

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 549

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

AN ACT

RELATING TO TAXATION; CREATING AUTHORITY FOR CERTAIN WATER AND
SANITATION DISTRICTS TO IMPOSE A GROSS RECEIPTS TAX; PROVIDING
FOR COLLECTION, ADMINISTRATION, ENFORCEMENT AND DISTRIBUTION OF
THE TAX; MAKING AN APPROPRIATION.

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

Section 1. Section 73-21-2 NMSA 1978 (being Laws 1977,
Chapter 345, Section 1) is amended to read:

"73-21-2. SHORT TITLE.--~~[Sections 75-18-1 through~~
~~75-318-49 NMSA 1953]~~ Chapter 73, Article 21 NMSA 1978 may be
cited as the "Water and Sanitation District Act"."

Section 2. Section 73-21-4 NMSA 1978 (being Laws 1943,
Chapter 80, Section 3, as amended) is amended to read:

"73-21-4. DEFINITIONS.--As used in the Water and
Sanitation District Act:

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underscored material = new
[bracketed material] = delete

1 A. "sewage disposal" includes all constructions for
2 collection, transportation, pumping, treatment and final
3 disposition of sewage;

4 B. "district" means a water and sanitation district
5 that is established pursuant to that act and that is either
6 entirely within or partly within and partly without one or more
7 counties, provided those parts or parcels of the district lying
8 in two or more counties are contiguous with one another, and
9 further provided, a district created pursuant to a petition
10 signed by the board of county commissioners of a county shall
11 be entirely within that county;

12 C. "board" means the board of directors of a
13 district, except as otherwise provided by Section 73-21-56 NMSA
14 1978;

15 D. "taxpaying elector of a district" means a
16 person, qualified to vote at general elections in the state,
17 who either has paid or incurred a general tax liability on real
18 property within the district in the twelve months immediately
19 preceding a designated time or event or who is purchasing real
20 property within the district under a real estate contract where
21 a property tax has been paid or incurred on the real property
22 in the twelve months immediately preceding a designated time or
23 event; and

24 E. "publication" means once a week for three
25 consecutive weeks in at least one newspaper of general

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1 circulation in the county in which all or the major portion of
2 the district is located. It is not necessary that publication
3 be made on the same day of the week in each of the three weeks,
4 but not less than fourteen days, excluding the day of first
5 publication, shall intervene between the first publication and
6 the last publication, and publication shall be complete on the
7 date of the last publication."

8 Section 3. A new Section 73-21-56 NMSA 1978 is enacted to
9 read:

10 "73-21-56. [NEW MATERIAL] DEFINITIONS.--As used in
11 Sections 73-21-56 through 73-21-56.5 NMSA 1978:

12 A. "board" means the board of directors of a
13 district within a class B county having a population between
14 twenty-eight thousand and thirty-one thousand according to the
15 2000 federal decennial census;

16 B. "gross receipts" means the total amount of money
17 or the value of other consideration received from selling
18 property in a district, from leasing property employed in a
19 district, from selling services performed outside a district,
20 the product of which is initially used in a district, or from
21 performing services in a district. In an exchange in which the
22 money or other consideration received does not represent the
23 value of the property or service exchanged, "gross receipts"
24 means the reasonable value of the property or service
25 exchanged;

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1 C. "gross receipts" includes:

2 (1) any receipts from sales of tangible
3 personal property handled on consignment;

4 (2) the total commissions or fees derived from
5 the business of buying, selling or promoting the purchase, sale
6 or lease, as an agent or broker on a commission or fee basis,
7 of any property, service, stock, bond or security;

8 (3) amounts paid by members of any cooperative
9 association or similar organization for sales or leases of
10 personal property or performance of services by such
11 organization;

12 (4) amounts received from transmitting
13 messages or conversations by persons providing telephone or
14 telegraph services;

15 (5) amounts received by a New Mexico florist
16 from the sale of flowers, plants or other products that are
17 customarily sold by florists where the sale is made pursuant to
18 orders placed with the New Mexico florist that are filled and
19 delivered outside New Mexico by an out-of-state florist; and

20 (6) the receipts of a home service provider
21 from providing mobile telecommunications services to customers
22 whose place of primary use is in a district if:

23 (a) the mobile telecommunications
24 services originate and terminate in the same state, regardless
25 of where the services originate, terminate or pass through; and

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1 (b) the charges for mobile
2 telecommunications services are billed by or for a customer's
3 home service provider and are deemed provided by the home
4 service provider. For the purposes of this section, "home
5 service provider", "mobile telecommunications services",
6 "customer" and "place of primary use" have the meanings given
7 in the federal Mobile Telecommunications Sourcing Act; and

8 D. "gross receipts" excludes:

- 9 (1) cash discounts allowed and taken;
10 (2) New Mexico gross receipts tax,
11 governmental gross receipts tax and leased vehicle gross
12 receipts tax payable on transactions for the reporting period;
13 (3) taxes imposed pursuant to the provisions
14 of any local option gross receipts tax that is payable on
15 transactions for the reporting period;
16 (4) any gross receipts or sales taxes imposed
17 by an Indian nation, tribe or pueblo; provided that the tax is
18 approved, if approval is required by federal law or regulation,
19 by the secretary of the interior of the United States; and
20 provided further that the gross receipts or sales tax imposed
21 by the Indian nation, tribe or pueblo provides a reciprocal
22 exclusion for gross receipts, sales or gross receipts-based
23 excise taxes imposed by the state or its political
24 subdivisions;
25 (5) a water and sanitation district gross

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1 receipts tax;

2 (6) any type of time-price differential;

3 (7) amounts received solely on behalf of
4 another in a disclosed agency capacity; and

5 (8) amounts received by a New Mexico florist
6 from the sale of flowers, plants or other products that are
7 customarily sold by florists where the sale is made pursuant to
8 orders placed with an out-of-state florist for filling and
9 delivery in New Mexico by a New Mexico florist."

10 Section 4. A new Section 73-21-56.1 NMSA 1978 is enacted
11 to read:

12 "73-21-56.1. [NEW MATERIAL] GROSS RECEIPTS--CERTAIN
13 CONTRACTS.--When the sale of property or service is made under
14 any type of charge, conditional or time-sales contract or the
15 leasing of property is made under a leasing contract, the
16 seller or lessor may elect to treat all receipts, excluding any
17 type of time-price differential, under such contracts as gross
18 receipts as and when the payments are actually received. If
19 the seller or lessor transfers his interest in any such
20 contract to a third person, the seller or lessor shall pay the
21 gross receipts tax upon the full sale or leasing contract
22 amount, excluding any type of time-price differential."

23 Section 5. A new Section 73-21-56.2 NMSA is enacted to
24 read:

25 "73-21-56.2. [NEW MATERIAL] WATER AND SANITATION DISTRICT

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1 GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--VOTER APPROVAL--USE OF
2 PROCEEDS.--

3 A. A board may impose by resolution an excise tax
4 not to exceed a rate of twenty-five hundredths percent of the
5 gross receipts of any person engaging in business within the
6 board's district for the privilege of engaging in business in
7 that district. The excise tax imposed may be referred to as
8 the "water and sanitation district gross receipts tax".

9 B. A board shall use the proceeds from the water
10 and sanitation gross receipts tax to:

11 (1) purchase, acquire, establish and construct
12 waterworks to supply water for domestic, commercial and
13 industrial purposes by any available means to persons within
14 and without the boundaries of the board's district;

15 (2) purchase, acquire, establish and construct
16 sanitary sewers or a system or systems of sewage disposal,
17 garbage or refuse disposal;

18 (3) purchase, acquire, establish and construct
19 streets and street improvements, including, without limitation,
20 grades, regrades, gravel, oiling, surfacing, macadamizing,
21 paving, crosswalks, sidewalks, driveway approaches, curbs,
22 gutters, culverts, drains, sewers, manholes, inlets, outlets,
23 retaining walls, bridges, overpasses, tunnels, underpasses,
24 approaches, artificial lights and lighting equipment, parkways,
25 grade separators, traffic separators and traffic control

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1 equipment and all appurtenances and incidentals or any
2 combination thereof, including real and other property;

3 (4) establish or construct park and
4 recreational improvements; and

5 (5) pay revenue bonds issued pursuant to the
6 Water and Sanitation District Act.

7 C. A resolution by a board to impose the water and
8 sanitation district gross receipts tax shall not go into effect
9 until after an election is held on the question of imposing the
10 tax for the purpose for which the revenue is dedicated and a
11 majority of the voters in the board's district vote in favor of
12 imposing the tax. The board shall adopt a resolution calling
13 for an election within seventy-five days of the date the
14 resolution to impose the tax is adopted. The question shall be
15 submitted to the voters of the board's district as a separate
16 question at a general election or at a special election called
17 for that purpose by the board. A special election shall be
18 called, conducted and canvassed in substantially the same
19 manner as provided by law for general elections. If a majority
20 of the voters voting on the question approve the question of
21 imposing the water and sanitation district gross receipts tax,
22 the board's resolution to impose the tax shall become
23 effective. If the question of imposing the water and
24 sanitation district gross receipts tax fails, the governing
25 body shall not again propose the imposition of the tax for a

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1 period of one year from the date of the election."

2 Section 6. A new Section 73-21-56.3 NMSA 1978 is enacted
3 to read:

4 "73-21-56.3. [NEW MATERIAL] WATER AND SANITATION DISTRICT
5 GROSS RECEIPTS TAX--LEVY AND COLLECTION.--To levy and collect
6 the water and sanitation gross receipts tax, a board shall, in
7 each year, determine the amount of money necessary to be raised
8 by the tax in that board's district. The board shall consider
9 other sources of revenue of the district and fix a water and
10 sanitation district gross receipts tax rate in accordance with
11 the Water and Sanitation District Act that with other revenues
12 will raise the amount required by the district annually to
13 supply funds to purchase, acquire, establish and construct the
14 works and equipment of the district. The board shall, on or
15 before October 1 of each year, certify to the taxation and
16 revenue department the water and sanitation district gross
17 receipts tax rate fixed for the board's district."

18 Section 7. A new Section 73-21-56.4 NMSA 1978 is enacted
19 to read:

20 "73-21-56.4. [NEW MATERIAL] WATER AND SANITATION DISTRICT
21 GROSS RECEIPTS TAX--COLLECTION BY TAXATION AND REVENUE
22 DEPARTMENT--DISTRIBUTION OF PROCEEDS.--

23 A. The taxation and revenue department shall
24 collect the water and sanitation district gross receipts tax at
25 the rate certified by the district pursuant to the Water and

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1 Sanitation District Act in the same manner and at the same time
2 it collects the state gross receipts tax.

3 B. The taxation and revenue department shall
4 distribute to each district for which it is collecting the
5 water and sanitation district gross receipts tax the amount of
6 the tax collected for the district less any disbursements for
7 tax credits, refunds and the payment of interest applicable to
8 the water and sanitation gross receipts tax imposed by the
9 district. Transfer of the tax to a district shall be made
10 within the month following the month in which the tax is
11 collected."

12 Section 8. A new Section 73-21-56.5 NMSA 1978 is enacted
13 to read:

14 "73-21-56.5. [NEW MATERIAL] WATER AND SANITATION DISTRICT
15 GROSS RECEIPTS TAX--ADMINISTRATION.--

16 A. The taxation and revenue department shall
17 interpret Sections 73-21-56 through 73-21-56.3 NMSA 1978.

18 B. The taxation and revenue department shall
19 administer and enforce the collection of the water and
20 sanitation district gross receipts tax, and the Tax
21 Administration Act applies to the administration and
22 enforcement of the tax."

23 Section 9. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2005.