

AN ACT

RELATING TO TAXATION; PHASING IN A GROSS RECEIPTS TAX CREDIT FOR A PORTION OF NAVAJO NATION TAXES PAID ON RECEIPTS FROM SELLING COAL; ENACTING AN INTERGOVERNMENTAL TAX CREDIT FOR THE SEVERANCE OF COAL ON TRIBAL LAND; AUTHORIZING THE SECRETARY OF TAXATION AND REVENUE TO ENTER INTO COOPERATIVE AGREEMENTS WITH THE NAVAJO NATION; ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Gross Receipts and Compensating Tax Act, Section 7-9-88.2 NMSA 1978, is enacted to read:

"7-9-88.2. CREDIT--GROSS RECEIPTS TAX--TAX PAID TO NAVAJO NATION ON RECEIPTS FROM SELLING COAL.--

A. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by the Navajo Nation, the amount of the Navajo Nation tax paid and not refunded may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act and any local option gross receipts tax on the same receipts. The amount of the credit shall be equal to:

- (1) for the period from July 1, 2001 through

June 30, 2002, the lesser of thirty-seven and one-half percent of the tax imposed by the Navajo Nation on the receipts or thirty-seven and one-half percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts; and

(2) after June 30, 2002, the lesser of seventy-five percent of the tax imposed by the Navajo Nation on the receipts or seventy-five percent of the revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of local option gross receipts taxes imposed on the same receipts.

B. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amounts of the distributions made pursuant to Section 7-1-6.1 NMSA 1978 of the gross receipts tax and local option gross receipts taxes imposed on those receipts.

C. A qualifying gross receipts, sales, business activity or similar tax levied by the Navajo Nation shall be limited to a tax that:

(1) is substantially similar to the gross receipts tax imposed by the Gross Receipts and Compensating

Tax Act;

(2) does not unlawfully discriminate among persons or transactions based on membership in the Navajo Nation;

(3) is levied on the receipts from selling coal 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 Navajo Nation;

(4) provides a credit against the Navajo Nation tax equal to:

(a) for the period from July 1, 2001 through June 30, 2002, the lesser of twelve and one-half percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twelve and one-half percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts; and

(b) after June 30, 2002, the lesser of twenty-five percent of the tax imposed by the Navajo Nation on the receipts from selling coal severed from Navajo Nation land or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross

Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the same receipts;

(5) is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts or time period; and

(6) is subject to a cooperative agreement between the Navajo Nation and the secretary entered into pursuant to Section 9-11-12.2 NMSA 1978 and in effect at the time of the taxable transaction.

D. For purposes of the tax credit allowed by this section, "Navajo Nation land" means all land in New Mexico that, on March 1, 2001, was located within the exterior boundaries of the Navajo Nation reservation or within a dependent community of the Navajo Nation or was land held by the United States in trust for the Navajo Nation."

Section 2. A new Section 7-29C-2 NMSA 1978 is enacted to read:

"7-29C-2. INTERGOVERNMENTAL TAX CREDIT--SEVERANCE TAX ON COAL.--

A. Any person who is liable pursuant to Section 7-26-6 NMSA 1978 for the payment of the severance tax on coal severed and saved from tribal land is entitled to a credit to be computed under this section and to be deducted from the payment of the indicated tax. The credit provided by this

section may be referred to as the "intergovernmental coal severance tax credit".

B. For the purposes of this section, "tribal land" means all land in New Mexico that, on March 1, 2001, was within the exterior boundaries of the reservation or pueblo grant of an Indian nation, tribe or pueblo, was within a dependent Indian community of the Indian nation, tribe or pueblo or was held in trust by the United States for the Indian nation, tribe or pueblo.

C. The intergovernmental coal severance tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of tax due under one or more taxes in effect on March 1, 2001 imposed by the Indian nation, tribe or pueblo upon coal severed and saved from the tribal land of that Indian nation, tribe or pueblo, the value of coal severed and saved, the privilege of severing coal or the value of the leasehold interest; or

(2) the aggregate amount of severance tax and surtax due the state pursuant to Section 7-26-6 NMSA 1978 upon coal severed and saved from the tribal land of the Indian nation, tribe or pueblo.

D. If, after March 1, 2001, an Indian nation, tribe or pueblo increases any severance, privilege, possessory interest or similar tax applicable to coal to

which the tax credits provided by this section apply, the amount of the intergovernmental coal severance tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 2001. The expiration of a partial or total waiver from the tribal tax granted prior to March 1, 2001 does not constitute an increase in the tribal tax.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of severance tax and the amount of surtax due.

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

G. The taxation and revenue department is authorized to promulgate rules or instructions prescribing the method by which a taxpayer may allocate credit for a tax imposed by the Indian nation, tribe or pueblo on a basis other than monthly against the monthly amounts of severance

tax and surtax due."

Section 3. A new section of the Taxation and Revenue Department Act, Section 9-11-12.2 NMSA 1978, is enacted to read:

"9-11-12.2. COOPERATIVE AGREEMENTS WITH NAVAJO NATION. --

A. The secretary may enter into cooperative agreements with the Navajo Nation for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of the Navajo Nation in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due the Navajo Nation and for the receipt of money collected by the Navajo Nation for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the Navajo Nation, taxpayers



