

FACTS SHEET

Proposed Legislative Amendment to NM Laws to allow NMTRD to collect full Tribal Gross Receipts Tax Pursuant to Cooperative Agreements with NMTRD

1. Pursuant to Cooperative Agreements with Indian tribal governments in New Mexico, the NMTRD collects tribal gross receipts taxes on transactions on tribal lands and remits the collected taxes to the tribal governments.

2. NMTRD is unable to collect the full amount of the tribal gross receipts taxes due to the definition of a qualifying tax in the New Mexico law, which ends up limiting tribal governments to collecting the same amount as the county or other New Mexico local government where tribal lands are located.

3. NMTRD cannot collect the full tribal gross receipts tax because any tax greater than that of the local state government where tribal lands are located is not a “qualifying tribal gross receipts, sales or similar tax” for which the Cooperative Agreement is effective.

4. A “qualifying tribal gross receipts, sales or similar tax” is defined in Section 7-9-88.1(B)(3) NMSA:

B. A qualifying gross receipts, sales or similar tax levied by the tribe shall be limited to a tax that:

3) is levied on the taxable transaction **at a rate not greater than** the total of the **gross receipts tax rate** and local option gross receipts tax rates **imposed by this state and its political subdivisions located within the exterior boundaries of the tribe;**

5. Tribal governments can terminate the Agreements and do their own tax collection, but that would require significant lead time and involve a significant increase in administrative costs for the Tribe to collect the tax on its own. Ultimately though, it should be remembered that these agreements serve another purpose that benefits both the state of NM and the tribal governments by avoiding costly litigation.

8. **Revising the statutory language:**

3) is levied on the taxable transaction **at a rate not ~~greater~~ less than** the total of the **gross receipts tax rate** and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the tribe;

9. There are several reasons why revising this statute makes good economic sense for the tribes and the state, particularly at this time:

A. The equal playing field rationale that is used so often to limit tribal taxation does not work here. In general NM is worried about Tribes undercutting other businesses with lower taxes. The law can be revised to allow tribes to have higher taxes with absolutely no impact on the surrounding community.

B. As part of the Agreements, the state collects the tax on both Class I or Class II receipts.¹ For Class II receipts, the state retains 25% and pays 75% to the tribe. (This is essentially a settlement since this involves taxation of non-members with receipts from tribal members – both the state and the tribe could assert the ability to tax). If the tribal tax is allowed to increase it actually increases the revenue to the state.

C. Any argument that this would increase the costs of administering the Cooperative Agreement is offset by the collection of an administrative fee and the State's percentage of the Class II receipts, both of which increase if the tribal tax is allowed to increase.

¹ Class I receipts are those of a Non-Tribal entity that are reportable to a location on Tribal Land and are from the sale of goods or services to a Tribal Entity (the Tribe, any political subdivision, agency or department of the Tribe and any incorporation or unincorporated enterprise of the Tribe and any business that is fifty percent or more owned by the Tribe; or a member of the tribe). The state pays 100% of gross receipts on Class I sales to the Tribe.