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AN ACT

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

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

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

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

A. The provisions of this section apply to:

(1) any distribution to a municipality pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

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

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

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

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

1 1978;

2 (6) any transfer to a county with respect to
3 any tax imposed in accordance with the Local Liquor Excise
4 Tax Act;

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

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

10 (9) any distribution to a municipality of
11 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

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

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

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

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

25 D. Prior to or concurrently with the distribution

1 or transfer to the municipality or county of the adjusted net
2 receipts, the department shall notify the municipality or
3 county whose distribution or transfer has been adjusted
4 pursuant to Paragraph (2) of Subsection B of this section:

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

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

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

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

23 E. No earlier than ninety days from the date
24 notice pursuant to Subsection D of this section is given, the
25 department shall begin recovering the recoverable amount from

1 a municipality or county as follows:

2 (1) the department may collect the
3 recoverable amount by:

4 (a) decreasing distributions or
5 transfers to the municipality or county in accordance with a
6 repayment agreement entered into with the municipality or
7 county; or

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

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

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

23 (b) may, in the secretary's discretion,
24 waive recovery of any portion of the recoverable amount,
25 subject to approval by the state board of finance; and

1 (3) if, after application of a refund claim,
2 audit adjustment, correction of a mistake by the department
3 or other adjustment of a prior period, but prior to any
4 recovery of the department pursuant to this section, the
5 total net receipts of a municipality or county for the
6 twelve-month period beginning with the current month are
7 reduced or are projected to be reduced to less than fifty
8 percent of the average distribution or transfer of net
9 receipts, the secretary may waive recovery of any portion of
10 the recoverable amount, subject to approval by the state
11 board of finance.

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

19 G. On or before September 1 of each year beginning
20 in 2016, the secretary shall report to the state board of
21 finance and the legislative finance committee the total
22 recoverable amount waived pursuant to Subparagraph (b) of
23 Paragraph (2) and Paragraph (3) of Subsection E of this
24 section for each municipality and county in the prior fiscal
25 year.

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

1 debt obligations of the municipality or county to the
2 New Mexico finance authority. A decrease to or redirection
3 of a distribution or transfer pursuant to this subsection
4 that arose:

5 (1) prior to an adjustment of a distribution
6 or transfer of net receipts creating a recoverable amount
7 owed to the department takes precedence over any collection
8 of any recoverable amount pursuant to Paragraph (2) of
9 Subsection B of this section, which may be made only from the
10 net amount of the distribution or transfer remaining after
11 application of the decrease or redirection pursuant to this
12 subsection; and

13 (2) after an adjustment of a distribution or
14 transfer of net receipts creating a recoverable amount owed
15 to the department shall be subordinate to any collection of
16 any recoverable amount pursuant to Paragraph (2) of
17 Subsection B of this section.

18 I. Upon the direction of the secretary of finance
19 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
20 secretary shall temporarily withhold the balance of a
21 distribution to a municipality or county, net of any decrease
22 or redirected amount pursuant to Subsection H of this section
23 and any recoverable amount pursuant to Paragraph (2) of
24 Subsection B of this section, that has failed to submit an
25 audit report required by the Audit Act or a financial report

1 required by Subsection F of Section 6-6-2 NMSA 1978. The
2 amount to be withheld, the source of the withheld
3 distribution and the number of months that the distribution
4 is to be withheld shall be as directed by the secretary of
5 finance and administration. A distribution withheld pursuant
6 to this subsection shall remain in the tax administration
7 suspense fund until distributed to the municipality or county
8 and shall not be distributed to the general fund. An amount
9 withheld pursuant to this subsection shall be distributed to
10 the municipality or county upon direction of the secretary of
11 finance and administration.

12 J. As used in this section:

13 (1) "amounts relating to the current month"
14 means any amounts included in the net receipts of the current
15 month that represent payment of tax due for the current
16 month, correction of amounts processed in the current month
17 that relate to the current month or that otherwise relate to
18 obligations due for the current month;

19 (2) "amounts relating to prior periods"
20 means any amounts processed during the current month that
21 adjust amounts processed in a period or periods prior to the
22 current month regardless of whether the adjustment is a
23 correction of a department error or due to the filing of
24 amended returns, payment of department-issued assessments,
25 filing or approval of claims for refund, audit adjustments or

1 other cause;

2 (3) "average distribution or transfer
3 amount" means the following amounts; provided that a
4 distribution or transfer that is negative shall not be used
5 in calculating the amounts:

6 (a) the annual average of the total
7 amount distributed or transferred to a municipality or county
8 in each of the three twelve-month periods preceding the
9 current month;

10 (b) if a distribution or transfer to a
11 municipality or county has been made for less than three
12 years, the total amount distributed or transferred in the
13 year preceding the current month; or

14 (c) if a municipality or county has not
15 received distributions or transfers of net receipts for
16 twelve or more months, the monthly average of net receipts
17 distributed or transferred to the municipality or county
18 preceding the current month multiplied by twelve;

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

21 (5) "repayment agreement" means an agreement
22 between the department and a municipality or county under
23 which the municipality or county agrees to allow the
24 department to recover an amount determined pursuant to
25 Paragraph (2) of Subsection B of this section by decreasing

1 distributions or transfers to the municipality or county for
2 one or more months beginning with the distribution or
3 transfer to be made with respect to a designated month. No
4 interest shall be charged."

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

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

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

10 (1) the officials or employees of a
11 municipality of this state authorized in a written request by
12 the municipality for a period specified in the request within
13 the twelve months preceding the request; provided that the
14 municipality receiving the information has entered into a
15 written agreement with the department that the information
16 shall be used for tax purposes only and specifying that the
17 municipality is subject to the confidentiality provisions of
18 Section 7-1-8 NMSA 1978 and the penalty provisions of Section
19 7-1-76 NMSA 1978:

20 (a) the names, taxpayer identification
21 numbers and addresses of registered gross receipts taxpayers
22 reporting gross receipts for that municipality under the
23 Gross Receipts and Compensating Tax Act or a local option
24 gross receipts tax imposed by that municipality. The
25 department may also reveal the information described in this

1 subparagraph quarterly or upon such other periodic basis as
2 the secretary and the municipality may agree in writing;

3 (b) a range of taxable gross receipts
4 of registered gross receipts paid by taxpayers from business
5 locations attributable to that municipality under the Gross
6 Receipts and Compensating Tax Act or a local option gross
7 receipts tax imposed by that municipality; provided that
8 authorization from the federal internal revenue service to
9 reveal such information has been received. The department
10 may also reveal the information described in this
11 subparagraph quarterly or upon such other periodic basis as
12 the secretary and the municipality may agree in writing; and

13 (c) information indicating whether
14 persons shown on a list of businesses located within that
15 municipality furnished by the municipality have reported
16 gross receipts to the department but have not reported gross
17 receipts for that municipality under the Gross Receipts and
18 Compensating Tax Act or a local option gross receipts tax
19 imposed by that municipality;

20 (2) the officials or employees of a county
21 of this state authorized in a written request by the county
22 for a period specified in the request within the twelve
23 months preceding the request; provided that the county
24 receiving the information has entered into a written
25 agreement with the department that the information shall be

1 used for tax purposes only and specifying that the county is
2 subject to the confidentiality provisions of Section 7-1-8
3 NMSA 1978 and the penalty provisions of Section 7-1-76
4 NMSA 1978:

5 (a) the names, taxpayer identification
6 numbers and addresses of registered gross receipts taxpayers
7 reporting gross receipts either for that county in the case
8 of a local option gross receipts tax imposed on a countywide
9 basis or only for the areas of that county outside of any
10 incorporated municipalities within that county in the case of
11 a county local option gross receipts tax imposed only in
12 areas of the county outside of any incorporated
13 municipalities. The department may also reveal the
14 information described in this subparagraph quarterly or upon
15 such other periodic basis as the secretary and the county may
16 agree in writing;

17 (b) a range of taxable gross receipts
18 of registered gross receipts paid by taxpayers from business
19 locations attributable either to that county in the case of a
20 local option gross receipts tax imposed on a countywide basis
21 or only to the areas of that county outside of any
22 incorporated municipalities within that county in the case of
23 a county local option gross receipts tax imposed only in
24 areas of the county outside of any incorporated
25 municipalities; provided that authorization from the federal

1 internal revenue service to reveal such information has been
2 received. The department may also reveal the information
3 described in this subparagraph quarterly or upon such other
4 periodic basis as the secretary and the county may agree in
5 writing;

6 (c) in the case of a local option gross
7 receipts tax imposed by a county on a countywide basis,
8 information indicating whether persons shown on a list of
9 businesses located within the county furnished by the county
10 have reported gross receipts to the department but have not
11 reported gross receipts for that county under the Gross
12 Receipts and Compensating Tax Act or a local option gross
13 receipts tax imposed by that county on a countywide basis;
14 and

15 (d) in the case of a local option gross
16 receipts tax imposed by a county only on persons engaging in
17 business in that area of the county outside of incorporated
18 municipalities, information indicating whether persons on a
19 list of businesses located in that county outside of the
20 incorporated municipalities but within that county furnished
21 by the county have reported gross receipts to the department
22 but have not reported gross receipts for that county outside
23 of the incorporated municipalities within that county under
24 the Gross Receipts and Compensating Tax Act or a local option
25 gross receipts tax imposed by the county only on persons

1 engaging in business in that county outside of the
2 incorporated municipalities; and

3 (3) officials or employees of a municipality
4 or county of this state, authorized in a written request of
5 the municipality or county, for purposes of inspection, the
6 records of the department pertaining to an increase or
7 decrease to a distribution or transfer made pursuant to
8 Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the
9 basis for the increase or decrease; provided that the
10 municipality or county receiving the information has entered
11 into a written agreement with the department that the
12 information shall be used for tax purposes only and
13 specifying that the municipality or county is subject to the
14 confidentiality provisions of Section 7-1-8 NMSA 1978 and the
15 penalty provisions of Section 7-1-76 NMSA 1978. The
16 authorized officials or employees may only reveal the
17 information provided in this paragraph to another authorized
18 official or employee, to an employee of the department, or a
19 district court, an appellate court or a federal court in a
20 proceeding relating to a disputed distribution and in which
21 both the state and the municipality or county are parties.

22 B. The department may require that a municipal or
23 county official or employee satisfactorily complete
24 appropriate training on protecting confidential information
25 prior to receiving the information pursuant to Subsection A

1 of this section."

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

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