

1 SENATE BILL 121

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO TAXATION; CREATING A TEMPORARY GROSS RECEIPTS TAX
12 DEDUCTION FOR CERTAIN FOOD AND BEVERAGE ESTABLISHMENTS THAT
13 HAVE NOT RECEIVED CERTAIN GRANT FUNDS; DISTRIBUTING THE LOSS OF
14 LOCAL OPTION GROSS RECEIPTS TAX REVENUE ATTRIBUTABLE TO THE
15 DEDUCTION TO LOCAL GOVERNMENTS; MAKING AN APPROPRIATION;
16 DECLARING AN EMERGENCY.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 7-1-6.66 NMSA 1978 (being Laws 2021,
20 Chapter 4, Section 1) is amended to read:

21 "7-1-6.66. DISTRIBUTION--OFFSET FOR FOOD AND BEVERAGE
22 ESTABLISHMENTS [~~DEDUCTION~~] DEDUCTIONS.--

23 A. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 shall be made to a municipality in an amount, subject to
25 any increase or decrease made pursuant to Section 7-1-6.15 NMSA

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1 1978, equal to the sum of the deductions claimed pursuant to
2 Subsection A of Section [3 of this 2021 act] 7-9-118 NMSA 1978
3 for the month by taxpayers from business locations attributable
4 to the municipality multiplied by the sum of the combined rate
5 of all municipal local option gross receipts taxes in effect in
6 the municipality on January 1, 2021 plus one and two hundred
7 twenty-five thousandths percent.

8 B. A distribution pursuant to Section 7-1-6.1 NMSA
9 1978 shall be made to a municipality in an amount, subject to
10 any increase or decrease made pursuant to Section 7-1-6.15 NMSA
11 1978, equal to the sum of the deductions claimed pursuant to
12 Subsection B of Section 7-9-118 NMSA 1978 for the month by
13 taxpayers from business locations attributable to the
14 municipality multiplied by the sum of the combined rate of all
15 municipal local option gross receipts taxes in effect in the
16 municipality on January 1, 2023 plus one and two hundred
17 twenty-five thousandths percent.

18 ~~[B.]~~ C. A distribution pursuant to Section 7-1-6.1
19 NMSA 1978 shall be made to a county in an amount, subject to
20 any increase or decrease made pursuant to Section 7-1-6.15 NMSA
21 1978, equal to the sum of the total deductions claimed pursuant
22 to Subsection A of Section [3 of this 2021 act] 7-9-118 NMSA
23 1978 for the month by taxpayers from business locations:

24 (1) within a municipality in the county
25 multiplied by the combined rate of all county local option

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1 gross receipts taxes in effect on January 1, 2021 that are
2 imposed in the county; and

3 (2) in the county but not within a
4 municipality multiplied by the combined rate of all county
5 local option gross receipts taxes in effect on January 1, 2021
6 that are imposed in the county area not within a municipality.

7 D. A distribution pursuant to Section 7-1-6.1 NMSA
8 1978 shall be made to a county in an amount, subject to any
9 increase or decrease made pursuant to Section 7-1-6.15 NMSA
10 1978, equal to the sum of the total deductions claimed pursuant
11 to Subsection B of Section 7-9-118 NMSA 1978 for the month by
12 taxpayers from business locations:

13 (1) within a municipality in the county
14 multiplied by the combined rate of all county local option
15 gross receipts taxes in effect on January 1, 2023 that are
16 imposed in the county; and

17 (2) in the county but not within a
18 municipality multiplied by the combined rate of all county
19 local option gross receipts taxes in effect on January 1, 2023
20 that are imposed in the county area not within a municipality.

21 [~~C.~~] E. A distribution pursuant to this section may
22 be adjusted for a distribution made to a tax increment
23 development district with respect to a portion of a gross
24 receipts tax increment dedicated by a municipality pursuant to
25 the Tax Increment for Development Act.

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1 ~~[D-]~~ F. For the purposes of this section, "business
2 locations attributable to the municipality" means business
3 locations:

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

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

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

23 **SECTION 2.** Section 7-9-118 NMSA 1978 (being Laws 2021,
24 Chapter 4, Section 3) is amended to read:

25 "7-9-118. ~~[DEDUCTION]~~ DEDUCTIONS--GROSS RECEIPTS--FOOD OR
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1 BEVERAGE ESTABLISHMENTS.--

2 A. Beginning March 1, 2021 and prior to July 1,
3 2021, receipts of a food or beverage establishment from the
4 sale of prepared food or non-packaged beverages that are served
5 or picked up at the food or beverage establishment by or
6 delivered to customers for immediate consumption may be
7 deducted from gross receipts.

8 B. Beginning March 1, 2023 and prior to July 1,
9 2023, receipts of a food or beverage establishment that has not
10 received a grant from the restaurant revitalization fund
11 administered by the United States small business
12 administration, as evidenced by documentation required by the
13 department, from the sale of prepared food or non-packaged
14 beverages that are served or picked up at the food or beverage
15 establishment by or delivered to customers for immediate
16 consumption may be deducted from gross receipts.

17 [~~B.~~] C. The [~~deduction~~] deductions provided by this
18 section shall be applied only to gross receipts remaining after
19 all other allowable deductions available under the Gross
20 Receipts and Compensating Tax Act have been taken and shall be
21 separately stated by the taxpayer.

22 [~~C.~~] D. As used in this section:

23 (1) "craft distiller" means an establishment
24 owned or managed by person issued a craft distiller's license
25 pursuant to Section 60-6A-6.1 NMSA 1978 that is in good

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1 standing;

2 (2) "dispenser" means an establishment that is
3 held out to the public as a place where alcoholic beverages are
4 prepared and served for on-premises consumption to the general
5 public in consideration of payment and that has the facilities
6 and employees necessary for preparing and serving alcoholic
7 beverages; provided that the dispenser has been issued a
8 license pursuant to the Liquor Control Act as a dispenser;

9 (3) "food or beverage establishment" means a
10 craft distiller; dispenser; mobile food service establishment;
11 restaurant; small brewer; or winegrower;

12 (4) "mobile food service establishment" means
13 a mobile establishment where meals are prepared for sale to or
14 consumption by the general public either on or off the premises
15 and has been issued a permit pursuant to Section 25-1-7 NMSA
16 1978 that is in good standing;

17 (5) "restaurant" means an establishment that
18 is held out to the public as a place where meals and beverages
19 are prepared and primarily intended to be served for on-
20 premises consumption to the general public in consideration of
21 payment and that has a dining room, a kitchen and the employees
22 necessary for preparing, cooking and serving meals; provided
23 the restaurant has been issued a permit pursuant to Section
24 25-1-7 NMSA 1978 that is in good standing and, if the
25 restaurant serves alcoholic beverages, has been issued a

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1 license pursuant to Section 60-6A-4 NMSA 1978. "Restaurant"
2 does not include an establishment commonly known as a fast food
3 restaurant that dispenses food intended to be ordered, prepared
4 and served quickly, with minimal or no table service, and
5 prepared in quantity by a standardized method for consumption
6 on and off premises, and that tends to have any of the
7 following characteristics:

8 (a) a menu consisting primarily of pre-
9 cooked items or items prepared in advance and heated quickly;

10 (b) placement of orders at a fast serve
11 drive-through or walk-up window;

12 (c) service of food solely in disposable
13 wrapping or containers; or

14 (d) a menu that exclusively sells
15 hamburgers, sandwiches, salads and other fast foods;

16 (6) "small brewer" means an establishment
17 owned or managed by a person issued a small brewer's license
18 pursuant to Section 60-6A-26.1 NMSA 1978 that is in good
19 standing; and

20 (7) "winegrower" means an establishment owned
21 or managed by a person issued a winegrower's license pursuant
22 to Section 60-6A-11 NMSA 1978 that is in good standing."

23 SECTION 3. TEMPORARY PROVISION--AMOUNTS IN LIEU OF GROSS
24 RECEIPTS.--Any amount passed on to a customer in lieu of a
25 gross receipts tax on receipts for which a food or beverage

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1 establishment may deduct pursuant to Section 2 of this 2023 act
2 shall not be considered gross receipts.

3 SECTION 4. APPROPRIATION.--One hundred fifty thousand
4 dollars (\$150,000) is appropriated from the general fund to the
5 taxation and revenue department for expenditure in fiscal years
6 2023 and 2024 to administer the gross receipts tax deduction
7 pursuant to Section 2 of this act. Any unexpended or
8 unencumbered balance remaining at the end of fiscal year 2024
9 shall revert to the general fund.

10 SECTION 5. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.