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SENATE BILL 106

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

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR RECEIPTS FROM THE SALE OF FOOD AT RETAIL FOOD STORES; CREATING NEW DISTRIBUTIONS TO MUNICIPALITIES AND COUNTIES; MODIFYING THE COUNTY EQUALIZATION DISTRIBUTION; 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. --

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 1978, equal to the total deductions claimed pursuant to Section . 149626. 1

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1 7-9-92 NMSA 1978 for the month by taxpayers from business
2 locations attributable to the municipality multiplied by the
3 sum of:

4 (1) the combined rate of all municipal local
5 option gross receipts taxes in effect in the municipality for
6 the month; and

7 (2) one and two hundred twenty-five
8 thousandths percent.

9 B. The distribution pursuant to Subsection A of
10 this section is in lieu of revenue that would have been
11 received by the municipality but for the deduction provided by
12 Section 7-9-92 NMSA 1978. The distribution shall be considered
13 gross receipts tax revenue and shall be used by the
14 municipality in the same manner as gross receipts tax revenue,
15 including payment of gross receipts tax revenue bonds.

16 C. For the purposes of this section, "business
17 locations attributable to the municipality" means business
18 locations:

19 (1) within the municipality;

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

23 (3) outside the boundaries of the municipality
24 on land owned by the municipality; and

25 (4) on an Indian reservation or pueblo grant

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1 in an area that is contiguous to the municipality and in which
2 the municipality performs services pursuant to a contract
3 between the municipality and the Indian nation, tribe or pueblo
4 if:

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

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

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

15 "[NEW MATERIAL] DISTRIBUTION TO COUNTIES--OFFSET FOR FOOD
16 DEDUCTION. --

17 A. A distribution pursuant to Section 7-1-6.1 NMSA
18 1978 shall be made to a county in an amount, subject to any
19 increase or decrease made pursuant to Section 7-1-6.15 NMSA
20 1978, equal to the sum of:

21 (1) the total deductions claimed pursuant to
22 Section 7-9-92 NMSA 1978 for the month by taxpayers from
23 business locations within a municipality in the county
24 multiplied by the combined rate of all county local option
25 gross receipts taxes in effect for the month that are imposed

. 149626. 1

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1 throughout the county; and

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

8 B. The distribution pursuant to Subsection A of
9 this section is in lieu of revenue that would have been
10 received by the county but for the deduction provided by
11 Section 7-9-92 NMSA 1978. The distribution shall be considered
12 gross receipts tax revenue and shall be used by the county in
13 the same manner as gross receipts tax revenue, including
14 payment of gross receipts tax revenue bonds. "

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

17 "[NEW MATERIAL] PENALTY FOR OVERSTATING FOOD DEDUCTION. -- A
18 taxpayer who claims a deduction pursuant to Section 7-9-92 NMSA
19 1978 and overstates the amount of the deduction to which the
20 taxpayer is entitled shall pay a penalty in the amount of the
21 difference between the overstated deduction amount and the
22 correct deduction amount multiplied by twice the total local
23 option gross receipts tax rates in effect at the taxpayer's
24 business location for which the deduction was claimed. This
25 penalty shall be in addition to other applicable penalties. "

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

3 "7-1-6.16. COUNTY EQUALIZATION DISTRIBUTION. --

4 A. Beginning on September 15, 1989 and on September
5 15 of each year thereafter, the department shall distribute to
6 any county that has imposed or continued in effect during the
7 state's preceding fiscal year a county gross receipts tax
8 pursuant to [~~the County Gross Receipts Tax Act~~] Section 7-20E-9
9 NMSA 1978 an amount equal to:

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

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

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

25 C. As used in this section:

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

5 (2) "monthly amount" means an amount equal to
6 the product of:

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

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

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

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

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

4 "7-9-92. [NEW MATERIAL] DEDUCTION-- GROSS RECEIPTS-- SALE
5 OF FOOD AND FOOD INGREDIENTS. --

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

12 B. For the purposes of this section:

13 (1) "food" means any food or food product for
14 home consumption that meets the definition of food in 7 USCA
15 2012 (g) (1) for purposes of the federal food stamp program; and

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