

1 SENATE BILL 236

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Carroll H. Leavell

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10 AN ACT

11 RELATING TO TAXATION; AMENDING THE DEFINITION OF "AVERAGE  
12 DISTRIBUTION OR TRANSFER AMOUNT" IN SECTION 7-1-6.15 NMSA 1978  
13 (BEING LAWS 1983, CHAPTER 211, SECTION 20, AS AMENDED BY LAWS  
14 2015, CHAPTER 89, SECTION 1 AND BY LAWS 2015, CHAPTER 100,  
15 SECTION 1).

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 7-1-6.15 NMSA 1978 (being Laws 1983,  
19 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,  
20 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended  
21 to read:

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

24 A. The provisions of this section apply to:

25 (1) any distribution to a municipality

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1 pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

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

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

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

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

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

14 (7) any distribution to a county from the  
15 county government road fund pursuant to Section 7-1-6.26 NMSA  
16 1978;

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

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

21 B. Before making a distribution or transfer  
22 specified in Subsection A of this section to a municipality or  
23 county for the month, amounts comprising the net receipts shall  
24 be segregated into two mutually exclusive categories. One  
25 category shall be for amounts relating to the current month,

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1 and the other category shall be for amounts relating to prior  
2 periods. The total of each category for a municipality or  
3 county shall be reported each month to that municipality or  
4 county. If the total of the amounts relating to prior periods  
5 is less than zero and its absolute value exceeds the greater of  
6 one hundred dollars (\$100) or an amount equal to twenty percent  
7 of the average distribution or transfer amount for that  
8 municipality or county, then the following procedures shall be  
9 carried out:

10 (1) all negative amounts relating to any  
11 period prior to the three calendar years preceding the year of  
12 the current month, net of any positive amounts in that same  
13 time period for the same taxpayers to which the negative  
14 amounts pertain, shall be excluded from the total relating to  
15 prior periods. Except as provided in Paragraph (2) of this  
16 subsection, the net receipts to be distributed or transferred  
17 to the municipality or county shall be adjusted to equal the  
18 amount for the current month plus the revised total for prior  
19 periods; and

20 (2) if the revised total for prior periods  
21 determined pursuant to Paragraph (1) of this subsection is  
22 negative and its absolute value exceeds the greater of one  
23 hundred dollars (\$100) or an amount equal to twenty percent of  
24 the average distribution or transfer amount for that  
25 municipality or county, the revised total for prior periods

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1 shall be excluded from the distribution or transfers and the  
2 net receipts to be distributed or transferred to the  
3 municipality or county shall be equal to the amount for the  
4 current month.

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

9 D. Prior to or concurrently with the distribution  
10 or transfer to the municipality or county of the adjusted net  
11 receipts, the department shall notify the municipality or  
12 county whose distribution or transfer has been adjusted  
13 pursuant to Paragraph (2) of Subsection B of this section:

14 (1) that the department has made such an  
15 adjustment, that the department has determined that a specified  
16 amount is recoverable from the municipality or county and that  
17 the department intends to recover that amount from future  
18 distributions or transfers to the municipality or county;

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

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

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

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

10 (1) the department may collect the recoverable  
11 amount by:

12 (a) decreasing distributions or  
13 transfers to the municipality or county in accordance with a  
14 repayment agreement entered into with the municipality or  
15 county; or

16 (b) except as provided in Paragraphs (2)  
17 and (3) of this subsection, if the municipality or county fails  
18 to act within the ninety days, decreasing the amount of the  
19 next six distributions or transfers to the municipality or  
20 county following expiration of the ninety-day period in  
21 increments as nearly equal as practicable and sufficient to  
22 recover the amount;

23 (2) if, pursuant to Subsection B of this  
24 section, the secretary determines that the recoverable amount  
25 is more than fifty percent of the average distribution or

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1 transfer of net receipts for that municipality or county, the  
2 secretary:

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

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

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

19 F. No later than ninety days from the date notice  
20 pursuant to Subsection D of this section is given, the  
21 department shall provide the municipality or county adequate  
22 opportunity to review an application for a claim for refund  
23 that gave rise to the recoverable amount, exclusive of any  
24 amended returns that may be attached to the application,  
25 pursuant to Section 7-1-8.9 NMSA 1978.

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

7           H. The secretary is authorized to decrease a  
8 distribution or transfer to a municipality or county upon being  
9 directed to do so by the secretary of finance and  
10 administration pursuant to the State Aid Intercept Act or to  
11 redirect a distribution or transfer to the New Mexico finance  
12 authority pursuant to an ordinance or a resolution passed by  
13 the county or municipality and a written agreement of the  
14 municipality or county and the New Mexico finance authority.  
15 Upon direction to decrease a distribution or transfer or notice  
16 to redirect a distribution or transfer to a municipality or  
17 county, the secretary shall decrease or redirect the next  
18 designated distribution or transfer, and succeeding  
19 distributions or transfers as necessary, by the amount of the  
20 state distributions intercept authorized by the secretary of  
21 finance and administration pursuant to the State Aid Intercept  
22 Act or by the amount of the state distribution intercept  
23 authorized pursuant to an ordinance or a resolution passed by  
24 the county or municipality and a written agreement with the New  
25 Mexico finance authority. The secretary shall transfer the

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1 state distributions intercept amount to the municipal or county  
2 treasurer or other person designated by the secretary of  
3 finance and administration or to the New Mexico finance  
4 authority pursuant to written agreement to pay the debt service  
5 to avoid default on qualified local revenue bonds or meet other  
6 local revenue bond, loan or other debt obligations of the  
7 municipality or county to the New Mexico finance authority. A  
8 decrease to or redirection of a distribution or transfer  
9 pursuant to this subsection that arose:

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

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

22 I. Upon the direction of the secretary of finance  
23 and administration pursuant to Section 9-6-5.2 NMSA 1978, the  
24 secretary shall temporarily withhold the balance of a  
25 distribution to a municipality or county, net of any decrease

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1 or redirected amount pursuant to Subsection H of this section  
2 and any recoverable amount pursuant to Paragraph (2) of  
3 Subsection B of this section, that has failed to submit an  
4 audit report required by the Audit Act or a financial report  
5 required by Subsection F of Section 6-6-2 NMSA 1978. The  
6 amount to be withheld, the source of the withheld distribution  
7 and the number of months that the distribution is to be  
8 withheld shall be as directed by the secretary of finance and  
9 administration. A distribution withheld pursuant to this  
10 subsection shall remain in the tax administration suspense fund  
11 until distributed to the municipality or county and shall not  
12 be distributed to the general fund. An amount withheld  
13 pursuant to this subsection shall be distributed to the  
14 municipality or county upon direction of the secretary of  
15 finance and administration.

16 J. As used in this section:

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

23 (2) "amounts relating to prior periods" means  
24 any amounts processed during the current month that adjust  
25 amounts processed in a period or periods prior to the current

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1 month regardless of whether the adjustment is a correction of a  
2 department error or due to the filing of amended returns,  
3 payment of department-issued assessments, filing or approval of  
4 claims for refund, audit adjustments or other cause;

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

9 (a) the ~~[annual]~~ average ~~[of the total]~~  
10 monthly amount distributed or transferred to a municipality or  
11 county in ~~[each of the three twelve-month periods]~~ the thirty-  
12 six-month period preceding the current month;

13 (b) if a distribution or transfer to a  
14 municipality or county has been made for less than three years,  
15 the ~~[total]~~ average monthly amount distributed or transferred  
16 in the ~~[year]~~ twelve-month period preceding the current month;  
17 or

18 (c) if a distribution or transfer to a  
19 municipality or county has ~~[not received distributions or~~  
20 ~~transfers of net receipts for twelve or more]~~ been made for  
21 less than twelve months, the monthly average ~~[of net receipts]~~  
22 amount distributed or transferred to the municipality or county  
23 in the months preceding the current month ~~[multiplied by~~  
24 ~~twelve]~~;

25 (4) "current month" means the month for which

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1 the distribution or transfer is being prepared; and

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