the
15 Recordation Tax Act.

16 B. The recording and rerecording of all transfers
17 of real property in which the state or any of its
18 instrumentalities is the grantee or transferee and all
19 instruments evidencing an indebtedness in which the state or
20 any of its instrumentalities is the holder or owner of the
21 indebtedness shall be exempt from the taxes imposed by the
22 Recordation Tax Act.

23 C. Instruments for which a tax imposed pursuant to
24 Section 2 of the Recordation Tax Act is paid shall be exempt
25 from the tax imposed pursuant to Section 3 of that act.

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1 D. Instruments for which a tax imposed pursuant to
2 Section 3 of the Recordation Tax Act is paid shall be exempt
3 from the tax imposed pursuant to Section 2 of that act.

4 SECTION 6. [NEW MATERIAL] LIMITATION ON AMOUNT OF TAX.--A
5 tax imposed pursuant to the Recordation Tax Act shall not
6 exceed one hundred thousand dollars (\$100,000) with respect to
7 instruments evidencing the same transfer of an interest in real
8 property or each instrument of indebtedness for real property.

9 SECTION 7. [NEW MATERIAL] SHORT TITLE.--Sections 7
10 through 11 of this act may be cited as the "Food Gross Receipts
11 Tax Act".

12 SECTION 8. [NEW MATERIAL] DEFINITIONS.--As used in the
13 Food Gross Receipts Tax Act:

14 A. "engaging in business" means carrying on or
15 causing to be carried on the selling of food at a retail food
16 store with the purpose of direct or indirect benefit;

17 B. "food" means any food or food product for home
18 consumption that meets the definition of food in 7 U.S.C.
19 2012(k)(1) for purposes of the federal supplemental nutrition
20 assistance program;

21 C. "food gross receipts" means the total amount of
22 money or the value of other consideration received from selling
23 food at a retail food store in New Mexico, or, if in an
24 exchange in which the money or other consideration received
25 does not represent the value of the food, "food gross receipts"

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1 means the reasonable value of the food. "Food gross receipts"
2 excludes:

- 3 (1) cash discounts allowed and taken;
- 4 (2) food gross receipts tax payable on
5 transactions for the reporting period;
- 6 (3) gross receipts tax payable pursuant to the
7 Gross Receipts and Compensating Tax Act on transactions for the
8 reporting period;
- 9 (4) taxes imposed pursuant to the provisions
10 of any local option gross receipts tax, as that term is defined
11 in the Tax Administration Act, that is payable for the
12 reporting period;
- 13 (5) a time-price differential; and
- 14 (6) any gross receipts or sales taxes imposed
15 by an Indian nation, tribe or pueblo; provided that the tax is
16 approved, if approval is required by federal law or regulation,
17 by the United States secretary of the interior; and provided
18 further that the gross receipts or sales tax imposed by the
19 Indian nation, tribe or pueblo provides a reciprocal exclusion
20 from gross receipts, sales or gross receipts-based excise taxes
21 imposed by the state or its political subdivisions; and

22 D. "retail food store" means an establishment that
23 sells food for home preparation and consumption and that meets
24 the definition of retail food store in 7 U.S.C. 2012(p)(1) for
25 purposes of the federal supplemental nutrition assistance

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1 program, whether or not the establishment participates in the
2 federal supplemental nutrition assistance program.

3 SECTION 9. [NEW MATERIAL] FOOD GROSS RECEIPTS TAX.--For
4 the privilege of engaging in business, an excise tax of four
5 percent of gross receipts on the sale of food at a retail food
6 store is imposed on any person engaging in business in New
7 Mexico. The tax imposed by this section may be cited as the
8 "food gross receipts tax".

9 SECTION 10. [NEW MATERIAL] EXEMPTIONS.--Exempted from the
10 food gross receipts tax are receipts that are exempt from the
11 gross receipts tax pursuant to the Gross Receipts and
12 Compensating Tax Act pursuant to Sections 7-9-13, 7-9-13.1,
13 7-9-18.1, 7-9-28, 7-9-29 and 7-9-41.3 NMSA 1978.

14 SECTION 11. [NEW MATERIAL] DATE PAYMENT DUE.--The tax
15 imposed by the Food Gross Receipts Tax is to be paid on or
16 before the twenty-fifth day of the month following the month in
17 which the taxable event occurs.

18 SECTION 12. Section 7-1-2 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 2, as amended by Laws 2019, Chapter 47,
20 Section 1 and by Laws 2019, Chapter 53, Section 10 and also by
21 Laws 2019, Chapter 270, Section 1) is amended to read:

22 "7-1-2. APPLICABILITY.--The Tax Administration Act
23 applies to and governs:

24 A. the administration and enforcement of the
25 following taxes or tax acts as they now exist or may hereafter

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1 be amended:

- 2 (1) Income Tax Act;
- 3 (2) Withholding Tax Act;
- 4 (3) Oil and Gas Proceeds and Pass-Through
5 Entity Withholding Tax Act;
- 6 (4) Gross Receipts and Compensating Tax Act,
7 Interstate Telecommunications Gross Receipts Tax Act and Leased
8 Vehicle Gross Receipts Tax Act;
- 9 (5) Liquor Excise Tax Act;
- 10 (6) Local Liquor Excise Tax Act;
- 11 (7) any municipal local option gross receipts
12 tax or municipal compensating tax;
- 13 (8) any county local option gross receipts tax
14 or county compensating tax;
- 15 (9) Special Fuels Supplier Tax Act;
- 16 (10) Gasoline Tax Act;
- 17 (11) petroleum products loading fee, which fee
18 shall be considered a tax for the purpose of the Tax
19 Administration Act;
- 20 (12) Alternative Fuel Tax Act;
- 21 (13) Cigarette Tax Act;
- 22 (14) Estate Tax Act;
- 23 (15) Railroad Car Company Tax Act;
- 24 (16) Investment Credit Act, rural job tax
25 credit, Laboratory Partnership with Small Business Tax Credit

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1 Act, Technology Jobs and Research and Development Tax Credit
2 Act, Film Production Tax Credit Act, Affordable Housing Tax
3 Credit Act and high-wage jobs tax credit;

4 (17) Corporate Income and Franchise Tax Act;

5 (18) Uniform Division of Income for Tax
6 Purposes Act;

7 (19) Multistate Tax Compact;

8 (20) Tobacco Products Tax Act;

9 (21) the telecommunications relay service
10 surcharge imposed by Section 63-9F-11 NMSA 1978, which
11 surcharge shall be considered a tax for the purposes of the Tax
12 Administration Act; ~~and~~

13 (22) the Insurance Premium Tax Act;

14 (23) the Health Care Quality Surcharge Act;

15 (24) the Food Gross Receipts Tax Act; and

16 (25) the Recordation Tax Act;

17 B. the administration and enforcement of the
18 following taxes, surtaxes, advanced payments or tax acts as
19 they now exist or may hereafter be amended:

20 (1) Resources Excise Tax Act;

21 (2) Severance Tax Act;

22 (3) any severance surtax;

23 (4) Oil and Gas Severance Tax Act;

24 (5) Oil and Gas Conservation Tax Act;

25 (6) Oil and Gas Emergency School Tax Act;

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1 (7) Oil and Gas Ad Valorem Production Tax Act;

2 (8) Natural Gas Processors Tax Act;

3 (9) Oil and Gas Production Equipment Ad

4 Valorem Tax Act;

5 (10) Copper Production Ad Valorem Tax Act;

6 (11) any advance payment required to be made

7 by any act specified in this subsection, which advance payment

8 shall be considered a tax for the purposes of the Tax

9 Administration Act;

10 (12) Enhanced Oil Recovery Act;

11 (13) Natural Gas and Crude Oil Production

12 Incentive Act; and

13 (14) intergovernmental production tax credit

14 and intergovernmental production equipment tax credit;

15 C. the administration and enforcement of the
16 following taxes, surcharges, fees or acts as they now exist or
17 may hereafter be amended:

18 (1) Weight Distance Tax Act;

19 (2) the workers' compensation fee authorized

20 by Section 52-5-19 NMSA 1978, which fee shall be considered a

21 tax for purposes of the Tax Administration Act;

22 (3) Uniform Unclaimed Property Act (1995);

23 (4) 911 emergency surcharge and the network

24 and database surcharge, which surcharges shall be considered

25 taxes for purposes of the Tax Administration Act;

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1 (5) the solid waste assessment fee authorized
2 by the Solid Waste Act, which fee shall be considered a tax for
3 purposes of the Tax Administration Act;

4 (6) the water conservation fee imposed by
5 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
6 for the purposes of the Tax Administration Act; and

7 (7) the gaming tax imposed pursuant to the
8 Gaming Control Act; and

9 D. the administration and enforcement of all other
10 laws, with respect to which the department is charged with
11 responsibilities pursuant to the Tax Administration Act, but
12 only to the extent that the other laws do not conflict with the
13 Tax Administration Act."

14 SECTION 13. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
15 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
16 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
17 to read:

18 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
19 MUNICIPALITIES OR COUNTIES.--

20 A. The provisions of this section apply to:

21 (1) any distribution to a municipality
22 pursuant to Section 7-1-6.4 or 7-1-6.36 [~~or 7-1-6.46~~] NMSA
23 1978;

24 (2) any transfer to a municipality with
25 respect to any local option gross receipts tax imposed by that
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1 municipality;

2 (3) any transfer to a county with respect to
3 any local option gross receipts tax imposed by that county;

4 (4) any distribution to a county pursuant to
5 Section 7-1-6.16 [~~or 7-1-6.47~~] NMSA 1978;

6 (5) any distribution to a municipality or a
7 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

8 (6) any transfer to a county with respect to
9 any tax imposed in accordance with the Local Liquor Excise Tax
10 Act;

11 (7) any distribution to a county from the
12 county government road fund pursuant to Section 7-1-6.26 NMSA
13 1978;

14 (8) any distribution to a municipality of
15 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

16 (9) any distribution to a municipality [~~of~~
17 ~~compensating taxes pursuant to Section 7-1-6.55 NMSA 1978]~~
18 pursuant to Section 14 of this 2021 act.

19 B. Before making a distribution or transfer
20 specified in Subsection A of this section to a municipality or
21 county for the month, amounts comprising the net receipts shall
22 be segregated into two mutually exclusive categories. One
23 category shall be for amounts relating to the current month,
24 and the other category shall be for amounts relating to prior
25 periods. The total of each category for a municipality or

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1 county shall be reported each month to that municipality or
2 county. If the total of the amounts relating to prior periods
3 is less than zero and its absolute value exceeds the greater of
4 one hundred dollars (\$100) or an amount equal to twenty percent
5 of the average distribution or transfer amount for that
6 municipality or county, then the following procedures shall be
7 carried out:

8 (1) all negative amounts relating to any
9 period prior to the three calendar years preceding the year of
10 the current month, net of any positive amounts in that same
11 time period for the same taxpayers to which the negative
12 amounts pertain, shall be excluded from the total relating to
13 prior periods. Except as provided in Paragraph (2) of this
14 subsection, the net receipts to be distributed or transferred
15 to the municipality or county shall be adjusted to equal the
16 amount for the current month plus the revised total for prior
17 periods; and

18 (2) if the revised total for prior periods
19 determined pursuant to Paragraph (1) of this subsection is
20 negative and its absolute value exceeds the greater of one
21 hundred dollars (\$100) or an amount equal to twenty percent of
22 the average distribution or transfer amount for that
23 municipality or county, the revised total for prior periods
24 shall be excluded from the distribution or transfers and the
25 net receipts to be distributed or transferred to the

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1 municipality or county shall be equal to the amount for the
2 current month.

3 C. The department shall recover from a municipality
4 or county the amount excluded by Paragraph (2) of Subsection B
5 of this section. This amount may be referred to as the
6 "recoverable amount".

7 D. Prior to or concurrently with the distribution
8 or transfer to the municipality or county of the adjusted net
9 receipts, the department shall notify the municipality or
10 county whose distribution or transfer has been adjusted
11 pursuant to Paragraph (2) of Subsection B of this section:

12 (1) that the department has made such an
13 adjustment, that the department has determined that a specified
14 amount is recoverable from the municipality or county and that
15 the department intends to recover that amount from future
16 distributions or transfers to the municipality or county;

17 (2) that the municipality or county has ninety
18 days from the date notice is made to enter into a mutually
19 agreeable repayment agreement with the department;

20 (3) that if the municipality or county takes
21 no action within the ninety-day period, the department will
22 recover the amount from the next six distributions or transfers
23 following the expiration of the ninety days; and

24 (4) that the municipality or county may
25 inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application

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1 for a claim for refund that gave rise to the recoverable
2 amount, exclusive of any amended returns that may be attached
3 to the application.

4 E. No earlier than ninety days from the date notice
5 pursuant to Subsection D of this section is given, the
6 department shall begin recovering the recoverable amount from a
7 municipality or county as follows:

8 (1) the department may collect the recoverable
9 amount by:

10 (a) decreasing distributions or
11 transfers to the municipality or county in accordance with a
12 repayment agreement entered into with the municipality or
13 county; or

14 (b) except as provided in Paragraphs (2)
15 and (3) of this subsection, if the municipality or county fails
16 to act within the ninety days, decreasing the amount of the
17 next six distributions or transfers to the municipality or
18 county following expiration of the ninety-day period in
19 increments as nearly equal as practicable and sufficient to
20 recover the amount;

21 (2) if, pursuant to Subsection B of this
22 section, the secretary determines that the recoverable amount
23 is more than fifty percent of the average distribution or
24 transfer of net receipts for that municipality or county, the
25 secretary:

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1 (a) shall recover only up to fifty
2 percent of the average distribution or transfer of net receipts
3 for that municipality or county; and

4 (b) may, in the secretary's discretion,
5 waive recovery of any portion of the recoverable amount,
6 subject to approval by the state board of finance; and

7 (3) if, after application of a refund claim,
8 audit adjustment, correction of a mistake by the department or
9 other adjustment of a prior period, but prior to any recovery
10 of the department pursuant to this section, the total net
11 receipts of a municipality or county for the twelve-month
12 period beginning with the current month are reduced or are
13 projected to be reduced to less than fifty percent of the
14 average distribution or transfer of net receipts, the secretary
15 may waive recovery of any portion of the recoverable amount,
16 subject to approval by the state board of finance.

17 F. No later than ninety days from the date notice
18 pursuant to Subsection D of this section is given, the
19 department shall provide the municipality or county adequate
20 opportunity to review an application for a claim for refund
21 that gave rise to the recoverable amount, exclusive of any
22 amended returns that may be attached to the application,
23 pursuant to Section 7-1-8.9 NMSA 1978.

24 G. On or before September 1 of each year beginning
25 in 2016, the secretary shall report to the state board of

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1 finance and the legislative finance committee the total
2 recoverable amount waived pursuant to Subparagraph (b) of
3 Paragraph (2) and Paragraph (3) of Subsection E of this section
4 for each municipality and county in the prior fiscal year.

5 H. The secretary is authorized to decrease a
6 distribution or transfer to a municipality or county upon being
7 directed to do so by the secretary of finance and
8 administration pursuant to the State Aid Intercept Act or to
9 redirect a distribution or transfer to the New Mexico finance
10 authority pursuant to an ordinance or a resolution passed by
11 the county or municipality and a written agreement of the
12 municipality or county and the New Mexico finance authority.

13 Upon direction to decrease a distribution or transfer or notice
14 to redirect a distribution or transfer to a municipality or
15 county, the secretary shall decrease or redirect the next
16 designated distribution or transfer, and succeeding
17 distributions or transfers as necessary, by the amount of the
18 state distributions intercept authorized by the secretary of
19 finance and administration pursuant to the State Aid Intercept
20 Act or by the amount of the state distribution intercept
21 authorized pursuant to an ordinance or a resolution passed by
22 the county or municipality and a written agreement with the New
23 Mexico finance authority. The secretary shall transfer the
24 state distributions intercept amount to the municipal or county
25 treasurer or other person designated by the secretary of

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1 finance and administration or to the New Mexico finance
2 authority pursuant to written agreement to pay the debt service
3 to avoid default on qualified local revenue bonds or meet other
4 local revenue bond, loan or other debt obligations of the
5 municipality or county to the New Mexico finance authority. A
6 decrease to or redirection of a distribution or transfer
7 pursuant to this subsection that arose:

8 (1) prior to an adjustment of a distribution
9 or transfer of net receipts creating a recoverable amount owed
10 to the department takes precedence over any collection of any
11 recoverable amount pursuant to Paragraph (2) of Subsection B of
12 this section, which may be made only from the net amount of the
13 distribution or transfer remaining after application of the
14 decrease or redirection pursuant to this subsection; and

15 (2) after an adjustment of a distribution or
16 transfer of net receipts creating a recoverable amount owed to
17 the department shall be subordinate to any collection of any
18 recoverable amount pursuant to Paragraph (2) of Subsection B of
19 this section.

20 I. Upon the direction of the secretary of finance
21 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
22 secretary shall temporarily withhold the balance of a
23 distribution to a municipality or county, net of any decrease
24 or redirected amount pursuant to Subsection H of this section
25 and any recoverable amount pursuant to Paragraph (2) of

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1 Subsection B of this section, that has failed to submit an
2 audit report required by the Audit Act or a financial report
3 required by Subsection F of Section 6-6-2 NMSA 1978. The
4 amount to be withheld, the source of the withheld distribution
5 and the number of months that the distribution is to be
6 withheld shall be as directed by the secretary of finance and
7 administration. A distribution withheld pursuant to this
8 subsection shall remain in the tax administration suspense fund
9 until distributed to the municipality or county and shall not
10 be distributed to the general fund. An amount withheld
11 pursuant to this subsection shall be distributed to the
12 municipality or county upon direction of the secretary of
13 finance and administration.

14 J. As used in this section:

15 (1) "amounts relating to the current month"
16 means any amounts included in the net receipts of the current
17 month that represent payment of tax due for the current month,
18 correction of amounts processed in the current month that
19 relate to the current month or that otherwise relate to
20 obligations due for the current month;

21 (2) "amounts relating to prior periods" means
22 any amounts processed during the current month that adjust
23 amounts processed in a period or periods prior to the current
24 month regardless of whether the adjustment is a correction of a
25 department error or due to the filing of amended returns,

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1 payment of department-issued assessments, filing or approval of
2 claims for refund, audit adjustments or other cause;

3 (3) "average distribution or transfer amount"
4 means the following amounts; provided that a distribution or
5 transfer that is negative shall not be used in calculating the
6 amounts:

7 (a) the annual average of the total
8 amount distributed or transferred to a municipality or county
9 in each of the three twelve-month periods preceding the current
10 month;

11 (b) if a distribution or transfer to a
12 municipality or county has been made for less than three years,
13 the total amount distributed or transferred in the year
14 preceding the current month; or

15 (c) if a municipality or county has not
16 received distributions or transfers of net receipts for twelve
17 or more months, the monthly average of net receipts distributed
18 or transferred to the municipality or county preceding the
19 current month multiplied by twelve;

20 (4) "current month" means the month for which
21 the distribution or transfer is being prepared; and

22 (5) "repayment agreement" means an agreement
23 between the department and a municipality or county under which
24 the municipality or county agrees to allow the department to
25 recover an amount determined pursuant to Paragraph (2) of

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1 Subsection B of this section by decreasing distributions or
2 transfers to the municipality or county for one or more months
3 beginning with the distribution or transfer to be made with
4 respect to a designated month. No interest shall be charged."

5 SECTION 14. A new section of the Tax Administration Act
6 is enacted to read:

7 "[NEW MATERIAL] DISTRIBUTION--FOOD GROSS RECEIPTS TAX--
8 MUNICIPALITIES AND COUNTIES.--

9 A. A distribution pursuant to Section 7-1-6.1 NMSA
10 1978 shall be made to each municipality in an amount equal to
11 sixty-eight and seventy-five hundredths percent of the net
12 receipts attributable to the food gross receipts tax on food
13 sold in the municipality.

14 B. A distribution pursuant to Section 7-1-6.1 NMSA
15 1978 shall be made to each county in an amount equal to
16 eighteen and seventy-five hundredths percent of the net
17 receipts attributable to the food gross receipts tax on food
18 sold in that portion of a county that is located inside the
19 boundaries of a municipality.

20 C. A distribution pursuant to Section 7-1-6.1 NMSA
21 1978 shall be made to each county in an amount equal to eighty-
22 seven and one-half percent of the net receipts attributable to
23 the food gross receipts tax on food sold in that portion of a
24 county that is located outside the boundaries of a
25 municipality.

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1 D. The distribution amounts made pursuant to this
2 section shall be subject to any increase or decrease made
3 pursuant to Section 7-1-6.15 NMSA 1978.

4 E. The department may withhold an administrative
5 fee of three percent of the net amount to be distributed
6 pursuant to this section."

7 **SECTION 15.** A new section of the Income Tax Act is
8 enacted to read:

9 "[NEW MATERIAL] EXEMPTION--SOCIAL SECURITY INCOME.--

10 A. An individual may claim an exemption in an
11 amount equal to the amount included in adjusted gross income
12 pursuant to Section 86 of the Internal Revenue Code, as that
13 section may be amended or renumbered, of income includable
14 except for this exemption in net income. The exempted amount
15 shall not exceed the individual's net income.

16 B. An individual who claims an exemption pursuant
17 to this section shall not claim the exemption pursuant to
18 Section 7-2-5.2 NMSA 1978."

19 **SECTION 16.** A new section of the Income Tax Act is
20 enacted to read:

21 "[NEW MATERIAL] EXEMPTION--MILITARY RETIREMENT INCOME.--

22 A. An individual who is a uniformed services
23 retiree or a uniformed services retiree's surviving spouse may
24 claim an exemption in an amount not to exceed the individual's
25 net income from the amount of military retirement income that

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1 the individual received in a taxable year.

2 B. As used in this section:

3 (1) "uniformed services" means the United
4 States army, navy, air force, marine corps and coast guard and
5 the commissioned officer corps of the national oceanic and
6 atmospheric administration; and

7 (2) "uniformed services retiree" means a
8 former member of the uniformed services who has qualified by
9 years of service or disability to separate from service with
10 lifetime benefits."

11 SECTION 17. Section 7-9-3.5 NMSA 1978 (being Laws 2003,
12 Chapter 272, Section 3, as amended) is amended to read:

13 "7-9-3.5. DEFINITION--GROSS RECEIPTS.--

14 A. As used in the Gross Receipts and Compensating
15 Tax Act:

16 (1) "gross receipts" means the total amount of
17 money or the value of other consideration received from selling
18 property in New Mexico, from leasing or licensing property
19 employed in New Mexico, from granting a right to use a
20 franchise employed in New Mexico, from selling services
21 performed outside New Mexico, the product of which is initially
22 used in New Mexico, or from performing services in New Mexico.
23 In an exchange in which the money or other consideration
24 received does not represent the value of the property or
25 service exchanged, "gross receipts" means the reasonable value

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1 of the property or service exchanged;

2 (2) "gross receipts" includes:

3 (a) any receipts from sales of tangible
4 personal property handled on consignment;

5 (b) the total commissions or fees
6 derived from the business of buying, selling or promoting the
7 purchase, sale or lease, as an agent or broker on a commission
8 or fee basis, of any property, service, stock, bond or
9 security;

10 (c) amounts paid by members of any
11 cooperative association or similar organization for sales or
12 leases of personal property or performance of services by such
13 organization;

14 (d) amounts received from transmitting
15 messages or conversations by persons providing telephone or
16 telegraph services;

17 (e) amounts received by a New Mexico
18 florist from the sale of flowers, plants or other products that
19 are customarily sold by florists where the sale is made
20 pursuant to orders placed with the New Mexico florist that are
21 filled and delivered outside New Mexico by an out-of-state
22 florist;

23 (f) the receipts of a home service
24 provider from providing mobile telecommunications services to
25 customers whose place of primary use is in New Mexico if: 1)

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1 the mobile telecommunications services originate and terminate
2 in the same state, regardless of where the services originate,
3 terminate or pass through; and 2) the charges for mobile
4 telecommunications services are billed by or for a customer's
5 home service provider and are deemed provided by the home
6 service provider. For the purposes of this section, "home
7 service provider", "mobile telecommunications services",
8 "customer" and "place of primary use" have the meanings given
9 in the federal Mobile Telecommunications Sourcing Act; and

10 (g) receipts collected by a marketplace
11 provider engaging in business in the state from sales, leases
12 and licenses of tangible personal property, sales of licenses
13 and sales of services or licenses for use of real property that
14 are sourced to this state and are facilitated by the
15 marketplace provider on behalf of marketplace sellers,
16 regardless of whether the marketplace sellers are engaging in
17 business in the state; and

18 (3) "gross receipts" excludes:

19 (a) cash discounts allowed and taken;
20 (b) New Mexico gross receipts tax,
21 governmental gross receipts tax, ~~and~~ leased vehicle gross
22 receipts tax and food gross receipts tax payable on
23 transactions for the reporting period;

24 (c) taxes imposed pursuant to the
25 provisions of any local option gross receipts tax that is

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1 payable on transactions for the reporting period;

2 (d) any gross receipts or sales taxes
3 imposed by an Indian nation, tribe or pueblo; provided that the
4 tax is approved, if approval is required by federal law or
5 regulation, by the secretary of the interior of the United
6 States; and provided further that the gross receipts or sales
7 tax imposed by the Indian nation, tribe or pueblo provides a
8 reciprocal exclusion for gross receipts, sales or gross
9 receipts-based excise taxes imposed by the state or its
10 political subdivisions;

11 (e) any type of time-price differential;

12 (f) amounts received solely on behalf of
13 another in a disclosed agency capacity; and

14 (g) amounts received by a New Mexico
15 florist from the sale of flowers, plants or other products that
16 are customarily sold by florists where the sale is made
17 pursuant to orders placed with an out-of-state florist for
18 filling and delivery in New Mexico by a New Mexico florist.

19 B. When the sale of property or service is made
20 under any type of charge, conditional or time-sales contract or
21 the leasing of property is made under a leasing contract, the
22 seller or lessor may elect to treat all receipts, excluding any
23 type of time-price differential, under such contracts as gross
24 receipts as and when the payments are actually received. If
25 the seller or lessor transfers the seller's or lessor's

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1 interest in any such contract to a third person, the seller or
2 lessor shall pay the gross receipts tax upon the full sale or
3 leasing contract amount, excluding any type of time-price
4 differential."

5 SECTION 18. REPEAL.--Sections 7-1-6.46 and 7-1-6.47 NMSA
6 1978 (being Laws 2004, Chapter 116, Sections 1 and 2, as
7 amended) are repealed.

8 SECTION 19. APPLICABILITY.--The provisions of Sections 15
9 and 16 of this act apply to taxable years beginning on or after
10 January 1, 2021.

11 SECTION 20. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2021.