

HOUSE FLOOR SUBSTITUTE FOR
SENATE FLOOR SUBSTITUTE FOR
HOUSE BILL 625

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

AN ACT

RELATING TO TAXATION; REMOVING GROSS RECEIPTS TAX FROM FOOD AND CERTAIN HEALTH CARE SERVICES; CREATING NEW DISTRIBUTIONS TO CITIES AND COUNTIES; MODIFYING THE COUNTY EQUALIZATION DISTRIBUTION; REPEALING THE MUNICIPAL CREDIT; PROVIDING A PENALTY.

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

Section 1. A new section of the Tax Administration Act is enacted to read:

"NEW MATERIAL DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA .151707.3

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1 1978, equal to the sum of:

2 (1) the total deductions claimed pursuant to
3 Section 7-9-92 NMSA 1978 for the month by taxpayers from
4 business locations attributable to the municipality multiplied
5 by the sum of the combined rate of all municipal local option
6 gross receipts taxes in effect in the municipality for the
7 month plus one and two hundred twenty-five thousandths percent;
8 and

9 (2) the total deductions claimed pursuant to
10 Section 7-9-93 NMSA 1978 for the month by taxpayers from
11 business locations attributable to the municipality multiplied
12 by the sum of the combined rate of all municipal local option
13 gross receipts taxes in effect in the municipality for the
14 month plus one and two hundred twenty-five thousandths percent.

15 B. The distribution pursuant to Subsection A of
16 this section is in lieu of revenue that would have been
17 received by the municipality but for the deductions provided by
18 Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall
19 be considered gross receipts tax revenue and shall be used by
20 the municipality in the same manner as gross receipts tax
21 revenue, including payment of gross receipts tax revenue bonds.

22 C. For the purposes of this section, "business
23 locations attributable to the municipality" means business
24 locations:

25 (1) within the municipality;

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1 (2) on land owned by the state, commonly known
 2 as the "state fairgrounds", within the exterior boundaries of
 3 the municipality;

4 (3) outside the boundaries of the municipality
 5 on land owned by the municipality; and

6 (4) on an Indian reservation or pueblo grant
 7 in an area that is contiguous to the municipality and in which
 8 the municipality performs services pursuant to a contract
 9 between the municipality and the Indian tribe or Indian pueblo
 10 if:

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

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

19 Section 2. A new section of the Tax Administration Act is
 20 enacted to read:

21 "[NEW MATERIAL] DISTRIBUTION TO COUNTIES--OFFSET FOR FOOD
 22 DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

23 A. A distribution pursuant to Section 7-1-6.1 NMSA
 24 1978 shall be made to a county in an amount, subject to any
 25 increase or decrease made pursuant to Section 7-1-6.15 NMSA

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1 1978, equal to the sum of:

2 (1) the total deductions claimed pursuant to
3 Section 7-9-92 NMSA 1978 for the month by taxpayers from
4 business locations within a municipality in the county
5 multiplied by the combined rate of all county local option
6 gross receipts taxes in effect for the month that are imposed
7 throughout the county;

8 (2) the total deductions claimed pursuant to
9 Section 7-9-92 NMSA 1978 for the month by taxpayers from
10 business locations in the county but not within a municipality
11 multiplied by the combined rate of all county local option
12 gross receipts taxes in effect for the month that are imposed
13 in the county area not within a municipality;

14 (3) the total deductions claimed pursuant to
15 Section 7-9-93 NMSA 1978 for the month by taxpayers from
16 business locations within a municipality in the county
17 multiplied by the combined rate of all county local option
18 gross receipts taxes in effect for the month that are imposed
19 throughout the county; and

20 (4) the total deductions claimed pursuant to
21 Section 7-9-93 NMSA 1978 for the month by taxpayers from
22 business locations in the county but not within a municipality
23 multiplied by the combined rate of all county local option
24 gross receipts taxes in effect for the month that are imposed
25 in the county area not within a municipality.

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1 B. The distribution pursuant to Subsection A of
 2 this section is in lieu of revenue that would have been
 3 received by the county but for the deductions provided by
 4 Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall
 5 be considered gross receipts tax revenue and shall be used by
 6 the county in the same manner as gross receipts tax revenue,
 7 including payment of gross receipts tax revenue bonds."

8 Section 3. A new section of the Tax Administration Act is
 9 enacted to read:

10 "[NEW MATERIAL] PENALTY FOR INCORRECT REPORTING OF FOOD
 11 DEDUCTION OR HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--A
 12 taxpayer who claims a deduction pursuant to Section 7-9-92 or
 13 7-9-93 NMSA 1978 and fails to correctly report the amount of
 14 the deduction to which the taxpayer is entitled shall pay a
 15 penalty in the amount of the difference between the incorrect
 16 deduction amount and the correct deduction amount multiplied by
 17 twice the total local option tax rates in effect at the
 18 taxpayer's business location for which the deduction was
 19 claimed. This penalty shall be in addition to other applicable
 20 penalties."

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

23 "7-1-6.16. COUNTY EQUALIZATION DISTRIBUTION.--

24 A. Beginning on September 15, 1989 and on September
 25 15 of each year thereafter, the department shall distribute to
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1 any county that has imposed or continued in effect during the
2 state's preceding fiscal year a county gross receipts tax
3 pursuant to [~~the County Gross Receipts Tax Act~~] Section 7-20E-9
4 NMSA 1978 an amount equal to:

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

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

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

20 C. As used in this section:

21 (1) "annual sum" means for each county the sum
22 of the monthly amounts for those months in the report year
23 [~~which~~] that follow a month in which the county had in effect a
24 county gross receipts tax;

25 (2) "monthly amount" means an amount equal to
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1 the product of:

2 (a) the net receipts received by the
 3 department in the month attributable to the state gross
 4 receipts tax ~~[multiplied by]~~ plus five percent of the total
 5 amount of deductions claimed pursuant to Section 7-9-92 NMSA
 6 1978 for the month plus five percent of the total amount of
 7 deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the
 8 month; and

9 (b) a fraction, the numerator of which
 10 is one-eighth percent and the denominator of which is the tax
 11 rate imposed by Section 7-9-4 NMSA 1978 in effect on the last
 12 day of the previous month;

13 (3) "population" means the most recent
 14 official census or estimate determined by the ~~[bureau of the]~~
 15 United States census bureau for the unit or, if neither is
 16 available, the most current estimated population for the unit
 17 provided in writing by the bureau of business and economic
 18 research at the university of New Mexico; and

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

23 Section 5. A new section of the Gross Receipts and
 24 Compensating Tax Act, Section 7-9-92 NMSA 1978, is enacted to
 25 read:

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1 "7-9-92. [NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--SALE
2 OF FOOD AT RETAIL FOOD STORE.--

3 A. Receipts from the sale of food at a retail food
4 store that are not exempt from gross receipts taxation and are
5 not deductible pursuant to another provision of the Gross
6 Receipts and Compensating Tax Act may be deducted from gross
7 receipts. The deduction provided by this section shall be
8 separately stated by the taxpayer.

9 B. For the purposes of this section:

10 (1) "food" means any food or food product for
11 home consumption that meets the definition of food in 7 USCA
12 2012(g)(1) for purposes of the federal food stamp program; and

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

18 Section 6. A new section of the Gross Receipts and
19 Compensating Tax Act, Section 7-9-93 NMSA 1978, is enacted to
20 read:

21 "7-9-93. [NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--
22 CERTAIN RECEIPTS FOR SERVICES PROVIDED BY HEALTH CARE
23 PRACTITIONER.--

24 A. Receipts from payments by a managed health care
25 provider or health care insurer for commercial contract

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1 services or medicare part C services provided by a health care
2 practitioner that are not otherwise deductible pursuant to
3 another provision of the Gross Receipts and Compensating Tax
4 Act may be deducted from gross receipts, provided that the
5 services are within the scope of practice of the person
6 providing the service. Receipts from fee-for-service payments
7 by a health care insurer may not be deducted from gross
8 receipts. The deduction provided by this section shall be
9 separately stated by the taxpayer.

10 B. For the purposes of this section:

11 (1) "commercial contract services" means
12 health care services performed by a health care practitioner
13 pursuant to a contract with a managed health care provider or
14 health care insurer other than those health care services
15 provided for medicare patients pursuant to Title 18 of the
16 federal Social Security Act or for medicaid patients pursuant
17 to Title 19 or Title 21 of the federal Social Security Act;

18 (2) "health care insurer" means a person that:

19 (a) has a valid certificate of authority
20 in good standing pursuant to the New Mexico Insurance Code to
21 act as an insurer, health maintenance organization or nonprofit
22 health care plan or prepaid dental plan; and

23 (b) contracts to reimburse licensed
24 health care practitioners for providing basic health services
25 to enrollees at negotiated fee rates;

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1 (3) "health care practitioner" means:

2 (a) a chiropractic physician licensed
3 pursuant to the provisions of the Chiropractic Physician
4 Practice Act;

5 (b) a dentist or dental hygienist
6 licensed pursuant to the Dental Health Care Act;

7 (c) a doctor of oriental medicine
8 licensed pursuant to the provisions of the Acupuncture and
9 Oriental Medicine Practice Act;

10 (d) an optometrist licensed pursuant to
11 the provisions of the Optometry Act;

12 (e) an osteopathic physician licensed
13 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
14 or an osteopathic physician's assistant licensed pursuant to
15 the provisions of the Osteopathic Physicians' Assistants Act;

16 (f) a physical therapist licensed
17 pursuant to the provisions of the Physical Therapy Act;

18 (g) a physician or physician assistant
19 licensed pursuant to the provisions of Chapter 61, Article 6
20 NMSA 1978;

21 (h) a podiatrist licensed pursuant to
22 the provisions of the Podiatry Act;

23 (i) a psychologist licensed pursuant to
24 the provisions of the Professional Psychologist Act;

25 (j) a registered lay midwife registered

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1 by the department of health;

2 (k) a registered nurse or licensed
 3 practical nurse licensed pursuant to the provisions of the
 4 Nursing Practice Act;

5 (l) a registered occupational therapist
 6 licensed pursuant to the provisions of the Occupational Therapy
 7 Act;

8 (m) a respiratory care practitioner
 9 licensed pursuant to the provisions of the Respiratory Care
 10 Act; and

11 (n) a speech-language pathologist or
 12 audiologist licensed pursuant to the Speech-Language Pathology,
 13 Audiology and Hearing Aid Dispensing Practices Act;

14 (4) "managed health care provider" means a
 15 person that provides for the delivery of comprehensive basic
 16 health care services and medically necessary services to
 17 individuals enrolled in a plan through its own employed health
 18 care providers or by contracting with selected or participating
 19 health care providers. "Managed health care provider" includes
 20 only those persons that provide comprehensive basic health care
 21 services to enrollees on a contract basis, including the
 22 following:

- 23 (a) health maintenance organizations;
- 24 (b) preferred provider organizations;
- 25 (c) individual practice associations;

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- 1 (d) competitive medical plans;
- 2 (e) exclusive provider organizations;
- 3 (f) integrated delivery systems;
- 4 (g) independent physician-provider
- 5 organizations;
- 6 (h) physician hospital-provider
- 7 organizations; and
- 8 (i) managed care services organizations;
- 9 and

10 (5) "medicare part C services" means services
 11 performed pursuant to a contract with a managed health care
 12 provider for medicare patients pursuant to Title 18 of the
 13 federal Social Security Act."

14 Section 7. REPEAL.--Section 7-9-82 NMSA 1978 (being Laws
 15 1986, Chapter 20, Section 68, as amended) is repealed.

16 Section 8. EFFECTIVE DATE.--The effective date of the
 17 provisions of this act is January 1, 2005.

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