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HOUSE BILL 205

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY

Pauline K. Gubbels

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING VARIOUS TAX ACTS TO MAKE  
CORRECTIONS AND RECONCILE PROVISIONS.

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

Section 1. Section 7-2-14.4 NMSA 1978 (being Laws 1994,  
Chapter 111, Section 2) is amended to read:

"7-2-14.4. AUTHORIZATION TO FUND PROPERTY TAX REBATE  
FOR LOW-INCOME TAXPAYERS--TAX IMPOSITION--ELECTION.--

A. The board of county commissioners of any county  
may adopt a resolution to submit to the qualified electors of  
the county the question of whether a property tax at a rate  
not to exceed one dollar (\$1.00) per thousand dollars  
(\$1,000) of taxable value of property should be imposed for  
the purpose of providing the necessary funding for the  
property tax rebate for low-income taxpayers provided in the  
Income Tax Act if

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[~~(1)~~] the county has adopted an ordinance providing the property tax rebate [~~and~~

~~(2) the county has not adopted an ordinance imposing a transfer tax pursuant to the provisions of the Transfer Tax Act upon property transfers occurring in any property tax year for which the property tax rebate is to be in effect].~~

B. The resolution shall:

(1) specify the rate of the proposed tax, which shall not exceed one dollar (\$1.00) per thousand dollars (\$1,000) of taxable value of property;

(2) specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the county;

(3) impose the tax for one, two, three, four or five property tax years and limit the imposition of the proposed tax to no more than five property tax years; and

(4) pledge the revenue from the tax solely for the payment of the income tax revenue reduction resulting from the implementation of the property tax rebate for low-income taxpayers.

C. The resolution authorized in Subsection A of this section shall be adopted no later than May 15 in the year prior to the year in which the tax is proposed to be imposed. By adoption of an appropriate resolution, the board of county commissioners may submit the question of imposing the tax for successive periods of one, two, three, four or

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1 five years to the qualified electors of the county. The  
2 procedures for the election and for the imposition of the tax  
3 for subsequent periods shall be the same as those applying to  
4 the initial imposition of the tax. The election shall be  
5 scheduled so that the imposition of the tax for successive  
6 periods results in continuity of the tax.

7 D. An election on the question of imposing the tax  
8 authorized pursuant to this section may be held in  
9 conjunction with a general election or may be conducted as or  
10 held in conjunction with a special election, but the election  
11 shall be held by the date necessary to assure that the  
12 results of the election on the question of imposing the tax  
13 may be certified no later than July 1 of the first property  
14 tax year in which the tax is proposed to be imposed. Conduct  
15 of the election shall be as provided by the Election Code.

16 E. As used in this section, "taxable value of  
17 property" means the combined total of net taxable value of  
18 property allocated to the county under the Property Tax Code;  
19 the assessed value of products severed and sold in the county  
20 for the calendar year preceding the year for which a  
21 determination is made as determined under the Oil and Gas Ad  
22 Valorem Production Tax Act; the assessed value of equipment  
23 in the county as determined under the Oil and Gas Production  
24 Equipment Ad Valorem Tax Act; and the taxable value of copper  
25 mineral property in the county pursuant to Section 7-39-7  
NMSA 1978."

Section 2. Section 7-2E-2 NMSA 1978 (being Laws 1999,

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1 Chapter 183, Section 2) is amended to read:

2 "7-2E-2. CONTINUED APPLICABILITY OF RURAL JOB TAX  
3 CREDIT.--The balance of any rural job tax credit granted with  
4 respect to qualifying periods occurring after July 1, 2006 or  
5 remaining on a tax credit document issued prior to that date  
6 may be applied after that date in the manner provided in  
7 Section [~~1 of this act~~] 7-2E-1 NMSA 1978 against the holder's  
8 modified combined tax liability or corporate or personal  
9 income tax liability as if the provisions of Section [~~1 of~~  
10 ~~this act~~] 7-2E-1 NMSA 1978 were still in effect."

11 Section 3. Section 7-3-2 NMSA 1978 (being Laws 1990,  
12 Chapter 64, Section 1, as amended) is amended to read:

13 "7-3-2. DEFINITIONS.--As used in the Withholding Tax  
14 Act:

15 A. "department" means the taxation and revenue  
16 department, the secretary of taxation and revenue or any  
17 employee of the department exercising authority lawfully  
18 delegated to that employee by the secretary;

19 B. "employee" means either an individual domiciled  
20 within the state who performs services either within or  
21 without the state for an employer or, to the extent permitted  
22 by law, an individual domiciled outside of the state who  
23 performs services within the state for an employer;

24 C. "employer" means a person, or an officer, agent  
25 or employee of that person, having control of the payment of  
wages, doing business in or deriving income from sources  
within the state for whom an individual performs or performed

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1 any service as the employee of that person, except that if  
2 the person for whom the individual performs or performed the  
3 services does not have control over the payment of the wages  
4 for such services, "employer" means the person having control  
5 of the payment of wages;

6 D. "Internal Revenue Code" means the Internal  
7 Revenue Code of 1986, as amended;

8 E. "owner" means a partner in a partnership not  
9 taxed as a corporation for federal income tax purposes for  
10 the taxable year, a shareholder of an S corporation or of a  
11 corporation other than an S corporation that is not taxed as  
12 a corporation for federal income tax purposes for the taxable  
13 year, a member of a limited liability company or any similar  
14 person holding an ownership interest in any [~~business~~  
15 ~~association, other than a sole proprietorship, not taxed as a~~  
16 ~~corporation for federal income tax purposes for the taxable~~  
17 ~~year]~~ pass-through entity;

18 F. "pass-through entity" means any business  
19 association other than:

- 20 (1) a sole proprietorship;  
21 (2) an estate or trust; or  
22 (3) a corporation, limited liability  
23 company, partnership or other entity not a sole  
24 proprietorship taxed as a corporation for federal income tax  
25 purposes for the taxable year;

G. "payor" means any person making payment of a  
pension or annuity to an individual domiciled in New Mexico;

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1           H. "payroll period" means a period for which a  
2 payment of wages is made to the employee by his employer;

3           I. "person" means any individual, club, company,  
4 cooperative association, corporation, estate, firm, joint  
5 venture, partnership, receiver, syndicate, trust or other  
6 association and, to the extent permitted by law, any federal,  
7 state or other governmental unit or subdivision or an agency,  
8 department or instrumentality thereof;

9           J. "wagerer" means any person who receives  
10 winnings that are subject to withholding;

11           K. "wages" means remuneration in cash or other  
12 form for services performed by an employee for an employer;

13           L. "winnings that are subject to withholding"  
14 means "winnings which are subject to withholding" as that  
15 term is defined in Section 3402 of the Internal Revenue Code;

16           M. "withholdee" means:

17                   (1) an individual domiciled in New Mexico  
18 receiving a pension or annuity from which an amount of tax is  
19 deducted and withheld pursuant to the Withholding Tax Act;

20                   (2) an employee; and

21                   (3) a wagerer; and

22           N. "withholder" means a payor, an employer or any  
23 person required to deduct and withhold from winnings that are  
24 subject to withholding."  
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Section 4. Section 7-3-6 NMSA 1978 (being Laws 1969,  
Chapter 25, Section 1) is amended to read:

"7-3-6. DATE PAYMENT DUE.--Except for amounts withheld

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1 pursuant to the provisions of Section 7-3-12 NMSA 1978, taxes  
2 withheld under the provisions of the Withholding Tax Act must  
3 be paid on or before the twenty-fifth day of the month  
4 following the month when the taxes were required to be  
5 withheld. Amounts withheld pursuant to Section 7-3-12 NMSA  
6 1978 must be paid on or before the due date of the return for  
7 the pass-through entity."

8 Section 5. Section 7-3-12 NMSA 1978 (being Laws 1999,  
9 Chapter 14, Section 3) is amended to read:

10 "7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH  
11 ENTITY--WITHHOLDING.--

12 A. A pass-through entity doing business in this  
13 state shall file an annual information return with the  
14 department on or before the due date of the entity's federal  
15 return for the taxable year. The information return shall be  
16 signed by the business manager or one of the owners of the  
17 pass-through entity.

18 B. The information return required by this section  
19 shall contain all information required by the department,  
20 including:

- 21 (1) the pass-through entity's gross income;
- 22 (2) the pass-through entity's net income;
- 23 (3) the amount of each owner's share of the  
24 pass-through entity's net income; and
- 25 (4) the name, address and tax identification  
number of each owner entitled to a share of net income.

C. A pass-through entity shall provide to each of

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1 its owners sufficient information to enable the owner to  
2 comply with the provisions of the Income Tax Act and the  
3 Corporate Income and Franchise Tax Act with respect to the  
4 owner's share of net income.

5 D. ~~[At the time of filing the information return~~  
6 ~~required by this section]~~ The pass-through entity shall  
7 deduct and withhold from each nonresident owner's share of  
8 net income an amount equal to the owner's share of net income  
9 multiplied by a rate set by department regulation. In the  
10 case of an owner who is an individual or entity not taxed as  
11 a corporation for federal income tax purposes for the taxable  
12 year, the rate shall not exceed the rate for composite  
13 returns. In the case of an owner that is a corporation or  
14 other entity taxed as a corporation for the taxable year, the  
15 rate shall not exceed the maximum rate for corporate income  
16 tax.

17 E. The provisions of Subsection D of this section  
18 shall not apply with regard to the share of net income of a  
19 nonresident owner who has executed an agreement ~~[with]~~ in  
20 accordance with regulations or instructions of the department  
21 that the owner will report and pay tax, if required, on its  
22 own return pursuant to the Income Tax Act or the Corporate  
23 Income and Franchise Tax Act.

24 F. Amounts deducted from the owner's share of net  
25 income under the provisions of this section shall be a  
collected tax. No owner shall have a right of action against  
the pass-through entity for any amount deducted and withheld

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1 from the owner's share of net income."

2 Section 6. Section 7-20C-2 NMSA 1978 (being Laws 1991,  
3 Chapter 176, Section 2, as amended by Laws 1997, Chapter 54,  
4 Section 1 and also by Laws 1997, Chapter 129, Section 1) is  
5 amended to read:

6 "7-20C-2. DEFINITIONS.--As used in the Local Hospital  
7 Gross Receipts Tax Act:

8 A. "county" means:

9 (1) a class B county having a population of  
10 less than twenty-five thousand according to the most recent  
11 federal decennial census and having a net taxable value for  
12 rate-setting purposes for the 1990 property tax year or any  
13 subsequent year of more than two hundred fifty million  
14 dollars (\$250,000,000);

15 (2) a class B county having a population of  
16 less than forty-seven thousand but more than forty-four  
17 thousand according to the 1990 federal decennial census and  
18 having a net taxable value for rate-setting purposes for the  
19 1992 property tax year of more than three hundred million  
20 dollars (\$300,000,000) but less than six hundred million  
21 dollars (\$600,000,000);

22 (3) a class B county having a population of  
23 less than ten thousand according to the most recent federal  
24 decennial census and having a net taxable value for rate-  
25 setting purposes for the 1990 property tax year or any  
subsequent year of more than one hundred million dollars  
(\$100,000,000);

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1 (4) a class B county having a population of  
2 less than twenty-five thousand according to the 1990 federal  
3 decennial census and having a net taxable value for rate-  
4 setting purposes for the 1993 property tax year of more than  
5 ninety-one million dollars (\$91,000,000) but less than one  
6 hundred twenty-five million dollars (\$125,000,000); ~~or~~

7 (5) a class B county having a population of  
8 more than seventeen thousand but less than twenty thousand  
9 according to the 1990 federal decennial census and having a  
10 net taxable value for rate-setting purposes for the 1993  
11 property tax year of more than one hundred fifty-three  
12 million dollars (\$153,000,000) but less than one hundred  
13 fifty-six million dollars (\$156,000,000); or

14 (6) a class B county having a population of  
15 more than fifteen thousand according to the 1990 federal  
16 decennial census and having a net taxable value for rate-  
17 setting purposes for the 1996 property tax year of more than  
18 one hundred fifty million dollars (\$150,000,000) but less  
19 than one hundred seventy-five million dollars (\$175,000,000);

20 B. "department" means the taxation and revenue  
21 department, the secretary of taxation and revenue or any  
22 employee of the department exercising authority lawfully  
23 delegated to that employee by the secretary;

24 C. "governing body" means the board of county  
25 commissioners of a county;

D. "health care facilities contract" means an  
agreement between a hospital or health clinic not owned by

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1 the county and a county imposing the tax authorized by the  
2 Local Hospital Gross Receipts Tax Act that obligates the  
3 county to pay to the hospital revenue generated by the tax  
4 authorized in that act as consideration for the agreement by  
5 the hospital or health clinic to use the funds only for  
6 nonsectarian purposes and to make health care services  
7 available for the benefit of the county;

8           ~~[D.]~~ E. "hospital facility revenues" means all or  
9 a portion of the revenues derived from a lease of a hospital  
10 facility acquired, constructed or equipped pursuant to and  
11 operated in accordance with the Local Hospital Gross Receipts  
12 Tax Act;

13           ~~[E.]~~ F. "local hospital gross receipts tax" means  
14 the tax authorized to be imposed under the Local Hospital  
15 Gross Receipts Tax Act;

16           ~~[F.]~~ G. "person" means an individual or any other  
17 legal entity; and

18           ~~[G.]~~ H. "state gross receipts tax" means the gross  
19 receipts tax imposed under the Gross Receipts and  
20 Compensating Tax Act."