

1 AN ACT

2 RELATING TO TAXATION; DISTRIBUTING REVENUE IN EXCESS OF A
3 FIVE-YEAR AVERAGE OF THE OIL AND GAS EMERGENCY SCHOOL TAX TO
4 THE TAX STABILIZATION RESERVE; AMENDING THE UNIFORM DIVISION
5 OF INCOME FOR TAX PURPOSES ACT TO DETERMINE IN-STATE SALES OF
6 INTANGIBLES AND SERVICES BASED ON MARKET SOURCING RATHER THAN
7 COST OF PERFORMANCE; CLARIFYING THAT A CERTAIN EXEMPTION FROM
8 GROSS RECEIPTS FOR WAGES ONLY APPLIES TO CERTAIN RECEIPTS OF
9 PARTNERS; REQUIRING SEPARATE REPORTING FOR CERTAIN DEDUCTIONS
10 FROM GROSS RECEIPTS; REQUIRING THE LEGISLATIVE INTERIM REVENUE
11 STABILIZATION AND TAX POLICY COMMITTEE TO CONTINUE STUDYING
12 TAX REFORM RESULTING IN A REVENUE-NEUTRAL PROPOSAL, TO MAKE
13 RECOMMENDATIONS TO THE LEGISLATURE TO REDUCE THE EFFECTS OF
14 PYRAMIDING OF THE GROSS RECEIPTS TAX AND TO MAKE
15 RECOMMENDATIONS ON THE REPEAL OF CERTAIN GROSS RECEIPTS AND
16 COMPENSATING TAX CREDITS, DEDUCTIONS AND EXEMPTIONS; REQUIRING
17 THE LEGISLATURE TO ADJUST THE GROSS RECEIPTS TAX RATE TO
18 MAINTAIN REVENUE NEUTRALITY FOLLOWING THE COMMITTEE'S
19 RECOMMENDATIONS; PROVIDING DELAYED REPEALS OF THE CREDITS,
20 DEDUCTIONS AND EXEMPTIONS; REPEALING THE TAXPAYERS DIVIDEND
21 FUND; MAKING AN APPROPRIATION.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. Section 6-4-4 NMSA 1978 (being Laws 1987,
25 Chapter 347, Section 4, as amended) is amended to read:

1 "6-4-4. RESERVATION OF EXCESS GENERAL FUND REVENUES.--
2 For the seventy-seventh and subsequent fiscal years, if the
3 revenues of the general fund exceed the total of
4 appropriations from the general fund, the excess revenue
5 shall be transferred to the operating reserve; provided that
6 if the sum of the excess revenue plus the balance in the
7 operating reserve prior to the transfer is greater than eight
8 percent of the aggregate recurring appropriations from the
9 general fund for the previous fiscal year, then an amount
10 equal to the smaller of either the amount of the excess
11 revenue or the difference between the sum and eight percent
12 of the aggregate recurring appropriations from the general
13 fund for the previous fiscal year shall be transferred to the
14 tax stabilization reserve."

15 **SECTION 2.** Section 7-1-6.20 NMSA 1978 (being Laws 1985,
16 Chapter 65, Section 6, as amended) is amended to read:

17 "7-1-6.20. IDENTIFICATION OF MONEY IN EXTRACTION TAXES
18 SUSPENSE FUND--DISTRIBUTION.--

19 A. Except as provided in Subsection B of this
20 section, after the necessary disbursements have been made
21 from the extraction taxes suspense fund, the money remaining
22 in the suspense fund as of the last day of the month shall be
23 identified by tax source and distributed or transferred in
24 accordance with the provisions of Sections 7-1-6.21 through
25 7-1-6.23 NMSA 1978 and Section 3 of this 2017 act. After the

1 necessary distributions and transfers, any balance, except
2 for remittances unidentified as to source or disposition,
3 shall be transferred to the general fund.

4 B. Payments on assessments issued by the
5 department pursuant to the Oil and Gas Conservation Tax Act,
6 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
7 Valorem Production Tax Act and the Oil and Gas Severance Tax
8 Act shall be held in the extraction taxes suspense fund until
9 the secretary determines that there is no substantial risk of
10 protest or other litigation, whereupon after the necessary
11 disbursements have been made from the extraction taxes
12 suspense fund, the money remaining in the suspense fund as of
13 the last day of the month attributed to these payments shall
14 be identified by tax source and distributed or transferred in
15 accordance with the provisions of Sections 7-1-6.21 through
16 7-1-6.23 NMSA 1978 and Section 3 of this 2017 act. After the
17 necessary distributions and transfers, any balance, except
18 for remittance unidentified as to source or disposition,
19 shall be transferred to the general fund.”

20 SECTION 3. A new section of the Tax Administration Act
21 is enacted to read:

22 "DISTRIBUTION--TAX STABILIZATION RESERVE FROM THE OIL
23 AND GAS EMERGENCY SCHOOL TAX.--

24 A. A distribution pursuant to Section 7-1-6.20
25 NMSA 1978 shall be made to the tax stabilization reserve in

1 an amount as calculated pursuant to Subsection B of this
2 section.

3 B. If the year-to-date amount plus the current net
4 receipts exceeds the annual average amount, the excess shall
5 be distributed to the tax stabilization reserve. If there is
6 not an excess amount, no distribution shall be made to the
7 tax stabilization reserve. Each month the department shall
8 make the calculation to determine if an excess amount should
9 be distributed.

10 C. As used in this section:

11 (1) "annual average amount" means the total
12 net receipts attributable to the tax imposed pursuant to
13 Section 7-31-4 NMSA 1978 and distributed pursuant to Section
14 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal
15 years, divided by five; and

16 (2) "year-to-date amount" means the
17 cumulative year-to-date net receipts attributable to the tax
18 imposed pursuant to Section 7-31-4 NMSA 1978 and distributed
19 to the general fund in the prior months of the current fiscal
20 year."

21 SECTION 4. Section 7-4-18 NMSA 1978 (being Laws 1965,
22 Chapter 203, Section 18) is amended to read:

23 "7-4-18. DETERMINATION OF SALES IN THIS STATE OF
24 SERVICES AND OTHER PROPERTY FOR INCLUSION IN SALES FACTOR.--

25 A. Sales, other than sales described in Section

1 7-4-17 NMSA 1978, are in this state:

2 (1) in the case of sale, rental, lease or
3 license of real property, if and to the extent that the real
4 property is located in this state;

5 (2) in the case of rental, lease or license
6 of tangible personal property, if and to the extent that the
7 tangible personal property is located in this state;

8 (3) in the case of sale of a service, except
9 a communication service sold by a qualified group, if and to
10 the extent that the service is delivered to a location in
11 this state; and

12 (4) in the case of sale, rental, lease or
13 license of intangible property, if and to the extent that the
14 intangible property is used in this state.

15 B. Fifty percent of sales of communication
16 services sold by a qualified group are in this state if and
17 to the extent that the services are delivered to a location
18 in this state, and fifty percent of sales of communication
19 services shall not be assigned to a location in this state.

20 A member of a qualified group that owns an interest in an
21 entity treated as a partnership for federal income tax
22 purposes shall be treated as providing its share of the
23 partnership's communication services, incurring its share of
24 the partnership's qualifying expenditures and making its
25 share of the partnership's sales subject to the gross

1 receipts tax. A partner's share of a partnership shall equal
2 the percentage of income or loss allocated to it for the
3 taxable year.

4 C. If the state or states of assignment under
5 Subsection A or B of this section cannot be determined, the
6 state or states of assignment shall be reasonably
7 approximated.

8 D. If the taxpayer is not taxable in a state to
9 which a sale is assigned pursuant to Subsection A or B of
10 this section or if the state of assignment cannot be
11 determined or reasonably approximated pursuant to Subsection
12 C of this section, that sale shall be excluded from the
13 numerator and denominator of the sales factor.

14 E. The department may promulgate rules as
15 necessary or appropriate to carry out the purposes of this
16 section.

17 F. As used in this section:

18 (1) "broadcaster" means a taxpayer that is a
19 television or radio station licensed by the federal
20 communications commission, a television or radio broadcast
21 network, a cable program network or a television distribution
22 company. "Broadcaster" does not include a platform
23 distribution company;

24 (2) "communication service" means
25 transmission or reception of information or a combination of

1 the transmission and reception of information by the use of
2 electronic, magnetic, digital or optical means, or any
3 combination of those communication technologies, and that may
4 be available for use by another person for consideration.

5 "Communication service" does not include services of a
6 broadcaster or platform distribution company;

7 (3) "platform distribution company" means a
8 cable service provider, a direct broadcast satellite system,
9 an internet content distributor or any other distributor that
10 directly charges viewers for access to any film programming;

11 (4) "qualified expenditure" means an
12 expenditure incurred in a transaction with a person who is
13 not a member of a qualified group for:

14 (a) purchasing tangible personal
15 property placed in service in this state by a member of a
16 qualified group; and

17 (b) payroll for employees employed by a
18 member of the qualified group at a facility in this state;

19 (5) "qualified group" means a group of
20 corporations that files a return in this state pursuant to
21 Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978 and:

22 (a) at least one of the members of the
23 group is a qualified member; and

24 (b) the members of the group, during
25 the tax period: 1) incur at least forty-three million

1 dollars (\$43,000,000) in qualified expenditures in this
2 state; or 2) make at least forty-three million dollars
3 (\$43,000,000) in sales that are subject to the gross receipts
4 tax; and

5 (6) "qualified member" means a person that
6 is principally engaged in the sale of communication
7 services."

8 SECTION 5. Section 7-9-17 NMSA 1978 (being Laws 1969,
9 Chapter 144, Section 10) is amended to read:

10 "7-9-17. EXEMPTION--GROSS RECEIPTS TAX--WAGES.--
11 Exempted from the gross receipts tax are the receipts of
12 employees from wages, salaries, commissions or from any other
13 form of remuneration for personal services; provided that a
14 payment to an individual who is a partner or member of a
15 partnership, limited liability company or similar entity
16 shall be considered exempt remuneration to the extent that
17 payment is substantially similar to the type of remuneration
18 an employee might receive for personal services."

19 SECTION 6. A new section of the Gross Receipts and
20 Compensating Tax Act is enacted to read:

21 "SEPARATE REPORTING REQUIRED FOR CERTAIN DEDUCTIONS FROM
22 GROSS RECEIPTS.--A taxpayer allowed a deduction pursuant to
23 Section 7-9-48, 7-9-54.3, 7-9-73.2, 7-9-73.3 or 7-9-75 NMSA
24 1978 shall report the amount of the deduction separately in a
25 manner required by the department."

1 SECTION 7. TEMPORARY PROVISION--REVENUE STABILIZATION
2 AND TAX POLICY COMMITTEE--2017 INTERIM--STUDY TAX REFORM--
3 RECOMMENDATIONS TO REDUCE THE PYRAMIDING EFFECTS OF THE GROSS
4 RECEIPTS TAX--RECOMMENDATIONS ON THE REPEAL OF CERTAIN GROSS
5 RECEIPTS AND COMPENSATING TAX CREDITS, DEDUCTIONS AND
6 EXEMPTIONS.--

7 A. To continue the efforts begun in the 2016
8 interim by the legislative interim revenue stabilization and
9 tax policy committee, in the 2017 interim, the committee
10 shall continue to study and review the tax reform proposals
11 considered during the first session of the fifty-third
12 legislature.

13 B. In December 2018, the legislative interim
14 revenue stabilization and tax policy committee shall make
15 recommendations to the legislature to reduce the pyramiding
16 effects of the gross receipts on New Mexico taxpayers.

17 C. The legislative interim revenue stabilization
18 and tax policy committee shall make recommendations to the
19 legislature on the repeal of certain exemptions and
20 deductions being repealed by this act as follows:

21 (1) in December 2018, the deductions and
22 exemptions being repealed by Subsection A of Section 8 of
23 this act; and

24 (2) in December 2020, the credits and
25 deductions being repealed by Subsection B of Section 8 of

1 this act.

2 D. In the legislative session following the
3 recommendations made pursuant to Subsection C of this
4 section, the legislature shall make appropriate adjustments
5 to the gross receipts tax rate to maintain revenue
6 neutrality.

7 **SECTION 8. REPEAL.--**

8 A. Sections 6-4-5, 7-9-13.4, 7-9-26.1, 7-9-41.4,
9 7-9-54.2, 7-9-54.4, 7-9-54.5, 7-9-56.3 through 7-9-57,
10 7-9-57.2, 7-9-63, 7-9-64, 7-9-66, 7-9-68, 7-9-73.2, 7-9-73.3,
11 7-9-76.1, 7-9-79.2, 7-9-83, 7-9-84, 7-9-86 and 7-9-87 NMSA
12 1978 (being Laws 1987, Chapter 347, Section 5, Laws 2002,
13 Chapter 20, Section 1; Laws 2003, Chapter 62, Section 1; Laws
14 2009, Chapter 62, Section 1; Laws 1995, Chapter 183, Section
15 2; Laws 2003, Chapter 62, Section 4; Laws 2004, Chapter 16,
16 Section 3; Laws 2003, Chapter 232, Section 1; Laws 1969,
17 Chapter 144, Section 47; Laws 2002, Chapter 10, Section 1;
18 Laws 1969, Chapter 144, Sections 53, 54, 57 and 60; Laws
19 1998, Chapter 95, Section 2 and Laws 1998, Chapter 99,
20 Section 4; Laws 2014, Chapter 26, Section 1; Laws 1979,
21 Chapter 338, Section 7; Laws 2007, Chapter 204, Section 9;
22 Laws 1993, Chapter 364, Sections 1 and 2; Laws 1995, Chapter
23 80, Section 1; and Laws 1995, Chapter 155, Section 35, as
24 amended) are repealed effective July 1, 2019.

25 B. Sections 7-9-91, 7-9-94, 7-9-97 through

1 7-9-103.2, 7-9-105, 7-9-107, 7-9-108, 7-9-111, 7-9-114,
2 7-9A-1 through 7-9A-9, 7-9A-11, 7-9G-1, 7-9G-2 and 7-9J-1
3 through 7-9J-8 NMSA 1978 (being Laws 2001, Chapter 135,
4 Section 1; Laws 2005, Chapter 104, Section 23; Laws 2005,
5 Chapter 169, Section 1; Laws 2005, Chapter 179, Section 1;
6 Laws 2006, Chapter 35, Sections 1 and 2; Laws 2007, Chapter
7 3, Sections 16 through 18; Laws 2012, Chapter 12, Sections 2
8 and 3; Laws 2007, Chapter 45, Section 6; Laws 2007, Chapter
9 361, Section 6; Laws 2010, Chapter 77, Section 1 and Laws
10 2010, Chapter 78, Section 1; Laws 1979, Chapter 347, Sections
11 1 and 2; Laws 2001, Chapter 57, Section 2 and Laws 2001,
12 Chapter 337, Section 2; Laws 1979, Chapter 347, Sections 3
13 through 7; Laws 1983, Chapter 206, Section 6; Laws 1979,
14 Chapter 347, Sections 8 and 9; Laws 1997, Chapter 62, Section
15 2; Laws 2004, Chapter 15, Section 1; Laws 2007, Chapter 229,
16 Section 1; and Laws 2007, Chapter 204, Sections 11 through
17 18, as amended) are repealed effective July 1, 2021.

18 **SECTION 9. APPLICABILITY.**--The provisions of Section 4
19 of this act apply to taxable years beginning on or after
20 January 1, 2018.

21 **SECTION 10. EFFECTIVE DATE.**--

22 A. The effective date of the provisions of
23 Sections 1 through 3 of this act is July 1, 2018.

24 B. The effective date of the provisions of
25 Sections 5 and 6 of this act is July 1, 2017.

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