

Explanation of

Take-back (SB236 update)

Summary: Reintroduces 2017's SB 236 which passed both the Senate and the House unanimously but was vetoed by Governor Martinez. SB 236 redefined the term "average distribution or transfer amount". Instead of indicating the annual average of three consecutive years of distributions/transfers of gross receipts tax revenues, the term would mean the monthly average of 36 consecutive months of distributions/transfers of gross receipts tax revenues.

In addition to that main idea, this bill also:

(1) simplifies language dealing with situations in which distributions/transfers have been made for fewer than 36 months;

(2) makes it clear that the new definition applies to distributions and transfers to be made on and after the effective date and that the current definition applies to distributions and transfers made before then; and

(3) adds an effective date of January 1, 2020.

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Bill

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

AN ACT

RELATING TO TAXATION; AMENDING THE DEFINITION OF "AVERAGE DISTRIBUTION OR TRANSFER AMOUNT" IN SECTION 7-1-6.15 NMSA 1978 (BEING LAWS 1983, CHAPTER 211, SECTION 20, AS AMENDED BY LAWS 2015, CHAPTER 89, SECTION 1 AND LAWS 2015, CHAPTER 100, SECTION 1).

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 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;

(2) any transfer to a municipality with respect to any local

1 option gross receipts tax imposed by that municipality;

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

4 (4) any distribution to a county pursuant to Section 7-1-
5 6.16 or 7-1-6.47 NMSA 1978;

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

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

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

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

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

16 B. Before making a distribution or transfer specified in
17 Subsection A of this section to a municipality or county for the month,
18 amounts comprising the net receipts shall be segregated into two mutually
19 exclusive categories. One category shall be for amounts relating to the
20 current month, and the other category shall be for amounts relating to prior
21 periods. The total of each category for a municipality or county shall be
22 reported each month to that municipality or county. If the total of the
23 amounts relating to prior periods is less than zero and its absolute value
24 exceeds the greater of one hundred dollars (\$100) or an amount equal to
25 twenty percent of the average distribution or transfer amount for that

1 municipality or county, then the following procedures shall be carried out:

2 (1) all negative amounts relating to any period prior to the
3 three calendar years preceding the year of the current month, net of any
4 positive amounts in that same time period for the same taxpayers to which the
5 negative amounts pertain, shall be excluded from the total relating to prior
6 periods. Except as provided in Paragraph (2) of this subsection, the net
7 receipts to be distributed or transferred to the municipality or county shall be
8 adjusted to equal the amount for the current month plus the revised total for
9 prior periods; and

10 (2) if the revised total for prior periods determined
11 pursuant to Paragraph (1) of this subsection is negative and its absolute value
12 exceeds the greater of one hundred dollars (\$100) or an amount equal to
13 twenty percent of the average distribution or transfer amount for that
14 municipality or county, the revised total for prior periods shall be excluded
15 from the distribution or transfers and the net receipts to be distributed or
16 transferred to the municipality or county shall be equal to the amount for the
17 current month.

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

21 D. Prior to or concurrently with the distribution or transfer to the
22 municipality or county of the adjusted net receipts, the department shall notify
23 the municipality or county whose distribution or transfer has been adjusted
24 pursuant to Paragraph (2) of Subsection B of this section:

25 (1) that the department has made such an adjustment,

1 that the department has determined that a specified amount is recoverable
2 from the municipality or county and that the department intends to recover
3 that amount from future distributions or transfers to the municipality or
4 county;

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

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

11 (4) that the municipality or county may inspect, pursuant
12 to Section 7-1-8.9 NMSA 1978, an application for a claim for refund that gave
13 rise to the recoverable amount, exclusive of any amended returns that may be
14 attached to the application.

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

18 (1) the department may collect the recoverable amount
19 by:

20 (a) decreasing distributions or transfers to the
21 municipality or county in accordance with a repayment agreement entered into
22 with the municipality or county; or

23 (b) except as provided in Paragraphs (2) and (3) of
24 this subsection, if the municipality or county fails to act within the ninety days,
25 decreasing the amount of the next six distributions or transfers to the

1 municipality or county following expiration of the ninety-day period in
2 increments as nearly equal as practicable and sufficient to recover the
3 amount;

4 (2) if, pursuant to Subsection B of this section, the
5 secretary determines that the recoverable amount is more than fifty percent of
6 the average distribution or transfer of net receipts for that municipality or
7 county, the secretary:

8 (a) shall recover only up to fifty percent of the
9 average distribution or transfer of net receipts for that municipality or county;
10 and

11 (b) may, in the secretary's discretion, waive
12 recovery of any portion of the recoverable amount, subject to approval by the
13 state board of finance; and

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

22 F. No later than ninety days from the date notice pursuant to
23 Subsection D of this section is given, the department shall provide the
24 municipality or county adequate opportunity to review an application for a
25 claim for refund that gave rise to the recoverable amount, exclusive of any

1 amended returns that may be attached to the application, pursuant to Section
2 7-1-8.9 NMSA 1978.

3 G. On or before September 1 of each year beginning in 2020, the
4 secretary shall report to the state board of finance and the legislative finance
5 committee the total recoverable amount waived pursuant to Subparagraph (b)
6 of Paragraph (2) and Paragraph (3) of Subsection E of this section for each
7 municipality or county in the prior fiscal year.

8 H. The secretary is authorized to decrease a distribution or
9 transfer to a municipality or county upon being directed to do so by the
10 secretary of finance and administration pursuant to the State Aid Intercept Act
11 or to redirect a distribution or transfer to the New Mexico finance authority
12 pursuant to an ordinance or a resolution passed by the county or municipality
13 and a written agreement of the municipality or county and the New Mexico
14 finance authority. Upon direction to decrease a distribution or transfer or
15 notice to redirect a distribution or transfer to a municipality or county, the
16 secretary shall decrease or redirect the next designated distribution or
17 transfer, and succeeding distributions or transfers as necessary, by the
18 amount of the state distributions intercept authorized by the secretary of
19 finance and administration pursuant to the State Aid Intercept Act or by the
20 amount of the state distribution intercept authorized pursuant to an ordinance
21 or a resolution passed by the county or municipality and a written agreement
22 with the New Mexico finance authority. The secretary shall transfer the state
23 distributions intercept amount to the municipal or county treasurer or other
24 person designated by the secretary of finance and administration or to the
25 New Mexico finance authority pursuant to written agreement to pay the debt

1 service to avoid default on qualified local revenue bonds or meet other local
2 revenue bond, loan or other debt obligations of the municipality or county to
3 the New Mexico finance authority. A decrease to or redirection of a
4 distribution or transfer pursuant to this subsection that arose:

5 (1) prior to an adjustment of a distribution or transfer of
6 net receipts creating a recoverable amount owed to the department takes
7 precedence over any collection of any recoverable amount pursuant to
8 Paragraph (2) of Subsection B of this section, which may be made only from
9 the net amount of the distribution or transfer remaining after application of the
10 decrease or redirection pursuant to this subsection; and

11 (2) after an adjustment of a distribution or transfer of net
12 receipts creating a recoverable amount owed to the department shall be
13 subordinate to any collection of any recoverable amount pursuant to
14 Paragraph (2) of Subsection B of this section.

15 I. Upon the direction of the secretary of finance and
16 administration pursuant to Section 9-6-5.2 NMSA 1978, the secretary shall
17 temporarily withhold the balance of a distribution to a municipality or county,
18 net of any decrease or redirected amount pursuant to Subsection H of this
19 section and any recoverable amount pursuant to Paragraph (2) of Subsection
20 B of this section, that has failed to submit an audit report required by the
21 Audit Act or a financial report required by Subsection F of Section 6-6-2 NMSA
22 1978. The amount to be withheld, the source of the withheld distribution and
23 the number of months that the distribution is to be withheld shall be as
24 directed by the secretary of finance and administration. A distribution
25 withheld pursuant to this subsection shall remain in the tax administration

1 suspense fund until distributed to the municipality or county and shall not be
2 distributed to the general fund. An amount withheld pursuant to this
3 subsection shall be distributed to the municipality or county upon direction of
4 the secretary of finance and administration.

5 J. As used in this section:

6 (1) "amounts relating to the current month" means any
7 amounts included in the net receipts of the current month that represent
8 payment of tax due for the current month, correction of amounts processed in
9 the current month that relate to the current month or that otherwise relate to
10 obligations due for the current month;

11 (2) "amounts relating to prior periods" means any
12 amounts processed during the current month that adjust amounts processed
13 in a period or periods prior to the current month regardless of whether the
14 adjustment is a correction of a department error or due to the filing of
15 amended returns, payment of department-issued assessments, filing or
16 approval of claims for refund, audit adjustments or other cause;

17 (3) "average distribution or transfer amount" means the
18 following amounts; provided that a distribution or transfer that is negative
19 shall not be used in calculating the amounts:

20 (a) the [~~annual~~] average [~~of the total~~] monthly
21 amount distributed or transferred to a municipality or county in [~~each of the~~
22 ~~three twelve-month periods~~] the thirty-six-month period preceding the current
23 month; or

24 (b) if a distribution or transfer to a municipality or
25 county has been made for [~~less than three years, the total amount distributed~~

1 ~~or transferred in the year preceding the current month; or~~
2 ~~(c) if a municipality or county has received~~
3 ~~distributions or transfers of net receipts for twelve months]~~ fewer than thirty-
4 six months prior to the current month, the monthly average of net receipts
5 distributed or transferred to the municipality or county for the months for
6 which distributions or transfers preceding the current month [~~multiplied by~~
7 ~~twelve]~~ have been made;

8 (4) "current month" means the month for which the
9 distribution or transfer is being prepared;

10 (5) "repayment agreement" means an agreement between
11 the department and a municipality or county under which the municipality or
12 county agrees to allow the department to recover an amount determined
13 pursuant to Paragraph (2) of Subsection B of this section by decreasing
14 distributions or transfers to the municipality or county for one or more months
15 beginning with the distribution or transfer to be made with respect to a
16 designated month. No interest shall be charged."

17 **SECTION 2. APPLICABILITY**--The provisions of this act apply to
18 distributions and transfers made on or after the effective date of this act and
19 to repayment agreements entered into on or after the effective date of this
20 act. Distributions and transfers made and repayment agreements entered into
21 prior to the effective date of this act will be governed by that version of
22 Section 7-1-6.15 NMSA 1978 in effect immediately prior to the effective date
23 of this act.

24 **SECTION 3. EFFECTIVE DATE**--The effective date of this act is
25 January 1, 2020.