

FORTY-FIFTH LEGISLATURE
SECOND SESSION

February 12, 2002

SENATE FLOOR AMENDMENT number 1 to HOUSE TAXATION AND
REVENUE COMMITTEE
SUBSTITUTE FOR HOUSE
BILLS 410 & 447 & SENATE
BILL 148

Amendment sponsored by Senator Manny M Aragon

1. On page 1, line 11, after the semicolon strike the remainder of the line, strike all of line 12 and strike line 13 through the semicolon and insert in lieu thereof:

"PROVIDING A PHASED-IN CREDIT AGAINST THE STATE PORTION OF GROSS RECEIPTS TAX FOR RECEIPTS FROM THE SALE OF FOOD AT RETAIL FOOD STORES; PROVIDING A PHASED-IN INCREASE IN THE CIGARETTE TAX; MODIFYING THE GROSS RECEIPTS TAX MUNICIPAL DISTRIBUTION AND COUNTY EQUALIZATION DISTRIBUTION;".

2. On pages 1 through 6, strike Sections 1 through 5 and insert in lieu thereof:

"Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"[NEW MATERIAL] FOOD CREDIT--GROSS RECEIPTS TAX--RECEIPTS FROM SALE OF FOOD AT RETAIL FOOD STORES. --The credit provided for in this section may be referred to as the "food credit". A credit shall be allowed for each reporting period against the gross receipts tax due for that reporting period as follows:

A. for a taxpayer located in the unincorporated area of a county:

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 2

(1) on or after July 1, 2002 and before July 1, 2003, an amount equal to one and two-thirds percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period;

(2) on or after July 1, 2003, an amount equal to three and one-third percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period; and

(3) on or after January 1, 2005, an amount equal to five percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period, provided that the distributions to the general fund from August 1, 2003 to July 31, 2004 attributable to cigarette tax revenue less the distributions to the general fund from August 1, 2001 to July 31, 2002 attributable to cigarette tax revenue is equal to or greater than one hundred fifty percent of the total amount of the food credit claimed and allowed for fiscal year 2004; and

B. for a taxpayer located in a municipality:

(1) on or after July 1, 2002 and before July 1, 2003, an amount equal to one and ninety-two thousandths percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period;

(2) on or after July 1, 2003, an amount equal to two and one hundred eighty-four thousandths percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period; and

(3) on or after January 1, 2005, an amount equal to three and two hundred seventy-five thousandths percent of the taxpayer's taxable gross receipts from the sale of food at a retail food store for that reporting period, provided that the

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 3

distribution to the general fund attributable to cigarette tax revenue from August 1, 2003 to July 31, 2004 less the distribution to the general fund attributable to cigarette tax revenue from August 1, 2001 to July 31, 2002 is equal to or greater than one hundred fifty percent of the amount of the food credit claimed and allowed in fiscal year 2004. "

Section 2. Section 7-1-6.4 NMSA 1978 (being Laws 1983, Chapter 211, Section 9, as amended) is amended to read:

"7-1-6.4. DISTRIBUTION--MUNICIPALITY FROM GROSS RECEIPTS TAX.--

A. Except as provided in Subsection B of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of one and two hundred twenty-five thousandths percent divided by the tax rate imposed by Section 7-9-4 NMSA 1978 [~~times~~] multiplied by the sum of the net receipts for the month plus the amount of the food credit for the month attributable to the gross receipts tax from business locations:

- (1) within that municipality;
- (2) on land owned by the state, commonly known as the "state fair grounds", within the exterior boundaries of that municipality;
- (3) outside the boundaries of any municipality on land owned by that municipality; and
- (4) on an Indian reservation or pueblo grant in an area that is contiguous to that municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 4

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

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

B. If the reduction made by Laws 1991, Chapter 9, Section 9 to the distribution under this section impairs the ability of a municipality to meet its principal or interest payment obligations for revenue bonds outstanding prior to July 1, 1991 that are secured by the pledge of all or part of the municipality's revenue from the distribution made under this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet any required payment, provided that the distribution amount does not exceed the amount that would have been due that municipality under this section as it was in effect on June 30, 1992. "

Section 3. Section 7-1-6.11 NMSA 1978 (being Laws 1983, Chapter 211, Section 16, as amended) is amended to read:

"7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES. --

A. Except as provided in Subsection E of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipality recreational fund in an amount equal to [~~four and three-quarters percent~~] the following percentages of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax:

(1) before August 1, 2002, four and three-fourths percent;

(2) on or after August 1, 2002 and before August 1,

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 5

2003, two and three hundred seventy thousandths percent; and

(3) on or after August 1, 2003, one and five hundred five thousandths percent.

B. Except as provided in Subsection E of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipal cigarette tax fund in an amount equal to [~~nine and one-half percent~~] the following percentages of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax:

(1) before August 1, 2002, nine and one-half percent;

(2) on or after August 1, 2002 and before August 1, 2003, four and seven hundred thirty-nine thousandths percent; and

(3) on or after August 1, 2003, three and ten thousandths percent.

C. Except as provided in Subsection E of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cancer center at the university of New Mexico school of medicine in an amount equal to [~~four and three-quarters percent~~] the following percentages of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax:

(1) before August 1, 2002, four and three-fourths percent;

(2) on or after August 1, 2002 and before August 1, 2003, two and three hundred seventy thousandths percent; and

(3) on or after August 1, 2003, one and five hundred five thousandths percent.

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 6

D. Except as provided in Subsection E of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the New Mexico finance authority in an amount equal to [seven and one-eighth percent] the following percentages of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax:

(1) before August 1, 2002, seven and one-eighth percent;

(2) on or after August 1, 2002 and before August 1, 2003, three and five hundred fifty-four thousandths percent; and

(3) on or after August 1, 2003, two and two hundred fifty-eight thousandths percent.

E. If the amount of distributions in any fiscal year pursuant to Subsection A, B, C or D of this section is less than the amount of the distributions made pursuant to that subsection in fiscal year 2002, the amount distributed pursuant to that subsection shall be increased by an amount sufficient to result in a total distribution for the fiscal year equal to the amount distributed in fiscal year 2002. "

Section 4. Section 7-1-6.16 NMSA 1978 (being Laws 1983, Chapter 213, Section 27, as amended) is amended to read:

"7-1-6.16. COUNTY EQUALIZATION DISTRIBUTION. --

A. Beginning on September 15, 1989 and on September 15 of each year thereafter, the department shall distribute to any county that has imposed or continued in effect during the state's preceding fiscal year a county gross receipts tax pursuant to [~~the County Gross Receipts Tax Act~~] Section 7-20E-9 NMSA 1978 an amount equal to:

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 7

(1) the product of a fraction, the numerator of which is the county's population and the denominator of which is the state's population, multiplied by the annual sum for the county; less

(2) the net receipts received by the department during the report year, including any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, attributable to the county gross receipts tax at a rate of one-eighth percent. Provided that for any month in the report year, if no county gross receipts tax was in effect in the county in the previous month, the net receipts, for the purposes of this section, for that county for that month shall be zero.

B. If the amount determined by the calculation in Subsection A of this section is zero or a negative number for a county, no distribution shall be made to that county.

C. As used in this section:

(1) "annual sum" means for each county the sum of the monthly amounts for those months in the report year which follow a month in which the county had in effect a county gross receipts tax;

(2) "monthly amount" means an amount equal to the product of the sum of the net receipts received by the department in the month attributable to the state gross receipts tax plus the amount of the food credit claimed for the month multiplied by a fraction, the numerator of which is one-eighth percent and the denominator of which is the tax rate imposed by Section 7-9-4 NMSA 1978 in effect on the last day of the previous month;

(3) "population" means the most recent official census or estimate determined by the bureau of the census for the unit or, if neither is available, the most current estimated

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 8

population for the unit provided in writing by the bureau of business and economic research at the university of New Mexico; and

(4) "report year" means the twelve-month period ending on the July 31 immediately preceding the date upon which a distribution pursuant to this section is required to be made."

Section 5. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 2001, Chapter 65, Section 1 and by Laws 2001, Chapter 343, Section 1) is amended to read:

"7-9-3. DEFINITIONS. -- As used in the Gross Receipts and Compensating Tax Act:

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

B. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 9

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility;

(13) retaining wall, wall, fence gate or similar structure; or

(14) similar work;

"construction" also means:

(15) leveling or clearing land;

(16) excavating earth;

(17) drilling wells of any type, including seismograph shot holes or core drilling; or

(18) similar work;

D. "financial corporation" means any savings and loan

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 10

association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that:

(1) "engaging in business" does not include having a worldwide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person; and

(2) "engaging in business" does not include using a nonaffiliated third-party call center to accept and process telephone or electronic orders of tangible personal property or licenses primarily from non-New Mexico buyers, which orders are forwarded to a location outside New Mexico for filling, or to provide services primarily to non-New Mexico customers;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

(1) "Gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 11

the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential; and

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 12

(f) amounts received solely on behalf of another in a disclosed agency capacity.

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential;

G. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

H. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) a national, federal, state, Indian or other governmental unit or subdivision, or an agency, department or instrumentality of any of the foregoing;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 13

J. "leasing" means an arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is the sale of a license and not a lease;

K. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;

L. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state;

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "manufactured home" means a movable or portable housing structure for human occupancy that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation;

O. "initial use" or "initially used" means the first

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 14

employment for the intended purpose and does not include the following activities:

- (1) observation of tests conducted by the performer of services;
- (2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;
- (3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;
- (4) inspection of preliminary prototypes developed by the performer of services; or
- (5) similar activities;

P. "research and development services" means an activity engaged in for other persons for consideration, for one or more of the following purposes:

- (1) advancing basic knowledge in a recognized field of natural science;
- (2) advancing technology in a field of technical endeavor;
- (3) the development of a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;
- (4) the development of new uses or applications for an existing product, process or system, whether or not the new use

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 15

or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

Q. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department;

R. "prescription drugs" means insulin and substances that are:

(1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;

(2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 16

(3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353; [~~and~~]

S. "construction material" means tangible personal property that becomes or is intended to become an ingredient or component part of a construction project, but "construction material" does not include a replacement fixture when the replacement is not construction or a replacement part for a fixture;

T. "food" means any food or food product for home consumption that meets the definition of food in 7 USCA 2012(g) (1) for purposes of the federal food stamp program; and

U. "retail food store" means an establishment that sells food for home preparation and consumption that meets the definition of retail food store in 7 USCA 2012(k) (1) for purposes of the federal food stamp program, whether or not the establishment participates in the food stamp program."

Section 6. Section 7-12-3 NMSA 1978 (being Laws 1971, Chapter 77, Section 3, as amended) is amended to read:

"7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the rate of:

(1) before July 1, 2002, one and five hundredths cents (\$.0105) for each cigarette sold, given or consumed in this state;

(2) on or after July 1, 2002 and before July 1, 2003, two and three-tenths cents (\$.023) for each cigarette sold, given or consumed in this state; and

FORTY-FIFTH LEGISLATURE
SECOND SESSION

SF1/HTRC/HB 410, et al.

Page 17

(3) on or after July 1, 2003, four and five hundredths cents (\$.0405) for each cigarette sold, given or consumed in this state.

B. The tax imposed by this section shall be referred to as the "cigarette tax". "

Section 7. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2002. "

Manny M Aragon

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____