

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 137

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; CREATING THE DESTINATION-BASED SOURCING SAFETY NET FUND; REQUIRING REPORTING OF THE LOCATION OF THE SELLER WHEN REPORTING GROSS RECEIPTS ~~SFC~~ **→; MAKING APPROPRIATIONS** ~~SFC~~ ; DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] DESTINATION-BASED SOURCING

.222392.1AIC February 14, 2022 (9:09am)

underscoring material = new
[bracketed material] = delete
Amendments: new = **→bold, blue, highlight**
delete = **→bold, red, highlight, strikethrough**

SAFETY NET FUND.--

A. The "destination-based sourcing safety net fund" is created in the state treasury. The fund consists of appropriations, donations, interest from investment of the fund and other money distributed to the fund. The fund shall be administered by the local government division of the department of finance and administration, and money in the fund is appropriated to the division to make allocations to qualified municipalities pursuant to this section. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the local government division of the department of finance and administration or the director's designee. Any unexpended or unencumbered balance remaining in the fund at the end of fiscal year 2024 shall revert to the general fund.

B. The local government division of the department of finance and administration shall make the following allocations from the fund to a qualifying municipality as follows:

(1) on or before May 1, 2022, an amount equal to the revenue reduction occurring beginning July 1, 2021 and prior to January 1, 2022;

(2) on or before October 1, 2022, an amount equal to the revenue reduction occurring beginning January 1, 2022 and prior to July 1, 2022;

.222392.1AIC February 14, 2022 (9:09am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

(3) on or before May 1, 2023, an amount equal to the revenue reduction occurring beginning July 1, 2022 and prior to January 1, 2023; and

(4) on or before October 1, 2023, an amount equal to the revenue reduction occurring between January 1, 2023 and prior to July 1, 2023.

C. If money in the fund is insufficient to make an allocation pursuant to Subsection B of this section, all allocations for that allocation period shall be prorated among the qualifying municipalities, based on the total of revenue reduction amounts.

SFC→D. A qualifying municipality shall apply for an allocation from the fund on forms and in a manner as required by the local government division of the department of finance and administration.←SFC

SFC→D.←SFC SFC→E.←SFC As used in this section:

(1) "adjusted gross receipts tax revenue" means total gross receipts tax revenues of a municipality adjusted to exclude any negative distribution amounts made pursuant to 7-1-6.15 NMSA 1978 in excess of two hundred fifty thousand dollars (\$250,000) that occurred during the six-month period;

(2) "base year" means fiscal year 2020;

(3) "qualifying municipality" means a municipality that:

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

(a) had a revenue reduction; and

(b) can demonstrate to the local

government division that the revenue reduction is a result of the change to destination-based sourcing of services pursuant to Laws 2020, Chapter 80, Section 1, as determined by the SFC→~~municipality in conjunction with the~~←SFC taxation and revenue department; and

(4) "revenue reduction" means a reduction in a municipality's gross receipts tax revenue from the municipality's adjusted gross receipts tax revenue of at least ten percent during:

(a) the first six months of fiscal year 2022 compared to the same period in the base year; or

(b) in subsequent six-month periods compared to the same six-month period in the base year.

SECTION 2. Section 7-1-14 NMSA 1978 (being Laws 2020, Chapter 80, Section 1) is amended to read:

"7-1-14. [~~BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF~~] SOURCING RULES FOR REPORTING GROSS RECEIPTS AND USE--LOCATION-CODE DATABASE AND LOCATION-RATE DATABASE.--

A. For purposes of the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts

.222392.1AIC February 14, 2022 (9:09am)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

or compensating tax, a ~~[person]~~ taxpayer that has gross receipts and a ~~[person]~~ taxpayer using property or services in New Mexico in a taxable manner shall report the gross receipts and use to the proper business location, and the location of the taxpayer's place of business for a taxpayer that has gross receipts, as provided in this section.

B. The business location for gross receipts from the sale, lease or granting of a license to use real property located in New Mexico, and any related deductions, shall be the location of the property.

C. The business location for gross receipts from the sale or license of tangible personal property, and any related deductions, shall be at the following locations:

(1) if the property is received by the purchaser at the New Mexico ~~[business]~~ location of the seller, the location of the seller;

(2) if the property is not received by the purchaser at ~~[a business]~~ the location of the seller, the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the seller;

(3) if Paragraphs (1) and (2) of this subsection do not apply, the location indicated by an address for the purchaser available from the business records of the seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith;

(4) if Paragraphs (1) through (3) of this subsection do not apply, the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith; or

(5) if Paragraphs (1) through (4) of this subsection do not apply, including a circumstance in which the seller is without sufficient information to apply those standards, the location from which the property was shipped or transmitted.

D. The business location for gross receipts from the lease of tangible personal property, including vehicles, other transportation equipment and other mobile tangible personal property, and any related deductions, shall be the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this address does not constitute bad faith. The location of primary ~~[business location]~~ use shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

E. The business location for gross receipts from

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

the sale, lease or license of franchises, and any related deductions, shall be where the franchise is used.

F. The business location for gross receipts from the performance or sale of the following services, and any related deductions, shall be at the following locations:

(1) for professional services performed in New Mexico, other than construction-related services, or performed outside New Mexico when the product of the service is initially used in New Mexico, the location of the performer of the service or seller of the product of the service, as appropriate;

(2) for construction services and construction-related services performed for a construction project in New Mexico, the location of the construction site;

(3) for services with respect to the selling of real estate located in New Mexico, the location of the real estate;

(4) for transportation of persons or property in, into or from New Mexico, the location where the person or property enters the vehicle; and

(5) for services other than those described in Paragraphs (1) through (4) of this subsection, the location where the product of the service is delivered.

G. Except as provided in Subsection H of this section, the business location for uses of property or services

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight ←
delete = → bold, red, highlight, strikethrough ←

subject to the compensating tax shall be ~~[reported at]~~ the ~~[business]~~ location at which gross receipts would have been required to be reported had the transaction been subject to the gross receipts tax.

H. If a ~~[person]~~ taxpayer subject to the compensating tax can demonstrate that the first use upon which compensating tax is imposed occurred at a time and place different from the time and place of the purchase, then the business location for the compensating tax shall be ~~[reported at]~~ the ~~[business]~~ location of the first use.

~~[I. The secretary shall designate codes to identify the business locations for a person's gross receipts, or use for purchases subject to the compensating tax, and deductions related to those receipts or that use shall be reported.~~

~~J.]~~ I. The secretary shall develop a location-code database that provides the business location codes and place of business location codes designated ~~[pursuant to Subsection I of this section]~~ by the secretary. The secretary shall also develop and provide to taxpayers a location-rate database that sets out the tax rates applicable to business locations within the state, by address, and sellers who properly rely on this database shall not be liable for any additional tax due to the use of an incorrect rate.

~~[K.]~~ J. As used in this section:

~~[(1) "business location" means the code~~

~~designated by the department to identify business locations and required to be used to report the gross receipts, or use for purchases subject to the compensating tax, and deductions related to those receipts or that use;~~

~~(2)~~ (1) "gross receipts" means, as applicable, "gross receipts" as used in the Gross Receipts and Compensating Tax Act and the Leased Vehicle Gross Receipts Tax Act and "interstate telecommunications gross receipts" in the Interstate Telecommunications Gross Receipts Tax Act;

~~(3)~~ (2) "in-person service" means a service physically provided in person by the service provider, where the customer or the customer's real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed; and

~~(4)~~ (3) "professional service" means a service, other than an in-person service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform."

SFC → ~~SECTION 3. APPROPRIATIONS.~~

~~A. Fifty million dollars (\$50,000,000) is appropriated from the general fund to the destination-based sourcing safety net fund for expenditure in fiscal years 2022 through 2024 to implement the provisions of Section 1 of this~~

underscored material = new
[bracketed material] = delete
Amendments: new = → bold, blue, highlight
delete = → bold, red, highlight, strikethrough

~~act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.~~

~~B. Two million five hundred thousand dollars (\$2,500,000) is appropriated from the general fund to the taxation and revenue department for expenditure in fiscal years 2022 and 2023 to implement the provisions of Section 2 of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2023 shall revert to the general fund.~~

~~SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of Section 2 of this act is July 1, 2022.~~←SFC

SFC→SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of Section 2 of this act is October 1, 2022.←SFC

SECTION SFC→5.←SFC SFC→4.←SFC EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

underscoring material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←