

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 669

3 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

4  
5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO TAXATION; CHANGING PROCEDURES FOR ADJUSTING CERTAIN  
12 DISTRIBUTIONS AND TRANSFERS TO MUNICIPALITIES AND COUNTIES;  
13 ALLOWING THE TAXATION AND REVENUE DEPARTMENT TO, IN CERTAIN  
14 CIRCUMSTANCES, REVEAL TO LOCAL GOVERNMENTS A RANGE OF GROSS  
15 RECEIPTS TAXES PAID BY TAXPAYERS FROM BUSINESS LOCATIONS  
16 ATTRIBUTABLE TO THOSE LOCAL GOVERNMENTS.

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

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

21 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO  
22 MUNICIPALITIES OR COUNTIES.--

23 A. The provisions of this section apply to:

24 (1) any distribution to a municipality [~~of~~  
25 ~~gross receipts taxes~~] pursuant to Section 7-1-6.4 [~~NMSA 1978 or~~

.201082.1

underscored material = new  
[bracketed material] = delete

1 ~~of interstate telecommunications gross receipts tax pursuant to~~  
2 ~~Section]~~, 7-1-6.36 or 7-1-6.46 NMSA 1978;

3 (2) any transfer to a municipality with  
4 respect to any local option gross receipts tax imposed by that  
5 municipality;

6 (3) any transfer to a county with respect to  
7 any local option gross receipts tax imposed by that county;

8 (4) any distribution to a county pursuant to  
9 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

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

12 (6) any transfer to a county with respect to  
13 any tax imposed in accordance with the Local Liquor Excise Tax  
14 Act;

15 [~~(7)~~] ~~any distribution to a municipality or a~~  
16 ~~county of cigarette taxes pursuant to Sections 7-1-6.11,~~  
17 ~~7-12-15 and 7-12-16 NMSA 1978;~~

18 ~~(8)]~~ (7) any distribution to a county from the  
19 county government road fund pursuant to Section 7-1-6.26 NMSA  
20 1978;

21 [~~(9)~~] (8) any distribution to a municipality  
22 of gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

23 [~~(10)~~] (9) any distribution to a municipality  
24 of compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

25 [~~B. If the secretary determines that any prior~~

1 ~~distribution or transfer to a political subdivision was~~  
2 ~~erroneous, the secretary shall increase or decrease the next~~  
3 ~~distribution or transfer amount for that political subdivision~~  
4 ~~after the determination, except as provided in Subsection C, D~~  
5 ~~or E of this section, by the amount necessary to correct the~~  
6 ~~error. Subject to the provisions of Subsection E of this~~  
7 ~~section, the secretary shall notify the political subdivision~~  
8 ~~of the amount of each increase or decrease.~~

9 ~~G. No decrease shall be made to current or future~~  
10 ~~distributions or transfers to a political subdivision for any~~  
11 ~~excess distribution or transfer made to that political~~  
12 ~~subdivision more than one year prior to the calendar year in~~  
13 ~~which the determination of the secretary was made.~~

14 ~~D. The secretary, in lieu of recovery from the next~~  
15 ~~distribution or transfer amount, may recover an excess~~  
16 ~~distribution or transfer of one hundred dollars (\$100) or more~~  
17 ~~to the political subdivision in installments from current and~~  
18 ~~future distributions or transfers to that political subdivision~~  
19 ~~pursuant to an agreement with the officials of the political~~  
20 ~~subdivision whenever the amount of the distribution or transfer~~  
21 ~~decrease for the political subdivision exceeds ten percent of~~  
22 ~~the average distribution or transfer amount for that political~~  
23 ~~subdivision for the twelve months preceding the month in which~~  
24 ~~the secretary's determination is made; provided that for the~~  
25 ~~purposes of this subsection, the "average distribution or~~

.201082.1

1 ~~transfer amount" shall be the arithmetic mean of the~~  
2 ~~distribution or transfer amounts within the twelve months~~  
3 ~~immediately preceding the month in which the determination is~~  
4 ~~made.~~

5 ~~E. Except for the provisions of this section, if~~  
6 ~~the amount by which a distribution or transfer would be~~  
7 ~~adjusted pursuant to Subsection B of this section is one~~  
8 ~~hundred dollars (\$100) or less, no adjustment or notice need be~~  
9 ~~made.]~~

10 B. Before making a distribution or transfer  
11 specified in Subsection A of this section to a municipality or  
12 county for the month, amounts comprising the net receipts shall  
13 be segregated into two mutually exclusive categories. One  
14 category shall be for amounts relating to the current month,  
15 and the other category shall be for amounts relating to prior  
16 periods. The total of each category for a municipality or  
17 county shall be reported each month to that municipality or  
18 county. If the total of the amounts relating to prior periods  
19 is less than zero and its absolute value exceeds the greater of  
20 one hundred dollars (\$100) or an amount equal to twenty percent  
21 of the average distribution or transfer amount for that  
22 municipality or county, then the following procedures shall be  
23 carried out:

24 (1) all negative amounts relating to any  
25 period prior to the three calendar years preceding the year of

1 the current month, net of any positive amounts in that same  
2 time period for the same taxpayers to which the negative  
3 amounts pertain, shall be excluded from the total relating to  
4 prior periods. Except as provided in Paragraph (2) of this  
5 subsection, the net receipts to be distributed or transferred  
6 to the municipality or county shall be adjusted to equal the  
7 amount for the current month plus the revised total for prior  
8 periods; and

9 (2) if the revised total for prior periods  
10 determined pursuant to Paragraph (1) of this subsection is  
11 negative and its absolute value exceeds the greater of one  
12 hundred dollars (\$100) or an amount equal to twenty percent of  
13 the average distribution or transfer amount for that  
14 municipality or county, the revised total for prior periods  
15 shall be excluded from the distribution or transfers and the  
16 net receipts to be distributed or transferred to the  
17 municipality or county shall be equal to the amount for the  
18 current month.

19 C. The department shall recover from a municipality  
20 or county the amount excluded by Paragraph (2) of Subsection B  
21 of this section. This amount may be referred to as the  
22 "recoverable amount".

23 D. Prior to or concurrently with the distribution  
24 or transfer to the municipality or county of the adjusted net  
25 receipts, the department shall notify the municipality or

.201082.1

1 county whose distribution or transfer has been adjusted  
2 pursuant to Paragraph (2) of Subsection B of this section:

3 (1) that the department has made such an  
4 adjustment, that the department has determined that a specified  
5 amount is recoverable from the municipality or county and that  
6 the department intends to recover that amount from future  
7 distributions or transfers to the municipality or county;

8 (2) that the municipality or county has ninety  
9 days from the date notice is made to enter into a mutually  
10 agreeable repayment agreement with the department;

11 (3) that if the municipality or county takes  
12 no action within the ninety-day period, the department will  
13 recover the amount from the next six distributions or transfers  
14 following the expiration of the ninety days; and

15 (4) that the municipality or county may  
16 inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application  
17 for a claim for refund that gave rise to the recoverable  
18 amount, exclusive of any amended returns that may be attached  
19 to the application.

20 E. No earlier than ninety days from the date notice  
21 pursuant to Subsection D of this section is given, the  
22 department shall begin recovering the recoverable amount from a  
23 municipality or county as follows:

24 (1) the department may collect the recoverable  
25 amount by:

1                   (a) decreasing distributions or  
2 transfers to the municipality or county in accordance with a  
3 repayment agreement entered into with the municipality or  
4 county; or

5                   (b) except as provided in Paragraphs (2)  
6 and (3) of this subsection, if the municipality or county fails  
7 to act within the ninety days, decreasing the amount of the  
8 next six distributions or transfers to the municipality or  
9 county following expiration of the ninety-day period in  
10 increments as nearly equal as practicable and sufficient to  
11 recover the amount;

12                   (2) if, pursuant to Subsection B of this  
13 section, the secretary determines that the recoverable amount  
14 is more than fifty percent of the average distribution or  
15 transfer of net receipts for that municipality or county, the  
16 secretary:

17                   (a) shall recover only up to fifty  
18 percent of the average distribution or transfer of net receipts  
19 for that municipality or county; and

20                   (b) may, in the secretary's discretion,  
21 waive recovery of any portion of the recoverable amount,  
22 subject to review by the state board of finance; and

23                   (3) if, after application of a refund claim,  
24 audit adjustment, correction of a mistake by the department or  
25 other adjustment of a prior period, but prior to any recovery

.201082.1

underscored material = new  
[bracketed material] = delete

1 of the department pursuant to this section, the total net  
2 receipts of a municipality or county for the twelve-month  
3 period beginning with the current month are reduced or are  
4 projected to be reduced to less than fifty percent of the  
5 average distribution or transfer of net receipts, the secretary  
6 may waive recovery of any portion of the recoverable amount,  
7 subject to review by the state board of finance.

8 F. No later than ninety days from the date notice  
9 pursuant to Subsection D of this section is given, the  
10 department shall provide the municipality or county adequate  
11 opportunity to review an application for a claim for refund  
12 that gave rise to the recoverable amount, exclusive of any  
13 amended returns that may be attached to the application,  
14 pursuant to Section 7-1-8.9 NMSA 1978.

15 ~~[F.]~~ G. The secretary is authorized to decrease a  
16 distribution or transfer to a municipality or county upon being  
17 directed to do so by the secretary of finance and  
18 administration pursuant to the State Aid Intercept Act or to  
19 redirect a distribution or transfer to the New Mexico finance  
20 authority pursuant to an ordinance or a resolution passed by  
21 the county or municipality and a written agreement of the  
22 municipality or county and the New Mexico finance authority.  
23 Upon direction to decrease a distribution or transfer or notice  
24 to redirect a distribution or transfer to a municipality or  
25 county, the secretary shall decrease or redirect the next



1 designated distribution or transfer, and succeeding  
2 distributions or transfers as necessary, by the amount of the  
3 state distributions intercept authorized by the secretary of  
4 finance and administration pursuant to the State Aid Intercept  
5 Act or by the amount of the state distribution intercept  
6 authorized pursuant to an ordinance or a resolution passed by  
7 the county or municipality and a written agreement with the New  
8 Mexico finance authority. The secretary shall transfer the  
9 state distributions intercept amount to the municipal or county  
10 treasurer or other person designated by the secretary of  
11 finance and administration or to the New Mexico finance  
12 authority pursuant to written agreement to pay the debt service  
13 to avoid default on qualified local revenue bonds or meet other  
14 local revenue bond, loan or other debt obligations of the  
15 municipality or county to the New Mexico finance authority. A  
16 decrease to or redirection of a distribution or transfer  
17 pursuant to this subsection that arose:

18 (1) prior to an adjustment of a distribution  
19 or transfer of net receipts creating a recoverable amount owed  
20 to the department takes precedence over any collection of any  
21 recoverable amount pursuant to Paragraph (2) of Subsection B of  
22 this section, which may be made only from the net amount of the  
23 distribution or transfer remaining after application of the  
24 decrease or redirection pursuant to this subsection; and

25 (2) after an adjustment of a distribution or

.201082.1

1 transfer of net receipts creating a recoverable amount owed to  
2 the department shall be subordinate to any collection of any  
3 recoverable amount pursuant to Paragraph (2) of Subsection B of  
4 this section.

5           ~~[G.]~~ H. Upon the direction of the secretary of  
6 finance and administration pursuant to Section 9-6-5.2 NMSA  
7 1978, the secretary shall temporarily withhold the balance of a  
8 distribution to a municipality or county, net of any decrease  
9 or redirected amount pursuant to Subsection G of this section  
10 and any recoverable amount pursuant to Paragraph (2) of  
11 Subsection B of this section, that has failed to submit an  
12 audit report required by the Audit Act or a financial report  
13 required by Subsection F of Section 6-6-2 NMSA 1978. The  
14 amount to be withheld, the source of the withheld distribution  
15 and the number of months that the distribution is to be  
16 withheld shall be as directed by the secretary of finance and  
17 administration. A distribution withheld pursuant to this  
18 subsection shall remain in the tax administration suspense fund  
19 until distributed to the municipality or county and shall not  
20 be distributed to the general fund. An amount withheld  
21 pursuant to this subsection shall be distributed to the  
22 municipality or county upon direction of the secretary of  
23 finance and administration.

24           I. As used in this section:

25                   (1) "amounts relating to the current month"

1 means any amounts included in the net receipts of the current  
2 month that represent payment of tax due for the current month,  
3 correction of amounts processed in the current month that  
4 relate to the current month or that otherwise relate to  
5 obligations due for the current month;

6 (2) "amounts relating to prior periods" means  
7 any amounts processed during the current month that adjust  
8 amounts processed in a period or periods prior to the current  
9 month regardless of whether the adjustment is a correction of a  
10 department error or due to the filing of amended returns,  
11 payment of department-issued assessments, filing or approval of  
12 claims for refund, audit adjustments or other cause;

13 (3) "average distribution or transfer amount"  
14 means the following amounts; provided that a distribution or  
15 transfer that is negative shall not be used in calculating the  
16 amounts:

17 (a) the annual average of the total  
18 amount distributed or transferred to a municipality or county  
19 in each of the three years preceding the current month;

20 (b) if a distribution or transfer to a  
21 municipality or county has been made for less than three years,  
22 the total amount distributed or transferred in the year  
23 preceding the current month; or

24 (c) if a municipality or county has not  
25 received distributions or transfers of net receipts for twelve

.201082.1

1 or more months, the monthly average of net receipts distributed  
2 or transferred to the municipality or county preceding the  
3 current month multiplied by twelve;

4 (4) "current month" means the month for which  
5 the distribution or transfer is being prepared; and

6 (5) "repayment agreement" means an agreement  
7 between the department and a municipality or county under which  
8 the municipality or county agrees to allow the department to  
9 recover an amount determined pursuant to Paragraph (2) of  
10 Subsection B of this section by decreasing distributions or  
11 transfers to the municipality or county for one or more months  
12 beginning with the distribution or transfer to be made with  
13 respect to a designated month. No interest shall be charged."

14 SECTION 2. Section 7-1-8.9 NMSA 1978 (being Laws 2009,  
15 Chapter 243, Section 11) is amended to read:

16 "7-1-8.9. INFORMATION THAT MAY BE REVEALED TO LOCAL  
17 GOVERNMENTS AND THEIR AGENCIES.--

18 A. An employee of the department may reveal to:

19 [A.] (1) the officials or employees of a  
20 municipality of this state authorized in a written request by  
21 the municipality for a period specified in the request within  
22 the twelve months preceding the request; provided that the  
23 municipality receiving the information has entered into a  
24 written agreement with the department that the information  
25 shall be used for tax purposes only and specifying that the

1 municipality is subject to the confidentiality provisions of  
2 Section 7-1-8 NMSA 1978 and the penalty provisions of Section  
3 7-1-76 NMSA 1978:

4 [~~1~~] (a) the names, taxpayer  
5 identification numbers and addresses of registered gross  
6 receipts taxpayers reporting gross receipts for that  
7 municipality under the Gross Receipts and Compensating Tax Act  
8 or a local option gross receipts tax imposed by that  
9 municipality. The department may also reveal the information  
10 described in this [~~paragraph~~] subparagraph quarterly or upon  
11 such other periodic basis as the secretary and the municipality  
12 may agree in writing;

13 (b) a range of taxable gross receipts of  
14 registered gross receipts paid by taxpayers from business  
15 locations attributable to that municipality under the Gross  
16 Receipts and Compensating Tax Act or a local option gross  
17 receipts tax imposed by that municipality; provided that  
18 authorization from the federal internal revenue service to  
19 reveal such information has been received. The department may  
20 also reveal the information described in this subparagraph  
21 quarterly or upon such other periodic basis as the secretary  
22 and the municipality may agree in writing; and

23 [~~2~~] (c) information indicating whether  
24 persons shown on a list of businesses located within that  
25 municipality furnished by the municipality have reported gross

.201082.1

1 receipts to the department but have not reported gross receipts  
2 for that municipality under the Gross Receipts and Compensating  
3 Tax Act or a local option gross receipts tax imposed by that  
4 municipality;

5 [B.] (2) the officials or employees of a  
6 county of this state authorized in a written request by the  
7 county for a period specified in the request within the twelve  
8 months preceding the request; provided that the county  
9 receiving the information has entered into a written agreement  
10 with the department that the information shall be used for tax  
11 purposes only and specifying that the county is subject to the  
12 confidentiality provisions of Section 7-1-8 NMSA 1978 and the  
13 penalty provisions of Section 7-1-76 NMSA 1978:

14 [(1)] (a) the names, taxpayer  
15 identification numbers and addresses of registered gross  
16 receipts taxpayers reporting gross receipts either for that  
17 county in the case of a local option gross receipts tax imposed  
18 on a countywide basis or only for the areas of that county  
19 outside of any incorporated municipalities within that county  
20 in the case of a county local option gross receipts tax imposed  
21 only in areas of the county outside of any incorporated  
22 municipalities. The department may also reveal the information  
23 described in this [paragraph] subparagraph quarterly or upon  
24 such other periodic basis as the secretary and the county may  
25 agree in writing;

1                   (b) a range of taxable gross receipts of  
 2 registered gross receipts paid by taxpayers from business  
 3 locations attributable either to that county in the case of a  
 4 local option gross receipts tax imposed on a countywide basis  
 5 or only to the areas of that county outside of any incorporated  
 6 municipalities within that county in the case of a county local  
 7 option gross receipts tax imposed only in areas of the county  
 8 outside of any incorporated municipalities; provided that  
 9 authorization from the federal internal revenue service to  
 10 reveal such information has been received. The department may  
 11 also reveal the information described in this subparagraph  
 12 quarterly or upon such other periodic basis as the secretary  
 13 and the county may agree in writing;

14                   [~~(2)~~] (c) in the case of a local option  
 15 gross receipts tax imposed by a county on a countywide basis,  
 16 information indicating whether persons shown on a list of  
 17 businesses located within the county furnished by the county  
 18 have reported gross receipts to the department but have not  
 19 reported gross receipts for that county under the Gross  
 20 Receipts and Compensating Tax Act or a local option gross  
 21 receipts tax imposed by that county on a countywide basis; and

22                   [~~(3)~~] (d) in the case of a local option  
 23 gross receipts tax imposed by a county only on persons engaging  
 24 in business in that area of the county outside of incorporated  
 25 municipalities, information indicating whether persons on a

.201082.1

1 list of businesses located in that county outside of the  
2 incorporated municipalities but within that county furnished by  
3 the county have reported gross receipts to the department but  
4 have not reported gross receipts for that county outside of the  
5 incorporated municipalities within that county under the Gross  
6 Receipts and Compensating Tax Act or a local option gross  
7 receipts tax imposed by the county only on persons engaging in  
8 business in that county outside of the incorporated  
9 municipalities; and

10 [~~G-~~] (3) officials or employees of a  
11 municipality or county of this state, authorized in a written  
12 request of the municipality or county, for purposes of  
13 inspection, the records of the department pertaining to an  
14 increase or decrease to a distribution or transfer made  
15 pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of  
16 reviewing the basis for the increase or decrease; provided that  
17 the municipality or county receiving the information has  
18 entered into a written agreement with the department that the  
19 information shall be used for tax purposes only and specifying  
20 that the municipality or county is subject to the  
21 confidentiality provisions of Section 7-1-8 NMSA 1978 and the  
22 penalty provisions of Section 7-1-76 NMSA 1978. The authorized  
23 officials or employees may only reveal the information provided  
24 in this [~~subsection~~] paragraph to another authorized official  
25 or employee, to an employee of the department, or a district

.201082.1



1 court, an appellate court or a federal court in a proceeding  
2 relating to a disputed distribution and in which both the state  
3 and the municipality or county are parties.

4 B. The department may require that a municipal or  
5 county official or employee satisfactorily complete appropriate  
6 training on protecting confidential information prior to  
7 receiving the information pursuant to Subsection A of this  
8 section."

9 SECTION 3. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2015.

underscoring material = new  
[bracketed material] = delete