

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 3-38-25 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 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 rooms or other units of accommodations in or at a taxable premises;

C. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodging;

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

3 E. "person" means a corporation, firm, other body
4 corporate, partnership, association or individual. "Person"
5 includes an executor, administrator, trustee, receiver or
6 other representative appointed according to law and acting in
7 a representative capacity. "Person" does not include the
8 United States of America, the state of New Mexico, any
9 corporation, department, instrumentality or agency of the
10 federal government or the state government or any political
11 subdivision of the state;

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

16 G. "taxable premises" means a hotel, motel or
17 other premises used for lodging that is not the vendee's
18 household or primary residence;

19 H. "temporary lodging" means lodgings for the
20 purpose of housing a vendee within proximity of the vendee's
21 employment or job location;

22 I. "tourist" means a person who travels for the
23 purpose of business, pleasure or culture to a municipality or
24 county imposing an occupancy tax;

25 J. "tourist-related events" means events that are

1 planned for, promoted to and attended by tourists;

2 K. "tourist-related facilities and attractions"
3 means facilities and attractions that are intended to be used
4 by or visited by tourists;

5 L. "tourist-related transportation systems" means
6 transportation systems that provide transportation for
7 tourists to and from tourist-related facilities and
8 attractions and tourist-related events;

9 M. "vendee" means a natural person to whom
10 lodgings are furnished in the exercise of the taxable service
11 of lodging; and

12 N. "vendor" means a person or the person's agent
13 furnishing lodgings in the exercise of the taxable service of
14 lodging."

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

17 "3-38-15. AUTHORIZATION OF TAX--LIMITATIONS ON USE OF
18 PROCEEDS.--

19 A. A municipality may impose by ordinance an
20 occupancy tax for revenues on lodging within the
21 municipality, and the board of county commissioners of a
22 county may impose by ordinance an occupancy tax for revenues
23 on lodging within that part of the county outside of the
24 incorporated limits of a municipality.

25 B. The occupancy tax shall not exceed five percent

1 of the gross taxable rent.

2 C. Every vendor who is furnishing any lodgings
3 within a municipality or county is exercising a taxable
4 privilege.

5 D. The following portions of the proceeds from the
6 occupancy tax that are collected based on the first thirty
7 days a vendee rents lodgings in taxable premises shall be
8 used only for advertising, publicizing and promoting
9 tourist-related facilities and attractions and tourist-
10 related events:

11 (1) if the municipality or county imposes an
12 occupancy tax of no more than two percent, not less than one-
13 fourth of the proceeds shall be used for those purposes;

14 (2) if the occupancy tax imposed is more
15 than two percent and the municipality is not located in a
16 class A county or the county is not a class A county, not
17 less than one-half of the proceeds from the first three
18 percent of the occupancy tax and not less than one-fourth of
19 the proceeds from the occupancy tax in excess of three
20 percent shall be used for those purposes; and

21 (3) if the occupancy tax imposed is more
22 than two percent and the municipality is located in a class A
23 county or the county is a class A county, not less than one-
24 half of the proceeds from the occupancy tax shall be used for
25 those purposes.

1 E. The proceeds from the occupancy tax that are
2 collected based on the first thirty days a vendee rents
3 lodgings in taxable premises in excess of the amount required
4 to be used for advertising, publicizing and promoting
5 tourist-related facilities and attractions and tourist-
6 related events may be used for any purpose authorized in
7 Section 3-38-21 NMSA 1978.

8 F. The proceeds from the occupancy tax that are
9 required to be used to advertise, publicize and promote
10 tourist-related facilities and attractions and tourist-
11 related events shall be used within two years of the close of
12 the fiscal year in which they were collected and shall not be
13 accumulated beyond that date or used for any other purpose.

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

22 H. Notwithstanding the provisions of Paragraph (2)
23 of Subsection D of this section, the payment of principal and
24 interest on outstanding bonds issued prior to January 1, 1996
25 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be

1 made in accordance with the retirement schedules of the bonds
2 established at the time of issuance. The amount of
3 expenditures required under Paragraph (2) of Subsection D of
4 this section shall be reduced each year, if necessary, to
5 make the required payments of principal and interest of all
6 outstanding bonds issued prior to January 1, 1996."

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

9 "3-38-16. EXEMPTIONS.--The occupancy tax shall not
10 apply:

11 A. if a vendee:

12 (1) has been a permanent resident of the
13 taxable premises for a period of at least thirty consecutive
14 days, unless those premises are temporary lodging; or

15 (2) enters into or has entered into a
16 written agreement for lodgings at the taxable premises for a
17 period of at least thirty consecutive days, unless those
18 premises are temporary lodging;

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

21 C. to lodging accommodations at institutions of
22 the federal government, the state or any political
23 subdivision thereof;

24 D. to lodging accommodations at religious,
25 charitable, educational or philanthropic institutions,

1 including accommodations at summer camps operated by such
2 institutions;

3 E. to clinics, hospitals or other medical
4 facilities; or

5 F. to privately owned and operated convalescent
6 homes or homes for the aged, infirm, indigent or chronically
7 ill."

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

10 "3-38-21. ELIGIBLE USES OF TAX PROCEEDS.--

11 A. Subject to the limitations contained in Section
12 3-38-15 NMSA 1978, a municipality or county imposing an
13 occupancy tax may use the proceeds from the occupancy tax
14 that are collected based on the first thirty days a vendee
15 rents lodgings in taxable premises to defray costs of:

16 (1) collecting and otherwise administering
17 the occupancy tax, including the performance of audits
18 required by the Lodgers' Tax Act pursuant to guidelines
19 issued by the department of finance and administration;

20 (2) establishing, operating, purchasing,
21 constructing, otherwise acquiring, reconstructing, extending,
22 improving, equipping, furnishing or acquiring real property
23 or any interest in real property for the site or grounds for
24 tourist-related facilities and attractions or tourist-related
25 transportation systems of the municipality, the county in

1 which the municipality is located or the county;

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

6 (4) advertising, publicizing and promoting
7 tourist-related attractions, facilities and events of the
8 municipality or county and tourist-related facilities,
9 attractions and events within the area;

10 (5) providing police and fire protection and
11 sanitation service for tourist-related facilities,
12 attractions and events located in the respective municipality
13 or county;

14 (6) providing a required minimum revenue
15 guarantee for air service to the municipality or county to
16 increase the ability of tourists to easily access the
17 municipality's or county's tourist-related facilities,
18 attractions and events; or

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

22 B. A municipality or county imposing an occupancy
23 tax may use the proceeds from the occupancy tax that are
24 collected based on the thirty-first and subsequent days a
25 vendee rents lodgings in taxable premises for any

1 municipality or county purpose; provided that the use is
2 stated in the ordinance imposing the tax.

3 C. As used in this section, "minimum revenue
4 guarantee" is the amount of money guaranteed by a
5 municipality or county to be earned by an airline providing
6 air services to and from that municipality or county, which
7 is the difference between the minimum flight charge revenue
8 specified in the contract between the municipality or county
9 and the airline and the amount of actual flight charge
10 revenue received by the airline that is less than that
11 contractual amount."

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

14 "3-38-25. MAINTAINING REVENUE DEDICATION.--If a
15 municipality or county has dedicated any amount of revenue
16 attributable to a tax imposed pursuant to the Lodgers' Tax
17 Act, the municipality or county shall continue to dedicate
18 the same amount of revenue attributable to the tax until the
19 ordinance dedicating the revenue expires, the term of the
20 dedication expires, the governing body acts to change the
21 dedication or, in the case of bonded indebtedness, the debt
22 is fully discharged or otherwise provided for in full."

23 SECTION 7. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2020. _____