

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.

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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:

"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 1978, equal to the sum of:

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

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

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

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

- (1) within the municipality;
- (2) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of the municipality;
- (3) outside the boundaries of the municipality on land owned by the municipality; and
- (4) on an Indian reservation or pueblo grant in an area that is contiguous to the municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:
  - (a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and
  - (b) the governing body of the municipality has submitted a copy of the contract to the secretary."

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

"DISTRIBUTION TO COUNTIES--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 county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

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

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

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

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

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

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

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

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

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

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

(1) the product of a fraction, the numerator of which is the county's population and the denominator of which is the state's population,

multiplied by the annual sum for the county; less

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

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

C. As used in this section:

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

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

(a) the net receipts received by the department in the month attributable to the state gross receipts tax plus five percent of the total amount of deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month plus five percent of the total amount of deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month; and

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

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

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

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

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"7-9-92. DEDUCTION--GROSS RECEIPTS--SALE OF FOOD AT RETAIL FOOD STORE.--

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

B. For the purposes of this section:

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

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

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

"7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR  
SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

A. Receipts from payments by a managed health care provider or  
health care insurer for commercial contract services or medicare part C services  
provided by a health care practitioner that are not otherwise deductible pursuant to  
another provision of the Gross Receipts and Compensating Tax Act may be  
deducted from gross receipts, provided that the services are within the scope of  
practice of the person providing the service. Receipts from fee-for-service  
payments by a health care insurer may not be deducted from gross receipts. The  
deduction provided by this section shall be separately stated by the taxpayer.

B. For the purposes of this section:

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

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

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

(b) contracts to reimburse licensed health care

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practitioners for providing basic health services to enrollees at negotiated fee rates;

(3) "health care practitioner" means:

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

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

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

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

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

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

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

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

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

(j) a registered lay midwife registered by the department of health;



- (k) a registered nurse or licensed practical nurse licensed pursuant to the provisions of the Nursing Practice Act;
- (l) a registered occupational therapist licensed pursuant to the provisions of the Occupational Therapy Act;
- (m) a respiratory care practitioner licensed pursuant to the provisions of the Respiratory Care Act; and
- (n) a speech-language pathologist or audiologist licensed pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

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

- (a) health maintenance organizations;
- (b) preferred provider organizations;
- (c) individual practice associations;
- (d) competitive medical plans;
- (e) exclusive provider organizations;
- (f) integrated delivery systems;
- (g) independent physician-provider organizations;
- (h) physician hospital-provider organizations; and

(i) managed care services organizations; and

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

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

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