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HOUSE BILL 581

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Daniel P. Silva

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 [~~U.~~] 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 OPTION COMPENSATING
20 TAXES.--

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

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1 Section 7-1-6.15 NMSA 1978, equal to the net receipts
2 attributable to the local option gross receipts tax imposed by
3 that county, less any deduction for administrative cost
4 determined and made by the department pursuant to the
5 provisions of the act authorizing imposition by that county of
6 the local option gross receipts tax and any additional
7 administrative fee withheld pursuant to Subsection C of Section
8 7-1-6.41 NMSA 1978.

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

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

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

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1 tax; and

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

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

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

8 A. The provisions of this section apply to:

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

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

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

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

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

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

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1 (7) any distribution to a municipality or a
2 county of cigarette taxes pursuant to Sections 7-1-6.11,
3 7-12-15 and 7-12-16 NMSA 1978;

4 (8) any distribution to a county from the
5 county government road fund pursuant to Section 7-1-6.26 NMSA
6 1978;

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

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

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

23 C. No decrease shall be made to current or future
24 distributions or transfers to a political subdivision for any
25 excess distribution or transfer made to that political

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1 subdivision more than one year prior to the calendar year in
2 which the determination of the secretary was made.

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

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

24 F. The secretary is authorized to decrease a
25 distribution to a municipality or county upon being directed

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

25 Section 5. A new section of the Tax Administration Act

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1 is enacted to read:

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

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

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

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

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

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

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

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

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

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1 (1) the property is used only for
2 nonbusiness purposes;

3 (2) the property is not a manufactured home;
4 and

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

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

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

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

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1 compensating tax and applicable local option compensating tax
2 to the seller for payment over to the department."

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

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

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

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

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

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

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

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

7 B. An ordinance imposing a tax authorized by
8 Subsection A of this section shall also impose a tax for the
9 privilege of using property in the municipality if the use or
10 service is subject to the compensating tax. This tax shall
11 be referred to as the "supplemental municipal compensating
12 tax". The rate of the tax imposed pursuant to this
13 subsection shall be the same as the rate of tax imposed
14 pursuant to Subsection A of this section. If, at the time
15 this 2005 act becomes effective, a municipality has in effect
16 any amount of supplemental municipal gross receipts tax, a
17 supplemental municipal compensating tax is hereby imposed at
18 the same rate, effective on the effective date of this 2005
19 act.

20 ~~[B.]~~ C. The governing body of a municipality
21 enacting an ordinance imposing the ~~[tax]~~ taxes authorized in
22 ~~[Subsection A]~~ Subsections A and B of this section shall
23 submit the question of imposing ~~[such tax]~~ the taxes and the
24 question of the issuance of supplemental municipal gross
25 receipts bonds in an amount not to exceed nine million

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1 dollars (\$9,000,000), for which the revenue from the
2 supplemental municipal gross receipts tax and supplemental
3 municipal compensating tax is dedicated, to the qualified
4 electors of the municipality at a regular or special
5 election.

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

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

16 For _____ Against _____"; and

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

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1 supplemental municipal gross receipts bonds?

2 For _____ Against _____".

3 [~~D.~~] E. Only those voters who are registered
4 electors who reside within the municipality shall be
5 permitted to vote on these two questions. The procedures for
6 conducting the election shall be substantially the same as
7 the applicable provisions in Sections 3-30-1, 3-30-6 and
8 3-30-7 NMSA 1978 relating to municipal debt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 A. The proceeds from the supplemental municipal

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1 gross receipts tax and supplemental municipal compensating tax
2 shall be deposited in a special improvement account of the
3 municipality and shall be used only for:

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

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

11 (3) refunding bonds; and

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

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

3 A. An ordinance imposing, increasing or repealing a
4 local option gross receipts tax authorized by the Municipal
5 Local Option Gross Receipts Taxes Act shall also impose,
6 increase or repeal a tax for the privilege of using property in
7 the municipality if the use of the property is subject to the
8 compensating tax. The rate of the municipal tax on use
9 imposed, increased or repealed shall be the same as the rate of
10 the local option gross receipts tax imposed, increased or
11 repealed.

12 B. If, at the time this 2005 act becomes effective,
13 a municipality has in effect a local option gross receipts tax
14 authorized by the Municipal Local Option Gross Receipts Taxes
15 Act, a municipal tax on use is hereby imposed at the same rate,
16 effective on the effective date of this 2005 act, except that
17 the rate of the municipal tax on use matching the municipal
18 gross receipts tax shall be equal to the rate of the municipal
19 gross receipts tax for the municipality.

20 C. The municipal taxes on use authorized or imposed
21 by this section may be referred to generally as "municipal
22 local option compensating taxes". Each tax may be referred to
23 individually by reference to the local option gross receipts
24 tax with which it is associated."

25 Section 15. Section 7-19D-7 NMSA 1978 (being Laws 1993,

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1 Chapter 346, Section 7, as amended) is amended to read:

2 "7-19D-7. COLLECTION BY DEPARTMENT--TRANSFER OF
3 PROCEEDS--DEDUCTIONS.--

4 A. The department shall collect each local option
5 gross receipts tax imposed pursuant to the provisions of the
6 Municipal Local Option Gross Receipts Taxes Act in the same
7 manner and at the same time it collects the state gross
8 receipts tax. The department shall collect the municipal local
9 option compensating taxes imposed pursuant to the provisions of
10 the Municipal Local Option Gross Receipts Taxes Act in the same
11 manner and at the same time it collects the compensating tax.

12 B. Except as provided in Subsection C of this
13 section, the department shall withhold an administrative fee
14 pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA 1978.
15 The department shall transfer to each municipality for which it
16 is collecting a local option gross receipts tax pursuant to the
17 provisions of the Municipal Local Option Gross Receipts Taxes
18 Act the amount of each tax collected for that municipality,
19 less the administrative fee withheld and less any disbursements
20 for tax credits, refunds and the payment of interest applicable
21 to the tax. The department shall transfer to each municipality
22 for which it collects a municipal local option compensating tax
23 pursuant to the provisions of the Municipal Local Option Gross
24 Receipts Taxes Act the amount of each tax collected for that
25 municipality less any disbursements for tax credits, refunds

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1 and payment of interest applicable to the tax. The transfer to
2 the municipality shall be made within the month following the
3 month in which the tax is collected.

4 C. With respect to the municipal gross receipts tax
5 imposed by a municipality pursuant to Section 7-19D-9 NMSA
6 1978, the department shall withhold the administrative fee
7 pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA 1978
8 only on that portion of the municipal gross receipts tax
9 arising from a municipal gross receipts tax rate in excess of
10 one-half [~~of one~~] percent."

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

13 "[NEW MATERIAL] MATCHING LOCAL HOSPITAL COMPENSATING
14 TAX.--Any ordinance imposing, increasing or repealing a local
15 hospital gross receipts tax authorized by the Local Hospital
16 Gross Receipts Tax Act shall also impose, increase or repeal a
17 tax for the privilege of using property in the county if the
18 use of the property is subject to the compensating tax. This
19 tax may be referred to as the "local hospital compensating
20 tax". The rate of the local hospital compensating tax imposed,
21 increased or repealed shall be the same as the rate of local
22 hospital gross receipts tax imposed, increased or repealed.
23 If, at the time this 2005 act becomes effective, a county has
24 in effect a local hospital gross receipts tax, a local hospital
25 compensating tax is hereby imposed at the same rate, effective

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1 on the effective date of this 2005 act."

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

4 "7-20C-6. COLLECTION BY DEPARTMENT--TRANSFER OF
5 PROCEEDS--DEDUCTIONS.--

6 A. The department shall collect the local hospital
7 gross receipts tax in the same manner and at the same time it
8 collects the state gross receipts tax. The department shall
9 collect the local hospital compensating tax in the same manner
10 and at the same time it collects the compensating tax.

11 B. The department shall withhold an administrative
12 fee pursuant to Section 7-1-6.41 NMSA 1978. Except as provided
13 in Subsection C of this section, the department shall transfer
14 to each county for which it is collecting [~~such~~] the local
15 hospital gross receipts tax the amount of the tax collected
16 less the administrative fee withheld and less any disbursements
17 for tax credits, refunds and the payment of interest applicable
18 to the tax. The department shall transfer to each county for
19 which it is collecting the local hospital compensating tax the
20 amount of the tax collected less any disbursements for tax
21 credits, refunds and the payment of interest applicable to the
22 tax. Transfer [~~of the tax~~] to a county shall be made within
23 the month following the month in which the tax is collected.

24 C. In lieu of a transfer pursuant to Subsection B
25 of this section to a class B county with a population, as shown

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1 in the last federal decennial census, of more than twenty-five
2 thousand and a net taxable value in the 2002 property tax year
3 of less than two hundred million dollars (\$200,000,000), the
4 department shall make the transfer to the largest municipality
5 in that county for the purpose of maintaining and operating a
6 hospital."

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

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

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

19 B. Any ordinance imposing, increasing or repealing
20 a local option gross receipts tax authorized by the County
21 Local Option Gross Receipts Taxes Act to be imposed only in the
22 county area shall also impose, increase or repeal a tax for the
23 privilege of using property in the county area. The rate of
24 county area tax on use imposed, increased or repealed shall be
25 the same as the rate of the local option gross receipts tax

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1 imposed, increased or repealed.

2 C. If, at the time this 2005 act becomes effective,
3 a county has in effect a local option gross receipts tax
4 authorized to be imposed on a countywide basis, a county tax on
5 use of property in the county is hereby imposed at the same
6 rate, effective on the effective date of this 2005 act. If, at
7 the time this 2005 act becomes effective, a county has in
8 effect a local option gross receipts tax authorized to be
9 imposed only in the county area, a county tax on use of
10 property in the county area is hereby imposed at the same rate,
11 effective on the effective date of this 2005 act.

12 D. The county taxes on use authorized or imposed by
13 this section may be referred to generally as "county local
14 option compensating taxes". Each tax may be referred to
15 individually by reference to the local option gross receipts
16 tax with which it is associated."

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

19 "7-20E-7. COLLECTION BY DEPARTMENT--TRANSFER OF
20 PROCEEDS--DEDUCTIONS.--

21 A. The department shall collect each county local
22 option gross receipts tax imposed pursuant to the provisions of
23 the County Local Option Gross Receipts Taxes Act in the same
24 manner and at the same time it collects the state gross
25 receipts tax. The department shall collect each county local

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1 option compensating tax imposed pursuant to the provisions of
2 the County Local Option Gross Receipts Taxes Act in the same
3 manner and at the same time it collects the compensating tax.

4 B. The department shall withhold an administrative
5 fee pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA
6 1978. The department shall transfer to each county for which
7 it is collecting a county local option gross receipts tax
8 pursuant to the provisions of the County Local Option Gross
9 Receipts Taxes Act the amount of each county local option gross
10 receipts tax collected for that county less the administrative
11 fee withheld and less any disbursements for tax credits,
12 refunds and the payment of interest applicable to the tax. The
13 department shall transfer to each county for which it is
14 collecting a county local option compensating tax pursuant to
15 the provisions of the County Local Option Gross Receipts Taxes
16 Act the amount of each local option compensating tax collected
17 for that county less any disbursements for tax credits, refunds
18 and the payment of interest applicable to the tax. The
19 transfer [~~to the county~~] shall be made within the month
20 following the month in which the tax is collected."

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

23 "7-20F-3. COUNTY CORRECTIONAL FACILITY GROSS RECEIPTS TAX
24 AND COUNTY CORRECTIONAL FACILITY COMPENSATING TAX--AUTHORITY TO
25 IMPOSE--RATE--ORDINANCE REQUIREMENTS--REFERENDUM.--

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1 A. The majority of the members elected to the
2 county board may enact an ordinance imposing on a countywide
3 basis an excise tax not to exceed a rate of one-eighth percent
4 of the gross receipts of any person engaging in business in the
5 county, including all municipalities within the county.

6 B. The tax imposed pursuant to Subsection A of this
7 section may be referred to as the "county correctional facility
8 gross receipts tax".

9 C. An ordinance imposing a county correctional
10 facility gross receipts tax shall also impose a tax on the use
11 of property in the county if the use of the property is subject
12 to the compensating tax. This tax may be referred to as the
13 "county correctional facility compensating tax". The rate of
14 the county correctional facility compensating tax imposed shall
15 be the same as the rate of county correctional facility gross
16 receipts tax imposed. If, at the time this 2005 act becomes
17 effective, a county has in effect a county correctional
18 facility gross receipts tax, a county correctional facility
19 compensating tax is hereby imposed at the same rate, effective
20 on the effective date of this 2005 act.

21 [~~C.~~] D. Any ordinance imposing a county
22 correctional facility gross receipts tax and county
23 correctional facility compensating tax pursuant to this section
24 shall:

25 (1) impose the [~~tax~~] taxes in any number of

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1 increments of one-sixteenth percent not to exceed an aggregate
2 amount of one-eighth percent; provided that the rates of the
3 two taxes are the same;

4 (2) specify that the imposition of the [~~tax~~]
5 taxes will begin on either July 1 or January 1, whichever
6 occurs first after the expiration of at least three months from
7 the date that the department is notified personally or by mail
8 by the county of adoption of the ordinance; and

9 (3) dedicate the revenue from the county
10 correctional facility gross receipts tax and county
11 correctional facility compensating tax:

12 (a) for the purpose of operating,
13 maintaining, constructing, purchasing, furnishing, equipping,
14 rehabilitating, expanding or improving a
15 judicial-correctional or a county correctional facility or the
16 grounds of a judicial-correctional or county correctional
17 facility, including acquiring and improving parking lots,
18 landscaping or any combination of the foregoing;

19 (b) for the purpose of transporting or
20 extraditing prisoners; or

21 (c) to payment of principal and interest
22 on revenue bonds or refunding bonds issued pursuant to the
23 provisions of the County Correctional Facility Gross Receipts
24 Tax Act.

25 [~~D.~~] E. An ordinance imposing a county correctional

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1 facility gross receipts tax and county correctional facility
2 compensating tax pursuant to this section shall be subject to
3 optional referendum selection by the governing body, as
4 provided in Subsection A of Section 7-20E-3 NMSA 1978.

5 ~~[E.]~~ F. If the county has pledged the revenue from
6 imposition of the county correctional facilities gross receipts
7 tax and county correctional facility compensating tax to the
8 repayment of bonds or other indebtedness, revenue produced by
9 the imposition of a county correctional facility gross receipts
10 tax and county correctional facility compensating tax that is
11 in excess of the annual principal and interest due on bonds
12 secured by a pledge of the county correctional facility gross
13 receipts tax and county correctional facility compensating tax
14 may be accumulated in a debt service reserve account until an
15 amount equal to the maximum amount permitted pursuant to the
16 provisions of the United States treasury regulations is
17 accumulated in the debt service reserve account. After the
18 debt service reserve account requirements have been met, the
19 excess revenue shall be accumulated in an extraordinary
20 mandatory redemption fund and annually used to redeem the bonds
21 prior to their stated maturity date.

22 ~~[F.]~~ G. If the county has pledged the revenue from
23 imposition of the county correctional ~~[facilities]~~ facility
24 gross receipts tax and county correctional facility
25 compensating tax to the repayment of bonds or other

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

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

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

17 "7-20F-5. COLLECTION BY DEPARTMENT--TRANSFER OF
18 PROCEEDS--DEDUCTIONS.--

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

25 B. The department shall remit to each county for

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

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

11 "7-20F-7. REVENUE BONDS--AUTHORITY TO ISSUE--ORDINANCE
12 AUTHORIZING ISSUE--PLEDGE OF REVENUE.--

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

20 B. A county board, by majority vote, may adopt an
21 ordinance providing for issuance of revenue bonds pursuant to
22 the provisions of the County Correctional Facility Gross
23 Receipts Tax Act, the principal and interest of which shall be
24 paid from the revenue derived by the county from the county
25 correctional facility gross receipts tax, the county

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1 correctional facility compensating tax and any other revenue
2 that the county may dedicate to the payment of the revenue
3 bonds.

4 C. Revenue bonds or refunding revenue bonds issued
5 as authorized pursuant to the County Correctional Facility
6 Gross Receipts Tax Act are:

- 7 (1) not general obligations of the county; and
 - 8 (2) collectible only from the county
- 9 correctional facility gross receipts tax, the county
10 correctional facility compensating tax and, if authorized,
11 other properly pledged revenues, and each bond shall be payable
12 solely from the properly pledged revenues and the bondholders
13 shall not look to any other county fund for the payment of the
14 interest and principal of the bonds."

15 Section 23. APPLICABILITY.--The provisions of this act
16 are applicable to use of tangible personal property on or after
17 July 1, 2005.

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