

SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL 119

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

AN ACT

RELATING TO TAXATION; AMENDING THE LODGERS' TAX ACT TO ALTER  
CERTAIN EXEMPTIONS; CHANGING THE ALLOWABLE USES OF OCCUPANCY  
TAX REVENUE.

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

SECTION 1. Section 3-38-13 NMSA 1978 (being Laws 1969,  
Chapter 199, Section 1, as amended) is amended to read:

"3-38-13. SHORT TITLE.--Sections 3-38-13 through  
~~[3-38-24]~~ 3-38-25 NMSA 1978 may be cited as the "Lodgers' Tax  
Act"."

SECTION 2. 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

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underscored material = new  
[bracketed material] = delete

1 tax or local sales taxes;

2 B. "lodging" means the transaction of furnishing  
3 rooms or other accommodations by a vendor to a vendee who for  
4 rent uses, possesses or has the right to use or possess the  
5 rooms or other units of accommodations in or at a taxable  
6 premises;

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

10 D. "occupancy tax" means the tax on lodging  
11 authorized by the Lodgers' Tax Act;

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

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

25 G. "taxable premises" means a hotel, [~~apartment,~~

1 ~~apartment hotel, apartment house, lodge, lodging house, rooming~~  
 2 ~~house, motor hotel, guest house, guest ranch, ranch resort,~~  
 3 ~~guest resort, mobile home, motor court, auto court, auto camp,~~  
 4 ~~trailer court, trailer camp, trailer park, tourist camp, cabin~~  
 5 ~~or other premises used for lodging] motel or other premises~~

6 used for lodging that is not the vendee's household or primary  
 7 residence;

8 H. "temporary lodging" means lodgings for the  
 9 purpose of housing a vendee within proximity of the vendee's  
 10 employment or job location;

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

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

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

19 [~~K.~~] L. "tourist-related transportation systems"  
 20 means transportation systems that provide transportation for  
 21 tourists to and from tourist-related facilities and attractions  
 22 and tourist-related events;

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

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1           [M-] N. "vendor" means a person or [~~his~~] the  
2 person's agent furnishing lodgings in the exercise of the  
3 taxable service of lodging."

4           **SECTION 3.** Section 3-38-15 NMSA 1978 (being Laws 1969,  
5 Chapter 199, Section 3, as amended) is amended to read:

6           "3-38-15. AUTHORIZATION OF TAX--LIMITATIONS ON USE OF  
7 PROCEEDS.--

8           A. A municipality may impose by ordinance an  
9 occupancy tax for revenues on lodging within the municipality,  
10 and the board of county commissioners of a county may impose by  
11 ordinance an occupancy tax for revenues on lodging within that  
12 part of the county outside of the incorporated limits of a  
13 municipality.

14           B. The occupancy tax shall not exceed five percent  
15 of the gross taxable rent.

16           C. Every vendor who is furnishing any lodgings  
17 within a municipality or county is exercising a taxable  
18 privilege.

19           D. The following portions of the proceeds from the  
20 occupancy tax that are collected based on the first thirty days  
21 a vendee rents lodgings in taxable premises shall be used only  
22 for advertising, publicizing and promoting tourist-related  
23 facilities and attractions [~~facilities~~] and tourist-related  
24 events:

25           (1) if the municipality or county imposes an

1 occupancy tax of no more than two percent, not less than one-  
2 fourth of the proceeds shall be used for those purposes;

3 (2) if the occupancy tax imposed is more than  
4 two percent and the municipality is not located in a class A  
5 county or the county is not a class A county, not less than  
6 one-half of the proceeds from the first three percent of the  
7 occupancy tax and not less than one-fourth of the proceeds from  
8 the occupancy tax in excess of three percent shall be used for  
9 those purposes; and

10 (3) if the occupancy tax imposed is more than  
11 two percent and the municipality is located in a class A county  
12 or the county is a class A county, not less than one-half of  
13 the proceeds from the occupancy tax shall be used for those  
14 purposes.

15 E. The proceeds from the occupancy tax that are  
16 collected based on the first thirty days a vendee rents  
17 lodgings in taxable premises in excess of the amount required  
18 to be used for advertising, publicizing and promoting  
19 tourist-related facilities and attractions [~~facilities~~] and  
20 tourist-related events may be used for any purpose authorized  
21 in Section 3-38-21 NMSA 1978.

22 F. The proceeds from the occupancy tax that are  
23 required to be used to advertise, publicize and promote  
24 tourist-related facilities and attractions [~~facilities~~] and  
25 tourist-related events shall be used within two years of the

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1 close of the fiscal year in which they were collected and shall  
2 not be accumulated beyond that date or used for any other  
3 purpose.

4 G. Notwithstanding the provisions of Paragraph (2)  
5 of Subsection D of this section, any use by a municipality or  
6 county of occupancy tax proceeds on January 1, 1996 may  
7 continue to be so used after July 1, 1996 in accordance with  
8 the provisions of this section and Section 3-38-21 NMSA 1978 as  
9 they were in effect prior to July 1, 1996; provided, any change  
10 in the use of those occupancy tax proceeds after July 1, 1996  
11 is subject to the limitations of that paragraph.

12 H. Notwithstanding the provisions of Paragraph (2)  
13 of Subsection D of this section, the payment of principal and  
14 interest on outstanding bonds issued prior to January 1, 1996  
15 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made  
16 in accordance with the retirement schedules of the bonds  
17 established at the time of issuance. The amount of  
18 expenditures required under Paragraph (2) of Subsection D of  
19 this section shall be reduced each year, if necessary, to make  
20 the required payments of principal and interest of all  
21 outstanding bonds issued prior to January 1, 1996."

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

24 "3-38-16. EXEMPTIONS.--The occupancy tax 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, unless those premises are temporary lodging; 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, unless those premises are  
 7 temporary lodging;

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

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

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

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

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

22 SECTION 5. Section 3-38-21 NMSA 1978 (being Laws 1969,  
 23 Chapter 199, Section 9, as amended) is amended to read:

24 "3-38-21. ELIGIBLE USES OF TAX PROCEEDS.--

25 A. Subject to the limitations contained in Section

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1 3-38-15 NMSA 1978, a municipality or county imposing an  
2 occupancy tax may use the proceeds from the occupancy tax that  
3 are collected based on the first thirty days a vendee rents  
4 lodgings in taxable premises to defray costs of:

5 (1) collecting and otherwise administering the  
6 occupancy tax, including the performance of audits required by  
7 the Lodgers' Tax Act pursuant to guidelines issued by the  
8 department of finance and administration;

9 (2) establishing, operating, purchasing,  
10 constructing, otherwise acquiring, reconstructing, extending,  
11 improving, equipping, furnishing or acquiring real property or  
12 any interest in real property for the site or grounds for  
13 tourist-related facilities and attractions or tourist-related  
14 transportation systems of the municipality, the county in which  
15 the municipality is located or the county;

16 (3) the principal of and interest on any prior  
17 redemption premiums due in connection with and any other  
18 charges pertaining to revenue bonds authorized by Section  
19 3-38-23 or 3-38-24 NMSA 1978;

20 (4) advertising, publicizing and promoting  
21 tourist-related attractions, facilities and events of the  
22 municipality or county and tourist-related facilities,  
23 attractions and events within the area;

24 (5) providing police and fire protection and  
25 sanitation service for tourist-related facilities, attractions

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1 and events located in the respective municipality or county;

2 (6) providing a required minimum revenue  
3 guarantee for air service to the municipality or county to  
4 increase the ability of tourists to easily access the  
5 municipality's or county's tourist-related facilities,  
6 attractions and events; or

7 (7) any combination of the foregoing purposes  
8 or transactions stated in this section, but for no other  
9 municipal or county purpose.

10 B. A municipality or county imposing an occupancy  
11 tax may use the proceeds from the occupancy tax that are  
12 collected based on the thirty-first and subsequent days a  
13 vendee rents lodgings in taxable premises for any municipality  
14 or county purpose; provided that the use is stated in the  
15 ordinance imposing the tax.

16 [~~B.~~] C. As used in this section, "minimum revenue  
17 guarantee" is the amount of money guaranteed by a municipality  
18 or county to be earned by an airline providing air services to  
19 and from that municipality or county, which is the difference  
20 between the minimum flight charge revenue specified in the  
21 contract between the municipality or county and the airline and  
22 the amount of actual flight charge revenue received by the  
23 airline that is less than that contractual amount."

24 **SECTION 6.** A new section of the Lodgers' Tax Act, Section  
25 3-38-25 NMSA 1978, is enacted to read:

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