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HOUSE BILL 290

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Thomas C. Taylor

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING FOR LOCAL OPTION COMPENSATING TAXES.

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

Section 1. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended) is amended to read:

"7-1-3. DEFINITIONS.--Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

A. "automated clearinghouse transaction" means an electronic credit or debit transmitted through an automated clearinghouse payable to the state treasurer and deposited with

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1 the fiscal agent of New Mexico;

2 B. "department" means the taxation and revenue
3 department, the secretary or any employee of the department
4 exercising authority lawfully delegated to that employee by the
5 secretary;

6 C. "electronic payment" means a payment made by
7 automated clearinghouse deposit, any funds wire transfer system
8 or a credit card, debit card or electronic cash transaction
9 through the internet;

10 D. "employee of the department" means any employee
11 of the department, including the secretary, or any person
12 acting as agent or authorized to represent or perform services
13 for the department in any capacity with respect to any law made
14 subject to administration and enforcement under the provisions
15 of the Tax Administration Act;

16 E. "financial institution" means any state or
17 federally chartered, federally insured depository institution;

18 F. "Internal Revenue Code" means the Internal
19 Revenue Code of 1986, as amended;

20 G. "levy" means the lawful power, hereby invested
21 in the secretary, to take into possession or to require the
22 present or future surrender to the secretary or the secretary's
23 delegate of any property or rights to property belonging to a
24 delinquent taxpayer;

25 H. "local option compensating tax" means a tax

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1 authorized to be imposed by a county or municipality upon the
2 taxpayer's use of property, as the term "use" is defined in the
3 Gross Receipts and Compensating Tax Act, and required to be
4 collected by the department at the same time and in the same
5 manner as the compensating tax; "local option compensating tax"
6 includes the compensating taxes imposed pursuant to the
7 Municipal Local Option Gross Receipts Taxes Act, Supplemental
8 Municipal Gross Receipts Tax Act, County Local Option Gross
9 Receipts Taxes Act, Local Hospital Gross Receipts Tax Act,
10 County Correctional Facility Gross Receipts Tax Act and such
11 other acts as may be enacted authorizing counties or
12 municipalities to impose taxes on use of property, which taxes
13 are to be collected by the department in the same time and in
14 the same manner as it collects the compensating tax;

15 [H.] I. "local option gross receipts tax" means a
16 tax authorized to be imposed by a county or municipality upon
17 the taxpayer's gross receipts, as that term is defined in the
18 Gross Receipts and Compensating Tax Act, and required to be
19 collected by the department at the same time and in the same
20 manner as the gross receipts tax; "local option gross receipts
21 tax" includes the taxes imposed pursuant to the Municipal Local
22 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
23 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,
24 Local Hospital Gross Receipts Tax Act, County Correctional
25 Facility Gross Receipts Tax Act and such other acts as may be

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1 enacted authorizing counties or municipalities to impose taxes
2 on gross receipts, which taxes are to be collected by the
3 department in the same time and in the same manner as it
4 collects the gross receipts tax;

5 ~~[I.]~~ J. "managed audit" means a review and analysis
6 conducted by a taxpayer under an agreement with the department
7 to determine the taxpayer's compliance with a tax administered
8 pursuant to the Tax Administration Act and the presentation of
9 the results to the department for assessment of tax found to be
10 due;

11 ~~[J.]~~ K. "net receipts" means the total amount of
12 money paid by taxpayers to the department in a month pursuant
13 to a tax or tax act less any refunds disbursed in that month
14 with respect to that tax or tax act;

15 ~~[K.]~~ L. "overpayment" means an amount paid,
16 pursuant to any law subject to administration and enforcement
17 under the provisions of the Tax Administration Act, by a person
18 to the department or withheld from the person in excess of tax
19 due from the person to the state at the time of the payment or
20 at the time the amount withheld is credited against tax due;

21 ~~[L.]~~ M. "paid" includes the term "paid over";

22 ~~[M.]~~ N. "pay" includes the term "pay over";

23 ~~[N.]~~ O. "payment" includes the term "payment over";

24 ~~[O.]~~ P. "person" means any individual, estate,
25 trust, receiver, cooperative association, club, corporation,

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1 company, firm, partnership, limited liability company, limited
2 liability partnership, joint venture, syndicate, other
3 association or gas, water or electric utility owned or operated
4 by a county or municipality; "person" also means, to the extent
5 permitted by law, a federal, state or other governmental unit
6 or subdivision, or an agency, department or instrumentality
7 thereof; and "person", as used in Sections 7-1-72 through
8 7-1-74 NMSA 1978, also includes an officer or employee of a
9 corporation, a member or employee of a partnership or any
10 individual who, as such, is under a duty to perform any act in
11 respect of which a violation occurs;

12 [P-] Q. "property" means property or rights to
13 property;

14 [Q-] R. "property or rights to property" means any
15 tangible property, real or personal, or any intangible property
16 of a taxpayer;

17 [R-] S. "secretary" means the secretary of taxation
18 and revenue and, except for purposes of Subsection B of Section
19 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978,
20 also includes the deputy secretary or a division director or
21 deputy division director delegated by the secretary;

22 [S-] T. "secretary or the secretary's delegate"
23 means the secretary or any employee of the department
24 exercising authority lawfully delegated to that employee by the
25 secretary;

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1 ~~[F.]~~ U. "security" means money, property or rights
2 to property or a surety bond;

3 ~~[H.]~~ V. "state" means any state of the United
4 States, the District of Columbia, the commonwealth of Puerto
5 Rico and any territory or possession of the United States;

6 ~~[V.]~~ W. "tax" means the total amount of each tax
7 imposed and required to be paid, withheld and paid or collected
8 and paid under provision of any law made subject to
9 administration and enforcement according to the provisions of
10 the Tax Administration Act and, unless the context otherwise
11 requires, includes the amount of any interest or civil penalty
12 relating thereto; "tax" also means any amount of any abatement
13 of tax made or any credit, rebate or refund paid or credited by
14 the department under any law subject to administration and
15 enforcement under the provisions of the Tax Administration Act
16 to any person contrary to law and includes, unless the context
17 requires otherwise, the amount of any interest or civil penalty
18 relating thereto;

19 ~~[W.]~~ X. "taxpayer" means a person liable for
20 payment of any tax, a person responsible for withholding and
21 payment or for collection and payment of any tax or a person to
22 whom an assessment has been made, if the assessment remains
23 unabated or the amount thereof has not been paid; and

24 ~~[X.]~~ Y. "tax return preparer" means a person who
25 prepares for others for compensation or who employs one or more

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1 persons to prepare for others for compensation any return of
2 income tax, a substantial portion of any return of income tax,
3 any claim for refund with respect to income tax or a
4 substantial portion of any claim for refund with respect to
5 income tax; provided that a person shall not be a "tax return
6 preparer" merely because such person:

7 (1) furnishes typing, reproducing or other
8 mechanical assistance;

9 (2) is an employee who prepares an income tax
10 return or claim for refund with respect to an income tax return
11 of the employer, or of an officer or employee of the employer,
12 by whom the person is regularly and continuously employed; or

13 (3) prepares as a trustee or other fiduciary
14 an income tax return or claim for refund with respect to income
15 tax for any person."

16 Section 2. Section 7-1-6.12 NMSA 1978 (being Laws 1983,
17 Chapter 211, Section 17, as amended) is amended to read:

18 "7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION
19 GROSS RECEIPTS TAXES--REVENUES FROM LOCAL OPTION COMPENSATING
20 TAXES.--

21 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
22 shall be made to each municipality for which the department is
23 collecting a local option gross receipts tax imposed by that
24 municipality in an amount, subject to any increase or decrease
25 made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net

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1 receipts attributable to the local option gross receipts tax
2 imposed by that municipality, less any deduction for
3 administrative cost determined and made by the department
4 pursuant to the provisions of the act authorizing imposition by
5 that municipality of the local option gross receipts tax and
6 any additional administrative fee withheld pursuant to
7 Subsection C of Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA
8 1978.

9 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
10 shall be made to each municipality for which the department is
11 collecting a local option compensating tax imposed by that
12 municipality in an amount, subject to any increase or decrease
13 pursuant to Section 7-1-6.15 NMSA 1978, equal to the net
14 receipts attributable to the local option compensating tax
15 imposed by that municipality."

16 Section 3. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
17 Chapter 211, Section 18, as amended) is amended to read:

18 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
19 GROSS RECEIPTS TAXES--REVENUES FROM LOCAL COMPENSATING TAXES.--

20 A. Except as provided in Subsection [~~B~~] C of this
21 section, a transfer pursuant to Section 7-1-6.1 NMSA 1978 shall
22 be made to each county for which the department is collecting a
23 local option gross receipts tax imposed by that county in an
24 amount, subject to any increase or decrease made pursuant to
25 Section 7-1-6.15 NMSA 1978, equal to the net receipts

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1 attributable to the local option gross receipts tax imposed by
2 that county, less any deduction for administrative cost
3 determined and made by the department pursuant to the
4 provisions of the act authorizing imposition by that county of
5 the local option gross receipts tax and any additional
6 administrative fee withheld pursuant to Subsection C of Section
7 7-1-6.41 NMSA 1978.

8 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
9 shall be made to each county for which the department is
10 collecting a local option compensating tax imposed by that
11 county in an amount, subject to any increase or decrease made
12 pursuant to Section 7-1-6.15 NMSA 1978, equal to the net
13 receipts attributable to the local option compensating tax
14 imposed by that county.

15 [~~B-~~] C. In lieu of a distribution pursuant to
16 Subsection A of this section to a class B county with a
17 population, as shown in the last federal decennial census, of
18 more than twenty-five thousand and a net taxable value in the
19 2002 property tax year of less than two hundred million dollars
20 (\$200,000,000), the department shall make a distribution of the
21 following amounts to the largest municipality in that county
22 for the purpose of maintaining and operating a hospital:

23 (1) amounts attributable to the second
24 one-eighth percent increment of the local option gross receipts
25 tax; and

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1 (2) amounts attributable to the special county
2 hospital gross receipts tax."

3 Section 4. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
4 Chapter 211, Section 20, as amended) is amended to read:

5 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
6 MUNICIPALITIES OR COUNTIES.--

7 A. The provisions of this section apply to:

8 (1) any distribution to a municipality of
9 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or
10 of interstate telecommunications gross receipts tax pursuant to
11 Section 7-1-6.36 NMSA 1978;

12 (2) any transfer to a municipality with
13 respect to any local option gross receipts tax or local option
14 compensating tax imposed by that municipality;

15 (3) any transfer to a county with respect to
16 any local option gross receipts tax or local option
17 compensating tax imposed by that county;

18 (4) any distribution to a county pursuant to
19 Section 7-1-6.16 NMSA 1978;

20 (5) any distribution to a municipality or a
21 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

22 (6) any transfer to a county with respect to
23 any tax imposed in accordance with the Local Liquor Excise Tax
24 Act;

25 (7) any distribution to a municipality or a

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1 county of cigarette taxes pursuant to Sections 7-1-6.11,
2 7-12-15 and 7-12-16 NMSA 1978;

3 (8) any distribution to a county from the
4 county government road fund pursuant to Section 7-1-6.26 NMSA
5 1978;

6 (9) any distribution to a municipality of
7 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

8 (10) any distribution to a municipality,
9 county, school district or special district of oil and gas ad
10 valorem production tax reduced as a result of a refund
11 requested in December 1998 with respect to production of carbon
12 dioxide.

13 B. If the secretary determines that any prior
14 distribution or transfer to a political subdivision was
15 erroneous, the secretary shall increase or decrease the next
16 distribution or transfer amount for that political subdivision
17 after the determination, except as provided in Subsection C, D
18 or E of this section, by the amount necessary to correct the
19 error. Subject to the provisions of Subsection E of this
20 section, the secretary shall notify the political subdivision
21 of the amount of each increase or decrease.

22 C. No decrease shall be made to current or future
23 distributions or transfers to a political subdivision for any
24 excess distribution or transfer made to that political
25 subdivision more than one year prior to the calendar year in

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1 which the determination of the secretary was made.

2 D. The secretary, in lieu of recovery from the next
3 distribution or transfer amount, may recover an excess
4 distribution or transfer of one hundred dollars (\$100) or more
5 to the political subdivision in installments from current and
6 future distributions or transfers to that political subdivision
7 pursuant to an agreement with the officials of the political
8 subdivision whenever the amount of the distribution or transfer
9 decrease for the political subdivision exceeds ten percent of
10 the average distribution or transfer amount for that political
11 subdivision for the twelve months preceding the month in which
12 the secretary's determination is made; provided that for the
13 purposes of this subsection, the "average distribution or
14 transfer amount" shall be the arithmetic mean of the
15 distribution or transfer amounts within the twelve months
16 immediately preceding the month in which the determination is
17 made.

18 E. Except for the provisions of this section, if
19 the amount by which a distribution or transfer would be
20 adjusted pursuant to Subsection B of this section is one
21 hundred dollars (\$100) or less, no adjustment or notice need be
22 made.

23 F. The secretary is authorized to decrease a
24 distribution to a municipality or county upon being directed
25 to do so by the secretary of finance and administration

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1 pursuant to the State Aid Intercept Act or to redirect a
2 distribution to the New Mexico finance authority pursuant to
3 an ordinance or a resolution passed by the county or
4 municipality and a written agreement of the municipality or
5 county and the New Mexico finance authority. Upon direction
6 to decrease a distribution or notice to redirect a
7 distribution to a municipality or county, the secretary shall
8 decrease or redirect the next designated distribution, and
9 succeeding distributions as necessary, by the amount of the
10 state distributions intercept authorized by the secretary of
11 finance and administration pursuant to the State Aid
12 Intercept Act or by the amount of the state distribution
13 intercept authorized pursuant to an ordinance or a resolution
14 passed by the county or municipality and a written agreement
15 with the New Mexico finance authority. The secretary shall
16 transfer the state distributions intercept amount to the
17 municipal or county treasurer or other person designated by
18 the secretary of finance and administration or to the New
19 Mexico finance authority pursuant to written agreement to pay
20 the debt service to avoid default on qualified local revenue
21 bonds or meet other local revenue bond, loan or other debt
22 obligations of the municipality or county to the New Mexico
23 finance authority."

24 Section 5. A new section of the Tax Administration Act
25 is enacted to read:

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1 "[NEW MATERIAL] LOCATION OF USE.--

2 A. For compensating tax and local option
3 compensating tax purposes, use of property occurs in the
4 jurisdiction in which:

5 (1) the buyer's place of business is located
6 if the buyer is engaging in business in New Mexico and uses
7 the property in furtherance of that business;

8 (2) the buyer's principal office is located
9 if the buyer is the state or a local government or an agency
10 or instrumentality of the state or a local government; or

11 (3) the buyer's residence is located if the
12 buyer is not engaging in business in New Mexico or does not
13 use the property in furtherance of business.

14 B. The department shall promulgate regulations to
15 determine where use will be attributed when the buyer has
16 more than one business location or residence in New Mexico."

17 Section 6. Section 7-9-7.1 NMSA 1978 (being Laws 1993,
18 Chapter 45, Section 1, as amended) is amended to read:

19 "7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION
20 ACTIONS WITH RESPECT TO CERTAIN COMPENSATING TAX
21 LIABILITIES.--

22 A. The department shall take no action to enforce
23 collection of compensating tax or any local option
24 compensating tax due on purchases made by an individual if:

25 (1) the property is used only for

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1 nonbusiness purposes;

2 (2) the property is not a manufactured home;

3 and

4 (3) the individual is not an agent for
5 collection of compensating tax pursuant to Section 7-9-10
6 NMSA 1978.

7 B. The prohibition in Subsection A of this
8 section does not prevent the department from enforcing
9 collection of compensating tax or any local option
10 compensating tax on purchases from persons who are not
11 individuals, who are agents for collection pursuant to
12 Section 7-9-10 NMSA 1978 or who use the property in the
13 course of engaging in business in New Mexico or from
14 enforcing collection of compensating tax or any local option
15 compensating tax due on purchase of manufactured homes."

16 Section 7. Section 7-9-9 NMSA 1978 (being Laws 1966,
17 Chapter 47, Section 9, as amended) is amended to read:

18 "7-9-9. LIABILITY OF USER FOR PAYMENT OF COMPENSATING
19 TAX AND LOCAL OPTION COMPENSATING TAX.--Any person in New
20 Mexico using property on the value of which compensating tax
21 and local option compensating tax is payable but has not been
22 paid is liable to the state for payment of the compensating
23 tax and applicable local option compensating tax, but this
24 liability is discharged if the buyer has paid the
25 compensating tax and applicable local option compensating tax

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1 to the seller for payment over to the department."

2 Section 8. A new section of the Gross Receipts and
3 Compensating Tax Act is enacted to read:

4 "[NEW MATERIAL] CREDIT--COMPENSATING TAX--MUNICIPAL
5 COMPENSATING TAX PAID.--A credit shall be allowed for each
6 reporting period against the compensating tax for an amount
7 of the municipal compensating tax equal to:

8 A. one-half percent of the value of property for
9 which the taxpayer is liable for that reporting period if the
10 rate of the municipal compensating tax in effect at the time
11 of the use was one-half percent; or

12 B. one-fourth percent of the value of property
13 for which the taxpayer is liable for that reporting period if
14 the rate of the municipal compensating tax in effect at the
15 time of the use was one-fourth percent."

16 Section 9. Section 7-19-12 NMSA 1978 (being Laws 1979,
17 Chapter 397, Section 3, as amended) is amended to read:

18 "7-19-12. AUTHORIZATION TO IMPOSE SUPPLEMENTAL
19 MUNICIPAL GROSS RECEIPTS TAX AND SUPPLEMENTAL MUNICIPAL
20 COMPENSATING TAX--AUTHORIZATION FOR ISSUANCE OF SUPPLEMENTAL
21 MUNICIPAL GROSS RECEIPTS BONDS--ELECTION REQUIRED.--

22 A. The majority of the members elected to the
23 governing body of a municipality may enact an ordinance
24 imposing an excise tax on any person engaging in business in
25 the municipality for the privilege of engaging in business in

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1 the municipality. This tax is to be referred to as the
2 "supplemental municipal gross receipts tax". The rate of the
3 tax shall not exceed one percent of the gross receipts of the
4 person engaging in business and shall be imposed in one-
5 fourth percent increments if less than one percent.

6 B. An ordinance imposing a tax authorized by
7 Subsection A of this section shall also impose a tax for the
8 privilege of using property in the municipality if the use or
9 service is subject to the compensating tax. This tax shall
10 be referred to as the "supplemental municipal compensating
11 tax". The rate of the tax imposed pursuant to this
12 subsection shall be the same as the rate of tax imposed
13 pursuant to Subsection A of this section. If, at the time
14 this 2004 act becomes effective, a municipality has in effect
15 any amount of supplemental municipal gross receipts tax, a
16 supplemental municipal compensating tax is hereby imposed at
17 the same rate, effective on the effective date of this 2004
18 act.

19 [~~B-~~] C. The governing body of a municipality
20 enacting an ordinance imposing the [~~tax~~] taxes authorized in
21 [~~Subsection A~~] Subsections A and B of this section shall
22 submit the question of imposing [~~such tax~~] the taxes and the
23 question of the issuance of supplemental municipal gross
24 receipts bonds in an amount not to exceed nine million
25 dollars (\$9,000,000), for which the revenue from the

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1 supplemental municipal gross receipts tax and supplemental
2 municipal compensating tax is dedicated, to the qualified
3 electors of the municipality at a regular or special
4 election.

5 [G-] D. The questions referred to in Subsection
6 [B] C of this section shall be submitted to a vote of the
7 qualified electors of the municipality as two separate ballot
8 questions, which shall be substantially in the following
9 form:

10 (1) "Shall the municipality be authorized to
11 issue supplemental municipal gross receipts bonds in an
12 amount of not exceeding _____ dollars for the
13 purpose of constructing and equipping and otherwise acquiring
14 a municipal water supply system?

15 For _____ Against _____"; and

16 (2) "Shall the municipality impose an excise
17 tax for the privilege of engaging in business in the
18 municipality which shall be known as the "supplemental
19 municipal gross receipts tax" and an excise tax on the use of
20 property in the municipality which shall be known as the
21 "supplemental municipal compensating tax", both of which
22 shall be imposed at a rate of _____ percent [~~of the~~
23 ~~gross receipts of the person engaging in business~~], the
24 proceeds of which are dedicated to the payment of
25 supplemental municipal gross receipts bonds?

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1 For _____ Against _____".

2 [~~D-~~] E. Only those voters who are registered
3 electors who reside within the municipality shall be
4 permitted to vote on these two questions. The procedures for
5 conducting the election shall be substantially the same as
6 the applicable provisions in Sections 3-30-1, 3-30-6 and
7 3-30-7 NMSA 1978 relating to municipal debt.

8 [~~E-~~] F. If at an election called pursuant to this
9 section a majority of the voters voting on each of the two
10 questions vote in the affirmative on each [~~such~~] question,
11 [~~then~~] the ordinance imposing the supplemental municipal
12 gross receipts tax and supplemental municipal compensating
13 tax shall be approved. If at such election a majority of the
14 voters voting on such questions [~~fail~~] fails to approve any
15 of the questions, [~~then~~] the ordinance imposing the [~~tax~~]
16 taxes shall be disapproved and the questions required to be
17 submitted by Subsection [~~B~~] C of this section shall not be
18 submitted to the voters for a period of one year from the
19 date of the election.

20 [~~F-~~] G. Any ordinance enacted under the
21 provisions of this section shall include an effective date of
22 either July 1 or January 1, whichever date occurs first after
23 the expiration of at least [~~five~~] three months from the date
24 of the election. A certified copy of any ordinance imposing
25 a supplemental municipal gross receipts tax and supplemental

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1 municipal compensating tax shall be mailed to the [~~division~~]
2 department within five days after the ordinance is adopted by
3 the approval by the electorate. Any ordinance repealing the
4 imposition of a tax under the provisions of the Supplemental
5 Municipal Gross Receipts Tax Act shall become effective on
6 either July 1 or January 1, after the expiration of at least
7 [~~five~~] three months from the date the ordinance is repealed
8 by the governing body.

9 [G-] H. Nothing in this section is intended to or
10 does alter the effectiveness or validity of any actions taken
11 in accordance with Subsection G of Section 80 of Chapter 20
12 of Laws 1986."

13 Section 10. Section 7-19-13 NMSA 1978 (being Laws 1979,
14 Chapter 397, Section 4) is amended to read:

15 "7-19-13. ORDINANCE [~~MUST~~] SHALL CONFORM TO CERTAIN
16 PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND
17 REQUIREMENTS OF THE [~~DIVISION~~] DEPARTMENT.--

18 A. Any ordinance imposing a supplemental
19 municipal gross receipts tax and supplemental municipal
20 compensating tax shall adopt by reference the same
21 definitions and the same provisions relating to exemptions
22 and deductions as are contained in the Gross Receipts and
23 Compensating Tax Act then in effect and as it may be amended
24 from time to time.

25 B. The governing body of any municipality

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1 imposing or increasing the supplemental municipal gross
2 receipts tax ~~[must]~~ and supplemental municipal compensating
3 tax shall adopt the language of the model ordinance furnished
4 to the municipality by the ~~[division]~~ department for the
5 portion of the ordinance relating to the ~~[tax]~~ taxes."

6 Section 11. Section 7-19-15 NMSA 1978 (being Laws 1979,
7 Chapter 397, Section 6, as amended) is amended to read:

8 "7-19-15. COLLECTION BY DEPARTMENT--TRANSFER OF
9 PROCEEDS--DEDUCTIONS.--

10 A. The department shall collect the supplemental
11 municipal gross receipts tax in the same manner and at the
12 same time it collects the state gross receipts tax. The
13 department shall collect the supplemental municipal
14 compensating tax in the same manner and at the same time it
15 collects the compensating tax.

16 B. The department shall withhold an
17 administrative fee pursuant to Section ~~[1 of this 1997 act]~~
18 7-1-6.41 NMSA 1978. The department shall transfer to each
19 municipality for which it is collecting a supplemental
20 municipal gross receipts tax the amount of the tax collected
21 less the administrative fee withheld and less any
22 disbursements for tax credits, refunds and the payment of
23 interest applicable to the supplemental municipal gross
24 receipts tax. The department shall transfer to each
25 municipality for which it is collecting a supplemental

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1 municipal compensating tax the amount of the tax collected
2 less any disbursements for tax credits, refunds and payment
3 of interest applicable to the supplemental municipal
4 compensating tax. Transfer of the [~~tax~~] taxes to a
5 municipality shall be made within the month following the
6 month in which the [~~tax is~~] taxes are collected."

7 Section 12. Section 7-19-16 NMSA 1978 (being Laws 1979,
8 Chapter 397, Section 7) is amended to read:

9 "7-19-16. INTERPRETATION OF ACT--ADMINISTRATION AND
10 ENFORCEMENT OF [~~TAX~~] TAXES.--

11 A. The [~~division~~] department shall interpret the
12 provisions of the Supplemental Municipal Gross Receipts Tax
13 Act.

14 B. The [~~division~~] department shall administer and
15 enforce the collection of the supplemental municipal gross
16 receipts tax and the supplemental municipal compensating tax,
17 and the Tax Administration Act applies to the administration
18 and enforcement of the [~~tax~~] taxes."

19 Section 13. Section 7-19-18 NMSA 1978 (being Laws 1979,
20 Chapter 397, Section 9, as amended) is amended to read:

21 "7-19-18. SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX AND
22 SUPPLEMENTAL MUNICIPAL COMPENSATING TAX--USE OF PROCEEDS--
23 RESTRICTION.--

24 A. The proceeds from the supplemental municipal
25 gross receipts tax and supplemental municipal compensating

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1 tax shall be deposited in a special improvement account of
2 the municipality and shall be used only for:

3 (1) the payment of the principal of,
4 interest on, any prior redemption premiums due in connection
5 with and other expenses related to the supplemental municipal
6 gross receipts bonds issued pursuant to the Supplemental
7 Municipal Gross Receipts Tax Act;

8 (2) the funding of any reserves and other
9 accounts in connection with such bonds;

10 (3) refunding bonds; and

11 (4) to the extent not needed for those
12 purposes, the improvement of the municipality's water system.

13 B. When any issue of supplemental municipal gross
14 receipts bonds is fully paid, the supplemental municipal
15 gross receipts tax and supplemental municipal compensating
16 tax shall cease to be imposed for that issue, but may
17 continue to be imposed for bonds enacted and approved
18 pursuant to Section 7-19-12 NMSA 1978 and thereafter issued,
19 or for refunding bonds issued pursuant to Section [~~4 of this~~
20 ~~1997 act~~] 7-19-17.1 NMSA 1978. Any money remaining in a
21 special improvement account after the obligations for
22 supplemental municipal gross receipts bonds and refunding
23 bonds are fully paid may be transferred to any other fund of
24 the municipality."

25 Section 14. A new section of the Municipal Local Option

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1 Gross Receipts Taxes Act is enacted to read:

2 "[NEW MATERIAL] MATCHING LOCAL OPTION COMPENSATING
3 TAX.--

4 A. An ordinance imposing, increasing or repealing
5 a local option gross receipts tax authorized by the Municipal
6 Local Option Gross Receipts Taxes Act, except an ordinance or
7 ordinances imposing increments of a municipal gross receipts
8 tax subject to the credit provided pursuant to Section 7-9-82
9 NMSA 1978, shall also impose, increase or repeal a tax for
10 the privilege of using property in the municipality if the
11 use of the property is subject to the compensating tax. The
12 rate of the municipal tax on use imposed, increased or
13 repealed shall be the same as the rate of the local option
14 gross receipts tax imposed, increased or repealed, except
15 that no municipal tax on use shall be imposed with respect to
16 increments of municipal gross receipts tax subject to the
17 credit provided pursuant to Section 7-9-82 NMSA 1978.

18 B. If, at the time this 2004 act becomes
19 effective, a municipality has in effect a local option gross
20 receipts tax authorized by the Municipal Local Option Gross
21 Receipts Taxes Act, a municipal tax on use is hereby imposed
22 at the same rate, effective on the effective date of this
23 2004 act, except that the rate of the municipal tax on use
24 matching the municipal gross receipts tax shall be equal to
25 the rate of the municipal gross receipts tax for the

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1 municipality less the amount of the increments subject to the
2 credit provided by Section 7-9-82 NMSA 1978 with respect to
3 the municipality.

4 C. The municipal taxes on use authorized or
5 imposed by this section may be referred to generally as
6 "municipal local option compensating taxes". Each tax may be
7 referred to individually by reference to the local option
8 gross receipts tax with which it is associated."

9 Section 15. Section 7-19D-7 NMSA 1978 (being Laws 1993,
10 Chapter 346, Section 7, as amended) is amended to read:

11 "7-19D-7. COLLECTION BY DEPARTMENT--TRANSFER OF
12 PROCEEDS--DEDUCTIONS.--

13 A. The department shall collect each local option
14 gross receipts tax imposed pursuant to the provisions of the
15 Municipal Local Option Gross Receipts Taxes Act in the same
16 manner and at the same time it collects the state gross
17 receipts tax. The department shall collect the municipal
18 local option compensating taxes imposed pursuant to the
19 provisions of the Municipal Local Option Gross Receipts Taxes
20 Act in the same manner and at the same time it collects the
21 compensating tax.

22 B. Except as provided in Subsection C of this
23 section, the department shall withhold an administrative fee
24 pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA 1978.
25 The department shall transfer to each municipality for which

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1 it is collecting a local option gross receipts tax pursuant
2 to the provisions of the Municipal Local Option Gross
3 Receipts Taxes Act the amount of each tax collected for that
4 municipality, less the administrative fee withheld and less
5 any disbursements for tax credits, refunds and the payment of
6 interest applicable to the tax. The department shall
7 transfer to each municipality for which it collects a
8 municipal local option compensating tax pursuant to the
9 provisions of the Municipal Local Option Gross Receipts Taxes
10 Act the amount of each tax collected for that municipality,
11 less any disbursements for tax credits, refunds and payment
12 of interest applicable to the tax. The transfer to the
13 municipality shall be made within the month following the
14 month in which the tax is collected.

15 C. With respect to the municipal gross receipts
16 tax imposed by a municipality pursuant to Section 7-19D-9
17 NMSA 1978, the department shall withhold the administrative
18 fee pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA
19 1978 only on that portion of the municipal gross receipts tax
20 arising from a municipal gross receipts tax rate in excess of
21 one-half [~~of one~~] percent."

22 Section 16. A new section of the Local Hospital Gross
23 Receipts Tax Act is enacted to read:

24 "[NEW MATERIAL] MATCHING LOCAL HOSPITAL COMPENSATING
25 TAX.--Any ordinance imposing, increasing or repealing a local

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1 hospital gross receipts tax authorized by the Local Hospital
2 Gross Receipts Tax Act shall also impose, increase or repeal
3 a tax for the privilege of using property in the county if
4 the use of the property is subject to the compensating tax.
5 This tax may be referred to as the "local hospital
6 compensating tax". The rate of the local hospital
7 compensating tax imposed, increased or repealed shall be the
8 same as the rate of local hospital gross receipts tax
9 imposed, increased or repealed. If, at the time this 2004
10 act becomes effective, a county has in effect a local
11 hospital gross receipts tax, a local hospital compensating
12 tax is hereby imposed at the same rate, effective on the
13 effective date of this 2004 act."

14 Section 17. Section 7-20C-6 NMSA 1978 (being Laws 1991,
15 Chapter 176, Section 6, as amended) is amended to read:

16 "7-20C-6. COLLECTION BY DEPARTMENT--TRANSFER OF
17 PROCEEDS--DEDUCTIONS.--

18 A. The department shall collect the local
19 hospital gross receipts tax in the same manner and at the
20 same time it collects the state gross receipts tax. The
21 department shall collect the local hospital compensating tax
22 in the same manner and at the same time it collects the
23 compensating tax.

24 B. The department shall withhold an
25 administrative fee pursuant to Section 7-1-6.41 NMSA 1978.

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1 Except as provided in Subsection C of this section, the
2 department shall transfer to each county for which it is
3 collecting ~~[such]~~ the local hospital gross receipts tax the
4 amount of the tax collected less the administrative fee
5 withheld and less any disbursements for tax credits, refunds
6 and the payment of interest applicable to the tax. The
7 department shall transfer to each county for which it is
8 collecting the local hospital compensating tax the amount of
9 the tax collected less any disbursements for tax credits,
10 refunds and the payment of interest applicable to the tax.
11 Transfer ~~[of the tax]~~ to a county shall be made within the
12 month following the month in which the tax is collected.

13 C. In lieu of a transfer pursuant to Subsection B
14 of this section to a class B county with a population, as
15 shown in the last federal decennial census, of more than
16 twenty-five thousand and a net taxable value in the 2002
17 property tax year of less than two hundred million dollars
18 (\$200,000,000), the department shall make the transfer to the
19 largest municipality in that county for the purpose of
20 maintaining and operating a hospital."

21 Section 18. A new section of the County Local Option
22 Gross Receipts Taxes Act is enacted to read:

23 "[NEW MATERIAL] MATCHING LOCAL OPTION COMPENSATING
24 TAX.--

25 A. Any ordinance imposing, increasing or

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1 repealing a local option gross receipts tax authorized by the
2 County Local Option Gross Receipts Taxes Act to be imposed on
3 a county-wide basis shall also impose, increase or repeal a
4 tax for the privilege of using property in the county if the
5 use of the property is subject to the compensating tax. The
6 rate of county tax on use imposed, increased or repealed
7 shall be the same as the rate of the local option gross
8 receipts tax imposed, increased or repealed.

9 B. Any ordinance imposing, increasing or
10 repealing a local option gross receipts tax authorized by the
11 County Local Option Gross Receipts Taxes Act to be imposed
12 only in the county area shall also impose, increase or repeal
13 a tax for the privilege of using property in the county area.
14 The rate of county area tax on use imposed, increased or
15 repealed shall be the same as the rate of the local option
16 gross receipts tax imposed, increased or repealed.

17 C. If, at the time this 2004 act becomes
18 effective, a county has in effect a local option gross
19 receipts tax authorized to be imposed on a county-wide basis,
20 a county tax on use of property in the county is hereby
21 imposed at the same rate, effective on the effective date of
22 this 2004 act. If, at the time this 2004 act becomes
23 effective, a county has in effect a local option gross
24 receipts tax authorized to be imposed only in the county
25 area, a county tax on use of property in the county area is

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1 hereby imposed at the same rate, effective on the effective
2 date of this 2004 act.

3 D. The county taxes on use authorized or imposed
4 by this section may be referred to generally as "county local
5 option compensating taxes". Each tax may be referred to
6 individually by reference to the local option gross receipts
7 tax with which it is associated."

8 Section 19. Section 7-20E-7 NMSA 1978 (being Laws 1993,
9 Chapter 354, Section 7, as amended) is amended to read:

10 "7-20E-7. COLLECTION BY DEPARTMENT--TRANSFER OF
11 PROCEEDS--DEDUCTIONS.--

12 A. The department shall collect each county local
13 option gross receipts tax imposed pursuant to the provisions
14 of the County Local Option Gross Receipts Taxes Act in the
15 same manner and at the same time it collects the state gross
16 receipts tax. The department shall collect each county local
17 option compensating tax imposed pursuant to the provisions of
18 the County Local Option Gross Receipts Taxes Act in the same
19 manner and at the same time it collects the compensating tax.

20 B. The department shall withhold an
21 administrative fee pursuant to Section [~~1 of this 1997 act~~]
22 7-1-6.41 NMSA 1978. The department shall transfer to each
23 county for which it is collecting a county local option gross
24 receipts tax pursuant to the provisions of the County Local
25 Option Gross Receipts Taxes Act the amount of each county

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1 local option gross receipts tax collected for that county,
2 less the administrative fee withheld and less any
3 disbursements for tax credits, refunds and the payment of
4 interest applicable to the tax. The department shall
5 transfer to each county for which it is collecting a county
6 local option compensating tax pursuant to the provisions of
7 the County Local Option Gross Receipts Taxes Act the amount
8 of each local option compensating tax collected for that
9 county, less any disbursements for tax credits, refunds and
10 the payment of interest applicable to the tax. The transfer
11 to the county shall be made within the month following the
12 month in which the tax is collected."

13 Section 20. Section 7-20F-3 NMSA 1978 (being Laws 1993,
14 Chapter 303, Section 3, as amended) is amended to read:

15 "7-20F-3. COUNTY CORRECTIONAL FACILITY GROSS RECEIPTS
16 TAX AND COUNTY CORRECTIONAL FACILITY COMPENSATING
17 TAX--AUTHORITY TO IMPOSE--RATE--ORDINANCE REQUIREMENTS--
18 REFERENDUM.--

19 A. The majority of the members elected to the
20 county board may enact an ordinance imposing on a county-wide
21 basis an excise tax not to exceed a rate of one-eighth [~~of~~
22 ~~one~~] percent of the gross receipts of any person engaging in
23 business in the county, including all municipalities within
24 the county; provided that the voters of:

25 (1) a class A county described in Paragraph
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1 (1) of Subsection A of Section 7-20F-2 NMSA 1978 or a class B
2 county described in Paragraph (2) of Subsection A of Section
3 7-20F-2 NMSA 1978 have approved the issuance of general
4 obligation bonds of the county sufficient to pay at least
5 one-half of the costs of the construction and equipping of
6 the new county judicial-correctional facility for which the
7 county correctional facility gross receipts tax revenue is
8 dedicated; or

9 (2) a class B county described in Paragraph
10 (3) of Subsection A of Section 7-20F-2 NMSA 1978 have
11 approved the issuance of bonds by the New Mexico finance
12 authority sufficient to pay at least one-half of the costs of
13 designing, constructing, equipping, furnishing and otherwise
14 improving the new county correctional facility for which the
15 county correctional facility gross receipts tax revenue is
16 dedicated.

17 B. The tax imposed pursuant to Subsection A of
18 this section may be referred to as the "county correctional
19 facility gross receipts tax". The county correctional
20 facility gross receipts tax shall be imposed only once for
21 the period necessary for payment of the principal and
22 interest on revenue bonds issued pursuant to the County
23 Correctional Facility Gross Receipts Tax Act, but the period
24 shall not exceed ten years from the effective date of the
25 ordinance imposing the tax.

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1 C. An ordinance imposing a county correctional
2 facility gross receipts tax shall also impose a tax on the
3 use of property in the county if the use of the property is
4 subject to the compensating tax. This tax may be referred to
5 as the "county correctional facility compensating tax". The
6 rate of the county correctional facility compensating tax
7 imposed shall be the same as the rate of county correctional
8 facility gross receipts tax imposed. If, at the time this
9 2004 act becomes effective, a county has in effect a county
10 correctional facility gross receipts tax, a county
11 correctional facility compensating tax is hereby imposed at
12 the same rate, effective on the effective date of this 2004
13 act.

14 [~~G.~~] D. Any ordinance imposing a county
15 correctional facility gross receipts tax and county
16 correctional facility compensating tax pursuant to this
17 section shall:

18 (1) impose the [~~tax~~] taxes in any number of
19 increments of one-sixteenth [~~of one~~] percent not to exceed an
20 aggregate amount of one-eighth [~~of one~~] percent; provided
21 that the rate of the two taxes is the same;

22 (2) specify that the imposition of the [~~tax~~]
23 taxes will begin on either July 1 or January 1, whichever
24 occurs first after the expiration of at least three months
25 from the date that the department is notified personally or

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1 by mail by the county that imposition of the county
2 correctional facility gross receipts tax and county
3 correctional facility compensating tax has been approved by a
4 majority of the registered voters in the county voting on the
5 question; and

6 (3) dedicate the revenue from the county
7 correctional facility gross receipts tax and county
8 correctional facility compensating tax for the purpose of
9 constructing, purchasing, furnishing, equipping,
10 rehabilitating, expanding or improving a judicial-
11 correctional or a county correctional facility or the grounds
12 of a judicial-correctional or county correctional facility,
13 including but not limited to acquiring and improving parking
14 lots, landscaping or any combination of the foregoing or to
15 payment of principal and interest on revenue bonds or
16 refunding bonds issued pursuant to the provisions of the
17 County Correctional Facility Gross Receipts Tax Act.

18 [~~D.~~] E. An ordinance imposing a county
19 correctional facility gross receipts tax and county
20 correctional facility compensating tax pursuant to this
21 section shall not become effective until after an election is
22 held and a simple majority of the qualified electors of the
23 county voting in the election votes in favor of imposing the
24 tax.

25 [~~E.~~] F. The [~~governing body~~] county board shall

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1 adopt a resolution calling for an election within
2 seventy-five days of the date the ordinance is adopted on the
3 question of imposing the [~~tax~~] taxes and:

4 (1) in a class A county described in
5 Paragraph (1) of Subsection A of Section 7-20F-2 NMSA 1978 or
6 a class B county described in Paragraph (2) of Subsection A
7 of Section 7-20F-2 NMSA 1978, if a property tax at a rate
8 necessary to comply with the provisions of Subsection A of
9 this section has not been approved by the voters of the
10 county, the question submitted to the voters shall be the
11 question of imposing a county correctional facility gross
12 receipts tax, a county correctional facility compensating tax
13 and a property tax at a rate necessary for the issuance of
14 general obligation bonds of the county sufficient to comply
15 with the provisions of the County Correctional Facility Gross
16 Receipts Tax Act; or

17 (2) in a class B county described in
18 Paragraph (3) of Subsection A of Section 7-20F-2 NMSA 1978,
19 the question to be submitted to the voters is "Shall a county
20 correctional facility gross receipts tax and a county
21 correctional facility compensating tax be imposed to repay
22 bonds that will be issued by the New Mexico finance authority
23 in an amount sufficient to pay at least one-half of the costs
24 of designing, constructing, equipping, furnishing and
25 otherwise improving the new county correctional facility?".

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1 ~~[F.]~~ G. The question shall be submitted to the
2 voters at any general election or special election called for
3 that purpose by the county board.

4 ~~[G.]~~ H. The election upon the question shall be
5 called, held, conducted and canvassed in substantially the
6 same manner as may be provided by law for general elections.

7 ~~[H.]~~ I. If the question of imposing the county
8 correctional facility gross receipts tax, the county
9 correctional facility compensating tax and a property tax, if
10 the question includes a property tax, fails, the county board
11 shall not again propose imposition of a county correctional
12 facility gross receipts tax for a period of one year after
13 the election.

14 ~~[I.]~~ J. Revenue produced by the imposition of a
15 county correctional facility gross receipts tax and a county
16 correctional facility compensating tax that is in excess of
17 the annual principal and interest due on bonds secured by a
18 pledge of the county correctional facility gross receipts tax
19 and the county correctional facility compensating tax may be
20 accumulated in a debt service reserve account until an amount
21 equal to the maximum amount permitted pursuant to the
22 provisions of the United States treasury regulations is
23 accumulated in the debt service reserve account. After the
24 debt service reserve account requirements have been met, the
25 excess revenue shall be accumulated in an extraordinary

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1 mandatory redemption fund and annually used to redeem the
2 bonds prior to their stated maturity date.

3 [J-] K. When all outstanding bonds have been
4 paid, whether from the debt service reserve, the redemption
5 fund or maturity, the ordinance shall be repealed if the
6 ~~[county correctional facility gross receipts tax]~~ revenue
7 from the county correctional facility gross receipts tax and
8 county correctional facility compensating tax is no longer
9 required for the purposes for which it may be used pursuant
10 to the provisions of the County Correctional Facility Gross
11 Receipts Tax Act.

12 [K-] L. The repeal of an ordinance imposing a
13 county correctional facility gross receipts tax and a county
14 correctional facility compensating tax shall state that the
15 repeal shall be effective on January 1 or July 1, whichever
16 occurs first following the date the department is notified
17 personally or by mail by the county of the repeal."

18 Section 21. Section 7-20F-5 NMSA 1978 (being Laws 1993,
19 Chapter 303, Section 5) is amended to read:

20 "7-20F-5. COLLECTION BY DEPARTMENT--TRANSFER OF
21 PROCEEDS--DEDUCTIONS.--

22 A. The department shall collect the county
23 correctional facility gross receipts tax in the same manner
24 and at the same time it collects the state gross receipts
25 tax. The department shall collect the county correctional

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1 facility compensating tax in the same manner and at the same
2 time it collects the compensating tax.

3 B. The department shall remit to each county for
4 which it is collecting a county correctional facility gross
5 receipts tax and a county correctional facility compensating
6 tax the amount of the tax collected, less any disbursement
7 for tax credits, refunds and the payment of interest
8 applicable to the [~~county correctional facility gross~~
9 ~~receipts tax~~] taxes. Transfer [~~of the tax~~] to a county shall
10 be made within the month following the month in which the
11 [~~tax is~~] taxes are collected."

12 Section 22. Section 7-20F-7 NMSA 1978 (being Laws 1993,
13 Chapter 303, Section 7) is amended to read:

14 "7-20F-7. REVENUE BONDS--AUTHORITY TO ISSUE--ORDINANCE
15 AUTHORIZING ISSUE--PLEDGE OF REVENUE.--

16 A. In addition to any other law authorizing a
17 county to issue revenue bonds, a county may issue revenue
18 bonds pursuant to the County Correctional Facility Gross
19 Receipts Tax Act for the purposes specified in that act.
20 Revenue bonds issued pursuant to the County Correctional
21 Facility Gross Receipts Tax Act may be referred to as "county
22 correctional facility gross receipts tax revenue bonds".

23 B. A county board, by majority vote, may adopt an
24 ordinance providing for issuance of revenue bonds pursuant to
25 the provisions of the County Correctional Facility Gross

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1 Receipts Tax Act, the principal and interest of which shall
2 be paid from the revenue derived by the county from the
3 county correctional facility gross receipts tax, the county
4 correctional facility compensating tax and any other revenue
5 that the county may dedicate to the payment of the revenue
6 bonds.

7 C. Revenue bonds or refunding revenue bonds
8 issued as authorized pursuant to the County Correctional
9 Facility Gross Receipts Tax Act are:

10 (1) not general obligations of the county;
11 and

12 (2) collectible only from the county
13 correctional facility gross receipts tax, the county
14 correctional facility compensating tax and, if authorized,
15 other properly pledged revenues, and each bond shall be
16 payable solely from the properly pledged revenues and the
17 bondholders shall not look to any other county fund for the
18 payment of the interest and principal of the bonds."

19 Section 23. APPLICABILITY.--The provisions of this act
20 are applicable to use of tangible personal property on or
21 after July 1, 2004.

22 Section 24. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2004.