

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 308

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

AN ACT

RELATING TO TAXATION; AMENDING A SECTION IN THE TAX  
ADMINISTRATION ACT TO RESET A PARAMETER AND REMOVE A PROCEDURE  
IN THE ADJUSTMENT PROVISIONS FOR DISTRIBUTIONS AND TRANSFERS  
MADE TO MUNICIPALITIES AND COUNTIES.

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 by Laws 2015, Chapter 89,  
Section 1 and by Laws 2015, Chapter 100, Section 1) 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;

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

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

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

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

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

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

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

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

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

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

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

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

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1 net receipts to be distributed or transferred to the  
2 municipality or county shall be equal to the amount for the  
3 current month.

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

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

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

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

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

25 (4) that the municipality or county may

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

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

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

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

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

22 [~~(2) if, pursuant to Subsection B of this~~  
 23 ~~section, the secretary determines that the recoverable amount~~  
 24 ~~is more than fifty percent of the average distribution or~~  
 25 ~~transfer of net receipts for that municipality or county, the~~

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1 ~~secretary:~~

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

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

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

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

25 G. On or before September 1 of each year [~~beginning~~

1 ~~in 2016~~], the secretary shall report to the state board of  
2 finance and the legislative finance committee the total  
3 recoverable amount waived pursuant to ~~[Subparagraph (b) of]~~  
4 Paragraph (2) ~~[and Paragraph (3)]~~ of Subsection E of this  
5 section for each municipality and county in the prior fiscal  
6 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 amount distributed or transferred to a municipality or county  
11 in each of the three twelve-month periods preceding the current  
12 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 amount distributed or transferred in the year  
16 preceding the current month; or

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

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

24 (5) "repayment agreement" means an agreement  
25 between the department and a municipality or county under which

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

7 SECTION 2. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is January 1, 2022.

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