

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 137

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO TAXATION; CREATING THE DESTINATION-BASED SOURCING
SAFETY NET FUND; REQUIRING REPORTING OF THE LOCATION OF THE
SELLER WHEN REPORTING GROSS RECEIPTS; MAKING APPROPRIATIONS;
DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] DESTINATION-BASED SOURCING
SAFETY NET FUND.--

A. The "destination-based sourcing safety net fund"
is created in the state treasury. The fund consists of
appropriations, donations, interest from investment of the fund
and other money distributed to the fund. The fund shall be
administered by the local government division of the department
of finance and administration, and money in the fund is
appropriated to the division to make allocations to qualified

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1 municipalities pursuant to this section. Disbursements from
2 the fund shall be made by warrant of the secretary of finance
3 and administration pursuant to vouchers signed by the director
4 of the local government division of the department of finance
5 and administration or the director's designee. Any unexpended
6 or unencumbered balance remaining in the fund at the end of
7 fiscal year 2024 shall revert to the general fund.

8 B. The local government division of the department
9 of finance and administration shall make the following
10 allocations from the fund to a qualifying municipality as
11 follows:

12 (1) on or before May 1, 2022, an amount equal
13 to the revenue reduction occurring beginning July 1, 2021 and
14 prior to January 1, 2022;

15 (2) on or before October 1, 2022, an amount
16 equal to the revenue reduction occurring beginning January 1,
17 2022 and prior to July 1, 2022;

18 (3) on or before May 1, 2023, an amount equal
19 to the revenue reduction occurring beginning July 1, 2022 and
20 prior to January 1, 2023; and

21 (4) on or before October 1, 2023, an amount
22 equal to the revenue reduction occurring between January 1,
23 2023 and prior to July 1, 2023.

24 C. If money in the fund is insufficient to make an
25 allocation pursuant to Subsection B of this section, all

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1 allocations for that allocation period shall be prorated among
2 the qualifying municipalities, based on the total of revenue
3 reduction amounts.

4 D. As used in this section:

5 (1) "adjusted gross receipts tax revenue"
6 means total gross receipts tax revenues of a municipality
7 adjusted to exclude any negative distribution amounts made
8 pursuant to 7-1-6.15 NMSA 1978 in excess of two hundred fifty
9 thousand dollars (\$250,000) that occurred during the six-month
10 period;

11 (2) "base year" means fiscal year 2020;

12 (3) "qualifying municipality" means a
13 municipality that:

14 (a) had a revenue reduction; and

15 (b) can demonstrate to the local
16 government division that the revenue reduction is a result of
17 the change to destination-based sourcing of services pursuant
18 to Laws 2020, Chapter 80, Section 1, as determined by the
19 municipality in conjunction with the taxation and revenue
20 department; and

21 (4) "revenue reduction" means a reduction in a
22 municipality's gross receipts tax revenue from the
23 municipality's adjusted gross receipts tax revenue of at least
24 ten percent during:

25 (a) the first six months of fiscal year

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1 2022 compared to the same period in the base year; or

2 (b) in subsequent six-month periods
3 compared to the same six-month period in the base year.

4 SECTION 2. Section 7-1-14 NMSA 1978 (being Laws 2020,
5 Chapter 80, Section 1) is amended to read:

6 "7-1-14. [~~BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF~~]
7 SOURCING RULES FOR REPORTING GROSS RECEIPTS AND USE--LOCATION-
8 CODE DATABASE AND LOCATION-RATE DATABASE.--

9 A. For purposes of the Gross Receipts and
10 Compensating Tax Act, Interstate Telecommunications Gross
11 Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any
12 act authorizing the imposition of a local option gross receipts
13 or compensating tax, a [~~person~~] taxpayer that has gross
14 receipts and a [~~person~~] taxpayer using property or services in
15 New Mexico in a taxable manner shall report the gross receipts
16 and use to the proper business location, and the location of
17 the taxpayer's place of business for a taxpayer that has gross
18 receipts, as provided in this section.

19 B. The business location for gross receipts from
20 the sale, lease or granting of a license to use real property
21 located in New Mexico, and any related deductions, shall be the
22 location of the property.

23 C. The business location for gross receipts from
24 the sale or license of tangible personal property, and any
25 related deductions, shall be at the following locations:

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1 (1) if the property is received by the
2 purchaser at the New Mexico [~~business~~] location of the seller,
3 the location of the seller;

4 (2) if the property is not received by the
5 purchaser at [~~a business~~] the location of the seller, the
6 location indicated by instructions for delivery to the
7 purchaser, or the purchaser's donee, when known to the seller;

8 (3) if Paragraphs (1) and (2) of this
9 subsection do not apply, the location indicated by an address
10 for the purchaser available from the business records of the
11 seller that are maintained in the ordinary course of business;
12 provided that use of the address does not constitute bad faith;

13 (4) if Paragraphs (1) through (3) of this
14 subsection do not apply, the location for the purchaser
15 obtained during consummation of the sale, including the address
16 of a purchaser's payment instrument, if no other address is
17 available; provided that use of this address does not
18 constitute bad faith; or

19 (5) if Paragraphs (1) through (4) of this
20 subsection do not apply, including a circumstance in which the
21 seller is without sufficient information to apply those
22 standards, the location from which the property was shipped or
23 transmitted.

24 D. The business location for gross receipts from
25 the lease of tangible personal property, including vehicles,

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1 other transportation equipment and other mobile tangible
2 personal property, and any related deductions, shall be the
3 location of primary use of the property, as indicated by the
4 address for the property provided by the lessee that is
5 available to the lessor from the lessor's records maintained in
6 the ordinary course of business; provided that use of this
7 address does not constitute bad faith. The location of primary
8 ~~[business location]~~ use shall not be altered by intermittent
9 use at different locations, such as use of business property
10 that accompanies employees on business trips and service calls.

11 E. The business location for gross receipts from
12 the sale, lease or license of franchises, and any related
13 deductions, shall be where the franchise is used.

14 F. The business location for gross receipts from
15 the performance or sale of the following services, and any
16 related deductions, shall be at the following locations:

17 (1) for professional services performed in New
18 Mexico, other than construction-related services, or performed
19 outside New Mexico when the product of the service is initially
20 used in New Mexico, the location of the performer of the
21 service or seller of the product of the service, as
22 appropriate;

23 (2) for construction services and
24 construction-related services performed for a construction
25 project in New Mexico, the location of the construction site;

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1 (3) for services with respect to the selling
2 of real estate located in New Mexico, the location of the real
3 estate;

4 (4) for transportation of persons or property
5 in, into or from New Mexico, the location where the person or
6 property enters the vehicle; and

7 (5) for services other than those described in
8 Paragraphs (1) through (4) of this subsection, the location
9 where the product of the service is delivered.

10 G. Except as provided in Subsection H of this
11 section, the business location for uses of property or services
12 subject to the compensating tax shall be [~~reported at~~] the
13 [~~business~~] location at which gross receipts would have been
14 required to be reported had the transaction been subject to the
15 gross receipts tax.

16 H. If a [~~person~~] taxpayer subject to the
17 compensating tax can demonstrate that the first use upon which
18 compensating tax is imposed occurred at a time and place
19 different from the time and place of the purchase, then the
20 business location for the compensating tax shall be [~~reported~~
21 ~~at~~] the [~~business~~] location of the first use.

22 [~~I. The secretary shall designate codes to identify~~
23 ~~the business locations for a person's gross receipts, or use~~
24 ~~for purchases subject to the compensating tax, and deductions~~
25 ~~related to those receipts or that use shall be reported.~~

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1 ~~J.]~~ I. The secretary shall develop a location-code
2 database that provides the business location codes and place of
3 business location codes designated ~~[pursuant to Subsection I of~~
4 ~~this section]~~ by the secretary. The secretary shall also
5 develop and provide to taxpayers a location-rate database that
6 sets out the tax rates applicable to business locations within
7 the state, by address, and sellers who properly rely on this
8 database shall not be liable for any additional tax due to the
9 use of an incorrect rate.

10 ~~[K.]~~ J. As used in this section:

11 ~~[(1)]~~ ~~"business location" means the code~~
12 ~~designated by the department to identify business locations and~~
13 ~~required to be used to report the gross receipts, or use for~~
14 ~~purchases subject to the compensating tax, and deductions~~
15 ~~related to those receipts or that use;~~

16 ~~(2)]~~ (1) "gross receipts" means, as
17 applicable, "gross receipts" as used in the Gross Receipts and
18 Compensating Tax Act and the Leased Vehicle Gross Receipts Tax
19 Act and "interstate telecommunications gross receipts" in the
20 Interstate Telecommunications Gross Receipts Tax Act;

21 ~~[(3)]~~ (2) "in-person service" means a service
22 physically provided in person by the service provider, where
23 the customer or the customer's real or tangible personal
24 property upon which the service is performed is in the same
25 location as the service provider at the time the service is

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1 performed; and

2 ~~[(4)]~~ (3) "professional service" means a
3 service, other than an in-person service, that requires either
4 an advanced degree from an accredited post-secondary
5 educational institution or a license from the state to
6 perform."

7 **SECTION 3. APPROPRIATIONS.--**

8 A. Fifty million dollars (\$50,000,000) is
9 appropriated from the general fund to the destination-based
10 sourcing safety net fund for expenditure in fiscal years 2022
11 through 2024 to implement the provisions of Section 1 of this
12 act. Any unexpended or unencumbered balance remaining at the
13 end of fiscal year 2024 shall revert to the general fund.

14 B. Two million five hundred thousand dollars
15 (\$2,500,000) is appropriated from the general fund to the
16 taxation and revenue department for expenditure in fiscal years
17 2022 and 2023 to implement the provisions of Section 2 of this
18 act. Any unexpended or unencumbered balance remaining at the
19 end of fiscal year 2023 shall revert to the general fund.

20 **SECTION 4. EFFECTIVE DATE.--**The effective date of the
21 provisions of Section 2 of this act is July 1, 2022.

22 **SECTION 5. EMERGENCY.--**It is necessary for the public
23 peace, health and safety that this act take effect immediately.