

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 7

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO TAXATION; AUTHORIZING AN OCCUPANCY SURTAX PURSUANT
TO THE LODGERS' TAX ACT; REQUIRING LOCAL GOVERNMENTS THAT
IMPOSE THE TAX TO USE THE PROCEEDS TO DEFRAY THE COST OF
AFFORDABLE HOUSING.

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

SECTION 1. Section 3-38-14 NMSA 1978 (being Laws 1969,
Chapter 199, Section 2, as amended) is amended to read:

"3-38-14. DEFINITIONS.--As used in the Lodgers' Tax Act:

A. "gross taxable rent" means the total amount of
rent paid for lodging, not including the state gross receipts
tax or local sales taxes;

B. "lodging" means the transaction of furnishing
rooms or other accommodations by a vendor to a vendee who for
rent uses, possesses or has the right to use or possess the

1 rooms or other units of accommodations in or at a taxable
2 premises;

3 C. "lodgings" means the rooms or other
4 accommodations furnished by a vendor to a vendee by a taxable
5 service of [~~lodgings~~] lodging;

6 D. "occupancy tax" means the tax on lodging
7 authorized by [~~the Lodgers' Tax Act~~] Section 3-38-15 NMSA 1978;

8 E. "occupancy surtax" means the surtax authorized
9 by Section 3-38-15.1 NMSA 1978;

10 [~~E.~~] F. "person" means a corporation, firm, other
11 body corporate, partnership, association or individual.
12 "Person" includes an executor, administrator, trustee, receiver
13 or other representative appointed according to law and acting
14 in a representative capacity. "Person" does not include the
15 United States of America, the state of New Mexico, any
16 corporation, department, instrumentality or agency of the
17 federal government or the state government or any political
18 subdivision of the state;

19 [~~F.~~] G. "rent" means the consideration received by
20 a vendor in money, credits, property or other consideration
21 valued in money for lodgings subject to [~~an occupancy~~] a tax
22 authorized in the Lodgers' Tax Act;

23 [~~G.~~] H. "taxable premises" means a hotel,
24 apartment, apartment hotel, apartment house, lodge, lodging
25 house, rooming house, motor hotel, guest house, guest ranch,

1 ranch resort, guest resort, mobile home, motor court, auto
 2 court, auto camp, trailer court, trailer camp, trailer park,
 3 tourist camp, cabin or other premises used for lodging;

4 ~~[H.]~~ I. "tourist" means a person who travels for
 5 the purpose of business, pleasure or culture to a municipality
 6 or county imposing an occupancy tax;

7 ~~[I.]~~ J. "tourist-related events" means events that
 8 are planned for, promoted to and attended by tourists;

9 ~~[J.]~~ K. "tourist-related facilities and
 10 attractions" means facilities and attractions that are intended
 11 to be used by or visited by tourists;

12 ~~[K.]~~ L. "tourist-related transportation systems"
 13 means transportation systems that provide transportation for
 14 tourists to and from tourist-related facilities and attractions
 15 and tourist-related events;

16 ~~[L.]~~ M. "vendee" means a natural person to whom
 17 lodgings are furnished in the exercise of the taxable service
 18 of lodging; and

19 ~~[M.]~~ N. "vendor" means a person or ~~[his]~~ the
 20 person's agent furnishing lodgings in the exercise of the
 21 taxable service of lodging."

22 **SECTION 2.** A new Section 3-38-15.1 NMSA 1978 is enacted
 23 to read:

24 "3-38-15.1. [NEW MATERIAL] OCCUPANCY SURTAX.--

25 A. In addition to the occupancy tax, a municipality

.213248.2

1 or county may impose by ordinance an occupancy surtax for
2 revenues on single-family rentals. The surtax shall not exceed
3 two and one-half percent gross taxable rent of single-family
4 rentals.

5 B. A municipality or county imposing an occupancy
6 surtax shall use the proceeds from the surtax to defray the
7 cost of providing affordable housing.

8 C. As used in this section:

9 (1) "affordable housing" means any housing
10 that benefits those whose income is at or below eighty percent
11 of the area median income;

12 (2) "single-family rental" means a single-
13 family residence offered for rent; and

14 (3) "single-family residence" means a
15 structure maintained and used as a single dwelling unit.
16 Regardless of whether a dwelling unit shares one or more walls
17 with another dwelling unit, a dwelling unit is a single-family
18 residence if it has a separate means of egress and shares
19 neither heating facilities, hot water equipment nor any other
20 essential facility or service with another dwelling unit."

21 SECTION 3. Section 3-38-16 NMSA 1978 (being Laws 1969,
22 Chapter 199, Section 4, as amended) is amended to read:

23 "3-38-16. EXEMPTIONS.--The occupancy tax and occupancy
24 surtax shall not apply:

25 A. if a vendee:

1 (1) has been a permanent resident of the
2 taxable premises for a period of at least thirty consecutive
3 days; or

4 (2) enters into or has entered into a written
5 agreement for lodgings at the taxable premises for a period of
6 at least thirty consecutive days;

7 B. if the rent paid by a vendee is less than two
8 dollars (\$2.00) a day;

9 C. to lodging accommodations at institutions of the
10 federal government, the state or any political subdivision
11 thereof;

12 D. to lodging accommodations at religious,
13 charitable, educational or philanthropic institutions,
14 including accommodations at summer camps operated by such
15 institutions;

16 E. to clinics, hospitals or other medical
17 facilities; or

18 F. to privately owned and operated convalescent
19 homes or homes for the aged, infirm, indigent or chronically
20 ill [~~or~~

21 ~~G. if the vendor does not offer at least three
22 rooms within or attached to a taxable premises for lodging or
23 at least three other premises for lodging or a combination of
24 these within the taxing jurisdiction]."~~

25 SECTION 4. Section 3-38-17 NMSA 1978 (being Laws 1969,

.213248.2

1 Chapter 199, Section 5, as amended) is amended to read:

2 "3-38-17. COLLECTION OF TAXES.--

3 A. Every vendor providing lodgings in a
4 municipality or county imposing an occupancy tax or occupancy
5 surtax shall collect the proceeds thereof on behalf of the
6 municipality or county and shall act as a trustee therefor.

7 B. The tax and surtax shall be collected from
8 vendees in accordance with the ordinance imposing the tax and
9 shall be charged separately from the rent fixed by the vendor
10 for the lodgings."

11 SECTION 5. Section 3-38-17.1 NMSA 1978 (being Laws 1992,
12 Chapter 12, Section 2, as amended) is amended to read:

13 "3-38-17.1. AUDIT OF VENDORS.--The governing body of any
14 municipality or county collecting over two hundred fifty
15 thousand dollars (\$250,000) in occupancy tax and occupancy
16 surtax proceeds shall select for annual random audits one or
17 more vendors to verify the amount of gross taxable rent subject
18 to the [~~occupancy~~] tax and surtax and to ensure that the full
19 amount of [~~occupancy~~] tax and surtax on that rent is collected.
20 The governing body of any municipality or county collecting
21 less than two hundred fifty thousand dollars (\$250,000) in
22 receipts, per annum, of [~~occupancy~~] tax and surtax proceeds
23 shall conduct random audits to verify full payment of
24 [~~occupancy~~] tax and surtax receipts. Copies of audits
25 completed shall be filed annually with the local government

.213248.2

1 division of the department of finance and administration."

2 SECTION 6. Section 3-38-17.2 NMSA 1978 (being Laws 1996,
3 Chapter 58, Section 5) is amended to read:

4 "3-38-17.2. FINANCIAL REPORTING.--

5 A. The governing body of any municipality or county
6 imposing and collecting an occupancy tax or occupancy surtax
7 shall furnish to the advisory board created pursuant to Section
8 3-38-22 NMSA 1978 that portion of any proposed budget, report
9 or audit filed or received by the governing body pursuant to
10 either Chapter 6, Article 6 NMSA 1978 or the Audit Act that
11 relates to the expenditure of [~~occupancy~~] tax and surtax funds
12 within ten days of the filing or receipt of such proposed
13 budget, report or audit by the local governing body.

14 B. The governing body of any municipality or county
15 imposing and collecting an occupancy tax or occupancy surtax
16 shall report to the local government division of the department
17 of finance and administration on a quarterly basis any
18 expenditure of [~~occupancy~~] tax and surtax funds pursuant to
19 Sections 3-38-15, 3-38-15.1 and 3-38-21 NMSA 1978 and shall
20 furnish a copy of this report to the advisory board when it is
21 filed with the division."

22 SECTION 7. Section 3-38-17.3 NMSA 1978 (being Laws 1996,
23 Chapter 58, Section 6) is amended to read:

24 "3-38-17.3. ENFORCEMENT.--

25 A. An action to enforce the provisions of the

.213248.2

1 Lodgers' Tax Act may be brought by:

2 (1) the attorney general or the district
3 attorney in the county of jurisdiction; or

4 (2) a vendor who is collecting the proceeds of
5 an occupancy tax or occupancy surtax in the county of
6 jurisdiction.

7 B. A district court may issue a writ of mandamus or
8 order an injunction or other appropriate remedy to enforce the
9 provisions of the Lodgers' Tax Act.

10 C. The court shall award costs and reasonable
11 ~~[attorneys']~~ attorney fees to the prevailing party in a court
12 action to enforce the provisions of the Lodgers' Tax Act."

13 SECTION 8. Section 3-38-18 NMSA 1978 (being Laws 1969,
14 Chapter 199, Section 6, as amended) is amended to read:

15 "3-38-18. COLLECTION OF DELINQUENCIES.--

16 A. The governing body of ~~[the]~~ a municipality or
17 county shall, by ordinance, provide that a vendor is liable for
18 the payment of the proceeds of any occupancy tax or occupancy
19 surtax that the vendor failed to remit to the municipality or
20 county, due to ~~[his]~~ the vendor's failure to collect the tax or
21 surtax or otherwise, and shall provide for a civil penalty for
22 any such failure in an amount equal to the greater of ten
23 percent of the amount that was not duly remitted to the
24 municipality or county or one hundred dollars (\$100).

25 B. ~~[The]~~ A municipality or county may bring an

1 action in law or equity in the district court for the
 2 collection of any amounts due, including without limitation
 3 penalties thereon, interest on the unpaid principal at a rate
 4 [~~of~~] not exceeding one percent a month, the costs of collection
 5 and reasonable [~~attorneys'~~] attorney fees incurred in
 6 connection therewith."

7 SECTION 9. Section 3-38-18.1 NMSA 1978 (being Laws 1992,
 8 Chapter 12, Section 1) is amended to read:

9 "3-38-18.1. LIEN FOR [~~OCCUPANCY~~] TAX--PAYMENT--
 10 CERTIFICATE OF LIENS.--

11 A. The occupancy tax and occupancy surtax imposed
 12 by a municipality or county [~~constitutes~~] constitute a lien in
 13 favor of that municipality or county upon the personal and real
 14 property of the vendor providing lodgings in that municipality
 15 or county. The lien may be enforced as provided in Sections
 16 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be
 17 determined from the date of filing.

18 B. Under process or order of court, no person shall
 19 sell the property of any vendor without first ascertaining from
 20 the clerk or treasurer of the municipality or county in which
 21 the vendor is located the amount of any occupancy tax or
 22 occupancy surtax due the municipality or county. Any
 23 [~~occupancy~~] tax or surtax due the municipality or county shall
 24 be paid from the proceeds of the sale before payment is made to
 25 the judgment creditor or any other person with a claim on the

.213248.2

1 sale proceeds.

2 C. The clerk or treasurer of [~~the~~] a municipality
3 or county shall furnish to any person applying for such a
4 certificate a certificate showing the amount of all liens in
5 the records of the municipality or county against any vendor
6 pursuant to Chapter 3, Article 38 NMSA 1978."

7 SECTION 10. Section 3-38-19 NMSA 1978 (being Laws 1969,
8 Chapter 199, Section 7, as amended) is amended to read:

9 "3-38-19. PENALTIES.--The governing body of [~~the~~] a
10 municipality or county shall, by ordinance, provide for
11 penalties by creating a misdemeanor and imposing a fine of not
12 more than five hundred dollars (\$500) or imprisonment for not
13 more than ninety days or both for a violation by any person of
14 the provisions of the [~~occupancy tax~~] ordinance imposing an
15 occupancy tax or occupancy surtax for a failure to pay the tax,
16 to remit the proceeds thereof to the municipality or county or
17 to account properly for any lodging and the tax or surtax
18 proceeds pertaining thereto."

19 SECTION 11. Section 3-38-20 NMSA 1978 (being Laws 1969,
20 Chapter 199, Section 8, as amended) is amended to read:

21 "3-38-20. ORDINANCE REQUIREMENTS.--The ordinance imposing
22 an occupancy tax or occupancy surtax or any ordinance
23 amendatory thereof or supplemental thereto, except as limited
24 by or otherwise provided in the Lodgers' Tax Act, shall:

25 A. provide a procedure for licensing each vendor

underscored material = new
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1 and for refusing a vendor a license after an opportunity has
 2 been given to the vendor of a public hearing thereon by the
 3 governing body of the municipality or county, as the case may
 4 be;

5 B. state the rate or other amount of the occupancy
 6 tax or occupancy surtax; the times, place and method for the
 7 payment of the [~~occupancy~~] tax or surtax proceeds to the
 8 municipality or county; the accounts and other records to be
 9 maintained in connection with the [~~occupancy~~] tax or surtax; a
 10 procedure for making refunds and resolving disputes relating to
 11 the [~~occupancy~~] tax or surtax, including exemptions pertaining
 12 thereto; the procedure for preservation and destruction of
 13 records and their inspection and investigation; vendor audit
 14 requirements; applicable civil and criminal penalties; and a
 15 procedure of liens, distraint and sales to satisfy such liens;
 16 and

17 C. provide other rights, privileges, powers,
 18 immunities and other details relating to any such vendor
 19 licenses, the collection of the occupancy tax or occupancy
 20 surtax and the remittance of the proceeds thereof to the
 21 municipality or county."

22 SECTION 12. Section 3-38-21.1 NMSA 1978 (being Laws 1996,
 23 Chapter 58, Section 8) is amended to read:

24 "3-38-21.1. CONTRACTING FOR SERVICES.--

25 A. The governing body of a municipality or county

.213248.2

1 may contract for the management of programs and activities
2 funded with revenue from the occupancy tax [~~authorized in~~
3 ~~Section 3-38-15 NMSA 1978~~] or the occupancy surtax. The
4 governing body shall require periodic reports to the governing
5 body, at least quarterly, listing the expenditures for those
6 periods. Within ten days of receiving the reports, the
7 governing body shall furnish copies of them to the advisory
8 board. Funds provided to the contracting person or
9 governmental agency shall be maintained in a separate account
10 established for that purpose and shall not be commingled with
11 any other money.

12 B. A person or governmental agency with whom a
13 municipality or county contracts under this section to conduct
14 an activity authorized by [~~Section~~] Sections 3-38-15.1 and
15 3-38-21 NMSA 1978 shall maintain complete and accurate
16 financial records of each expenditure of the occupancy tax or
17 occupancy surtax revenue made and upon request of the governing
18 body of the municipality or county shall make such records
19 available for inspection.

20 C. The occupancy tax and occupancy surtax revenue
21 spent for a purpose authorized by the Lodgers' Tax Act may be
22 spent for day-to-day operations, supplies, salaries, office
23 rental, travel expenses and other administrative costs only if
24 those administrative costs are incurred directly for that
25 purpose.

1 D. A person or governmental agency with whom a
2 local governmental body contracts under this section may
3 subcontract with the approval of the governing body of the
4 municipality or county. A subcontractor shall be subject to
5 the same terms and conditions as the contractor regarding
6 separate financial accounts, periodic reports and inspection of
7 records."

8 **SECTION 13. EFFECTIVE DATE.**--The effective date of the
9 provisions of this act is July 1, 2019.

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underscored material = new
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