

1 SENATE BILL 540

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 John Arthur Smith

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9  
10 AN ACT

11 RELATING TO TAXATION; ELIMINATING THE FOOD AND MEDICAL HOLD  
12 HARMLESS PROVISIONS OVER A TEN-YEAR PERIOD; ALLOWING  
13 MUNICIPALITIES AND COUNTIES THE DISCRETION TO IMPOSE A GROSS  
14 RECEIPTS TAX THROUGH AN ORDINANCE THAT DOES NOT PROVIDE CERTAIN  
15 DEDUCTIONS CONTAINED IN THE GROSS RECEIPTS AND COMPENSATING TAX  
16 ACT.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 7-1-6.46 NMSA 1978 (being Laws 2004,  
20 Chapter 116, Section 1, as amended) is amended to read:

21 "7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR  
22 FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES  
23 DEDUCTION.--

24 A. For a municipality that has not elected to  
25 impose a gross receipts tax through an ordinance that does not

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1 provide a deduction contained in the Gross Receipts and  
2 Compensating Tax Act and that has a population of less than ten  
3 thousand according to the most recent federal decennial census,  
4 a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
5 made to a municipality in an amount, subject to any increase or  
6 decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to  
7 the sum of:

8 [~~(1)~~] ~~for a municipality having a population of~~  
9 ~~less than ten thousand according to the most recent federal~~  
10 ~~decennial census and having per capita taxable gross receipts~~  
11 ~~for the previous calendar year that are less than the average~~  
12 ~~per capita taxable gross receipts for all municipalities for~~  
13 ~~that same calendar year.~~

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

21 [~~(b)~~] (2) the total deductions claimed  
22 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
23 from business locations attributable to the municipality  
24 multiplied by the sum of the combined rate of all municipal  
25 local option gross receipts taxes in effect in the municipality

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1 for the month plus one and two hundred twenty-five thousandths  
2 percent. [~~or~~

3 ~~(2)]~~ B. For a municipality not described in  
4 [Paragraph (1) of this] Subsection A of this section, a  
5 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be  
6 made to the municipality in an amount, subject to any increase  
7 or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal  
8 to the sum of:

9 [~~(a)]~~ (1) the total deductions claimed  
10 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
11 from business locations attributable to the municipality  
12 multiplied by the sum of the combined rate of all municipal  
13 local option gross receipts taxes in effect in the municipality  
14 on January 1, 2007 plus one and two hundred twenty-five  
15 thousandths percent in the following percentages:

16 (a) before July 1, 2014, one hundred  
17 percent;

18 (b) on or after July 1, 2014 and prior  
19 to July 1, 2015, ninety percent;

20 (c) on or after July 1, 2015 and prior  
21 to July 1, 2016, eighty percent;

22 (d) on or after July 1, 2016 and prior  
23 to July 1, 2017, seventy percent;

24 (e) on or after July 1, 2017 and prior  
25 to July 1, 2018, sixty percent;

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1                    (f) on or after July 1, 2018 and prior  
2 to July 1, 2019, fifty percent;

3                    (g) on or after July 1, 2019 and prior  
4 to July 1, 2020, forty percent;

5                    (h) on or after July 1, 2020 and prior  
6 to July 1, 2021, thirty percent;

7                    (i) on or after July 1, 2021 and prior  
8 to July 1, 2022, twenty percent; and

9                    (j) on or after July 1, 2022 and prior  
10 to July 1, 2023, ten percent; and

11                    [~~(b)~~] (2) the total deductions claimed  
12 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
13 from business locations attributable to the municipality  
14 multiplied by the sum of the combined rate of all municipal  
15 local option gross receipts taxes in effect in the municipality  
16 on January 1, 2007 plus one and two hundred twenty-five  
17 thousandths percent in the following percentages:

18                    (a) before July 1, 2014, one hundred  
19 percent;

20                    (b) on or after July 1, 2014 and prior  
21 to July 1, 2015, ninety percent;

22                    (c) on or after July 1, 2015 and prior  
23 to July 1, 2016, eighty percent;

24                    (d) on or after July 1, 2016 and prior  
25 to July 1, 2017, seventy percent;

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1                   (e) on or after July 1, 2017 and prior  
2 to July 1, 2018, sixty percent;

3                   (f) on or after July 1, 2018 and prior  
4 to July 1, 2019, fifty percent;

5                   (g) on or after July 1, 2019 and prior  
6 to July 1, 2020, forty percent;

7                   (h) on or after July 1, 2020 and prior  
8 to July 1, 2021, thirty percent;

9                   (i) on or after July 1, 2021 and prior  
10 to July 1, 2022, twenty percent; and

11                   (j) on or after July 1, 2022 and prior  
12 to July 1, 2023, ten percent.

13                   ~~[B.]~~ C. The distribution pursuant to ~~[Subsection]~~  
14 Subsections A and B of this section is in lieu of revenue that  
15 would have been received by the municipality but for the  
16 deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978.  
17 The distribution shall be considered gross receipts tax revenue  
18 and shall be used by the municipality in the same manner as  
19 gross receipts tax revenue, including payment of gross receipts  
20 tax revenue bonds. A distribution pursuant to this section to  
21 a municipality not described in Subsection A of this section or  
22 to a municipality that has imposed a gross receipts tax through  
23 an ordinance that does not provide a deduction contained in the  
24 Gross Receipts and Compensating Tax Act shall not be made on or  
25 after July 1, 2023.

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1           D. If the reductions made by this 2013 act to the  
2 distributions made pursuant to Subsections A and B of this  
3 section impair the ability of a municipality to meet its  
4 principal or interest payment obligations for revenue bonds  
5 that are outstanding prior to July 1, 2013 and that are secured  
6 by the pledge of all or part of the municipality's revenue from  
7 the distribution made pursuant to this section, then the amount  
8 distributed pursuant to this section to that municipality shall  
9 be increased by an amount sufficient to meet the required  
10 payment; provided that the total amount distributed to that  
11 municipality pursuant to this section does not exceed the  
12 amount that would have been due that municipality pursuant to  
13 this section as it was in effect on June 30, 2013.

14           ~~[G-]~~ E. For the purposes of this section, "business  
15 locations attributable to the municipality" means business  
16 locations:

- 17                   (1) within the municipality;
- 18                   (2) on land owned by the state, commonly known  
19 as the "state fairgrounds", within the exterior boundaries of  
20 the municipality;
- 21                   (3) outside the boundaries of the municipality  
22 on land owned by the municipality; and
- 23                   (4) on an Indian reservation or pueblo grant  
24 in an area that is contiguous to the municipality and in which  
25 the municipality performs services pursuant to a contract

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1 between the municipality and the Indian tribe or Indian pueblo  
2 if:

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

8 (b) the governing body of the  
9 municipality has submitted a copy of the contract to the  
10 secretary.

11 ~~[D-]~~ F. A distribution pursuant to this section may  
12 be adjusted for a distribution made to a tax increment  
13 development district with respect to a portion of a gross  
14 receipts tax increment dedicated by a municipality pursuant to  
15 the Tax Increment for Development Act."

16 SECTION 2. Section 7-1-6.47 NMSA 1978 (being Laws 2004,  
17 Chapter 116, Section 2, as amended) is amended to read:

18 "7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR FOOD  
19 DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

20 A. For a county that has not elected to impose a  
21 gross receipts tax through an ordinance that does not provide a  
22 deduction contained in the Gross Receipts and Compensating Tax  
23 Act and that has a population of less than forty-eight thousand  
24 according to the most recent federal decennial census, a  
25 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be

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1 made to a county in an amount, subject to any increase or  
2 decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to  
3 the sum of:

4 ~~[(1) for a county having a population of less~~  
5 ~~than forty-eight thousand according to the most recent federal~~  
6 ~~decennial census;~~

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

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

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

25 ~~[(d)]~~ (4) the total deductions claimed

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1 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
2 from business locations in the county but not within a  
3 municipality multiplied by the combined rate of all county  
4 local option gross receipts taxes in effect for the month that  
5 are imposed in the county area not within a municipality. [~~or~~

6 ~~(2)~~] B. For a county not described in [~~Paragraph~~  
7 ~~(1) of this~~] Subsection A of this section, a distribution  
8 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the  
9 county in an amount, subject to any increase or decrease made  
10 pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

11 [~~(a)~~] (1) the total deductions claimed  
12 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
13 from business locations within a municipality in the county  
14 multiplied by the combined rate of all county local option  
15 gross receipts taxes in effect on January 1, 2007 that are  
16 imposed throughout the county in the following percentages:

17 (a) before July 1, 2014, one hundred  
18 percent;

19 (b) on or after July 1, 2014 and prior  
20 to July 1, 2015, ninety percent;

21 (c) on or after July 1, 2015 and prior  
22 to July 1, 2016, eighty percent;

23 (d) on or after July 1, 2016 and prior  
24 to July 1, 2017, seventy percent;

25 (e) on or after July 1, 2017 and prior

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1 to July 1, 2018, sixty percent;

2 (f) on or after July 1, 2018 and prior  
3 to July 1, 2019, fifty percent;

4 (g) on or after July 1, 2019 and prior  
5 to July 1, 2020, forty percent;

6 (h) on or after July 1, 2020 and prior  
7 to July 1, 2021, thirty percent;

8 (i) on or after July 1, 2021 and prior  
9 to July 1, 2022, twenty percent; and

10 (j) on or after July 1, 2022 and prior  
11 to July 1, 2023, ten percent;

12 [~~(b)~~] (2) the total deductions claimed  
13 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
14 from business locations in the county but not within a  
15 municipality multiplied by the combined rate of all county  
16 local option gross receipts taxes in effect on January 1, 2007  
17 that are imposed in the county area not within a municipality  
18 in the following percentages:

19 (a) before July 1, 2014, one hundred  
20 percent;

21 (b) on or after July 1, 2014 and prior  
22 to July 1, 2015, ninety percent;

23 (c) on or after July 1, 2015 and prior  
24 to July 1, 2016, eighty percent;

25 (d) on or after July 1, 2016 and prior

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1 to July 1, 2017, seventy percent;

2 (e) on or after July 1, 2017 and prior  
3 to July 1, 2018, sixty percent;

4 (f) on or after July 1, 2018 and prior  
5 to July 1, 2019, fifty percent;

6 (g) on or after July 1, 2019 and prior  
7 to July 1, 2020, forty percent;

8 (h) on or after July 1, 2020 and prior  
9 to July 1, 2021, thirty percent;

10 (i) on or after July 1, 2021 and prior  
11 to July 1, 2022, twenty percent; and

12 (j) on or after July 1, 2022 and prior  
13 to July 1, 2023, ten percent;

14 [~~e~~] (3) the total deductions claimed  
15 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
16 from 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 on January 1, 2007 that are  
19 imposed throughout the county in the following percentages:

20 (a) before July 1, 2014, one hundred  
21 percent;

22 (b) on or after July 1, 2014 and prior  
23 to July 1, 2015, ninety percent;

24 (c) on or after July 1, 2015 and prior  
25 to July 1, 2016, eighty percent;

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1                    (d) on or after July 1, 2016 and prior  
2 to July 1, 2017, seventy percent;

3                    (e) on or after July 1, 2017 and prior  
4 to July 1, 2018, sixty percent;

5                    (f) on or after July 1, 2018 and prior  
6 to July 1, 2019, fifty percent;

7                    (g) on or after July 1, 2019 and prior  
8 to July 1, 2020, forty percent;

9                    (h) on or after July 1, 2020 and prior  
10 to July 1, 2021, thirty percent;

11                    (i) on or after July 1, 2021 and prior  
12 to July 1, 2022, twenty percent; and

13                    (j) on or after July 1, 2022 and prior  
14 to July 1, 2023, ten percent; and

15                    [~~(d)~~] (4) the total deductions claimed  
16 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
17 from business locations in the county but not within a  
18 municipality multiplied by the combined rate of all county  
19 local option gross receipts taxes in effect on January 1, 2007  
20 that are imposed in the county area not within a municipality  
21 in the following percentages:

22                    (a) before July 1, 2014, one hundred  
23 percent;

24                    (b) on or after July 1, 2014 and prior  
25 to July 1, 2015, ninety percent;

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1                    (c) on or after July 1, 2015 and prior  
2 to July 1, 2016, eighty percent;

3                    (d) on or after July 1, 2016 and prior  
4 to July 1, 2017, seventy percent;

5                    (e) on or after July 1, 2017 and prior  
6 to July 1, 2018, sixty percent;

7                    (f) on or after July 1, 2018 and prior  
8 to July 1, 2019, fifty percent;

9                    (g) on or after July 1, 2019 and prior  
10 to July 1, 2020, forty percent;

11                   (h) on or after July 1, 2020 and prior  
12 to July 1, 2021, thirty percent;

13                   (i) on or after July 1, 2021 and prior  
14 to July 1, 2022, twenty percent; and

15                   (j) on or after July 1, 2022 and prior  
16 to July 1, 2023, ten percent.

17                   ~~[B-]~~ C. The distribution pursuant to ~~[Subsection]~~  
18 Subsections A and B of this section is in lieu of revenue that  
19 would have been received by the county but for the deductions  
20 provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The  
21 distribution shall be considered gross receipts tax revenue and  
22 shall be used by the county in the same manner as gross  
23 receipts tax revenue, including payment of gross receipts tax  
24 revenue bonds. A distribution pursuant to this section to a  
25 county not described in Subsection A of this section or to a

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1 county that has imposed a gross receipts tax through an  
2 ordinance that does not provide a deduction contained in the  
3 Gross Receipts and Compensating Tax Act shall not be made on or  
4 after July 1, 2023.

5 D. If the reductions made by this 2013 act to the  
6 distributions made pursuant to Subsections A and B of this  
7 section impair the ability of a county to meet its principal or  
8 interest payment obligations for revenue bonds that are  
9 outstanding prior to July 1, 2013 and that are secured by the  
10 pledge of all or part of the county's revenue from the  
11 distribution made pursuant to this section, then the amount  
12 distributed pursuant to this section to that county shall be  
13 increased by an amount sufficient to meet the required payment;  
14 provided that the total amount distributed to that county  
15 pursuant to this section does not exceed the amount that would  
16 have been due that county pursuant to this section as it was in  
17 effect on June 30, 2013.

18 ~~[G.]~~ E. A distribution pursuant to this section may  
19 be adjusted for a distribution made to a tax increment  
20 development district with respect to a portion of a gross  
21 receipts tax increment dedicated by a county pursuant to the  
22 Tax Increment for Development Act."

23 **SECTION 3.** Section 7-19D-4 NMSA 1978 (being Laws 1993,  
24 Chapter 346, Section 4) is amended to read:

25 "7-19D-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS

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1 OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND REQUIREMENTS  
2 OF THE DEPARTMENT.--

3 A. An ordinance imposing a tax [~~under~~] pursuant to  
4 the provisions of the Municipal Local Option Gross Receipts  
5 Taxes Act shall adopt by reference the same definitions and the  
6 same provisions relating to exemptions and deductions as are  
7 contained in the Gross Receipts and Compensating Tax Act then  
8 in effect and as it may be amended from time to time, except  
9 that the ordinance shall not be required to provide a deduction  
10 provided pursuant to Section 7-9-46, 7-9-51, 7-9-52, 7-9-52.1,  
11 7-9-54.2, 7-9-54.3, 7-9-54.5, 7-9-56, 7-9-56.3, 7-9-57.2,  
12 7-9-60, 7-9-61.2, 7-9-62, 7-9-73, 7-9-73.2, 7-9-77.1, 7-9-83,  
13 7-9-86, 7-9-92, 7-9-93, 7-9-95, 7-9-98 through 7-9-101,  
14 7-9-103.1, 7-9-103.2, 7-9-104, 7-9-106, 7-9-107, 7-9-109 or  
15 7-9-111 through 7-9-114 NMSA 1978. Except as provided pursuant  
16 to Subsection C of this section, a municipality may continue to  
17 enact and repeal an ordinance authorized as provided pursuant  
18 to the Municipal Local Option Gross Receipts Taxes Act;  
19 provided that the model ordinance establishing the tax base and  
20 allowing or prohibiting the deductions shall not be modified  
21 for a period of two years, except to conform with the Gross  
22 Receipts and Compensating Tax Act.

23 B. The governing body of any municipality imposing  
24 a tax [~~under~~] pursuant to provisions of the Municipal Local  
25 Option Gross Receipts Taxes Act shall impose the tax by

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1 adopting the model ordinance with respect to the tax furnished  
2 to the municipality by the department. An ordinance that does  
3 not conform substantially to the model ordinance of the  
4 department is not valid.

5 C. A municipality that has a population of less  
6 than ten thousand according to the most recent federal  
7 decennial census shall by January 1, 2014, and every ten years  
8 thereafter, elect whether to impose a gross receipts tax  
9 through an ordinance that does not provide a deduction  
10 contained in the Gross Receipts and Compensating Tax Act. Once  
11 that election occurs, that municipality shall maintain the  
12 model ordinance without adding or removing a deduction not  
13 required to be provided pursuant to Subsection A of this  
14 section for a period of ten years, except to conform to the  
15 extent necessary with the Gross Receipts and Compensating Tax  
16 Act."

17 SECTION 4. Section 7-20E-4 NMSA 1978 (being Laws 1993,  
18 Chapter 354, Section 4) is amended to read:

19 "7-20E-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS  
20 OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND REQUIREMENTS  
21 OF THE DEPARTMENT.--

22 A. An ordinance imposing a tax [~~under~~] pursuant to  
23 the provisions of the County Local Option Gross Receipts Taxes  
24 Act shall adopt by reference the same definitions and the same  
25 provisions relating to exemptions and deductions as are

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1 contained in the Gross Receipts and Compensating Tax Act then  
2 in effect and as it may be amended from time to time, except  
3 that the ordinance shall not be required to provide a deduction  
4 provided pursuant to Section 7-9-46, 7-9-51, 7-9-52, 7-9-52.1,  
5 7-9-54.2, 7-9-54.3, 7-9-54.5, 7-9-56, 7-9-56.3, 7-9-57.2,  
6 7-9-60, 7-9-61.2, 7-9-62, 7-9-73, 7-9-73.2, 7-9-77.1, 7-9-83,  
7 7-9-86, 7-9-92, 7-9-93, 7-9-95, 7-9-98 through 7-9-101,  
8 7-9-103.1, 7-9-103.2, 7-9-104, 7-9-106, 7-9-107, 7-9-109 or  
9 7-9-111 through 7-9-114 NMSA 1978. Except as provided pursuant  
10 to Subsection C of this section, a county may continue to enact  
11 and repeal an ordinance authorized as provided pursuant to the  
12 County Local Option Gross Receipts Taxes Act; provided that the  
13 model ordinance establishing the tax base and allowing  
14 deductions shall not be modified for a period of two years,  
15 except to conform to the extent necessary with the Gross  
16 Receipts and Compensating Tax Act.

17 B. The governing body of any county imposing a tax  
18 [~~under~~] authorized by the County Local Option Gross Receipts  
19 Taxes Act shall impose the tax by adopting the model ordinance  
20 with respect to the tax furnished to the county by the  
21 department. An ordinance that does not conform substantially  
22 to the model ordinance of the department is not valid.

23 C. A county that has a population of less than  
24 forty-eight thousand according to the most recent federal  
25 decennial census shall by January 1, 2014, and every ten years

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1 thereafter, elect whether to impose a gross receipts tax  
2 through an ordinance that does not provide a deduction  
3 contained in the Gross Receipts and Compensating Tax Act. Once  
4 that election occurs, that county shall maintain the model  
5 ordinance without adding or removing a deduction not required  
6 to be provided pursuant to Subsection A of this section for a  
7 period of ten years, except to conform to the extent necessary  
8 with the Gross Receipts and Compensating Tax Act."

9 SECTION 5. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2013.