

AN ACT

RELATING TO TAXATION; PROVIDING FOR LOCAL OPTION COMPENSATING TAXES.

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

Section 1. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended) is amended to read:

"7-1-3. DEFINITIONS.--Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

A. "automated clearinghouse transaction" means an electronic credit or debit transmitted through an automated clearinghouse payable to the state treasurer and deposited with the fiscal agent of New Mexico;

B. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "electronic payment" means a payment made by automated clearinghouse deposit, any funds wire transfer system or a credit card, debit card or electronic cash transaction through the internet;

D. "employee of the department" means any employee of the department, including the secretary, or any person acting as agent or authorized to represent or perform services for the department in any capacity with respect to any law made subject to administration and enforcement under the provisions of the Tax Administration Act;

E. "financial institution" means any state or federally chartered, federally insured depository institution;

F. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

G. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

H. "local option compensating tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's use of property, as the term "use" is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the compensating tax; "local option compensating tax" includes the compensating taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross

Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on use of property, which taxes are to be collected by the department in the same time and in the same manner as it collects the compensating tax;

I. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

J. "managed audit" means a review and analysis conducted by a taxpayer under an agreement with the department to determine the taxpayer's compliance with a tax administered pursuant to the Tax Administration Act and the presentation of

the results to the department for assessment of tax found to be due;

K. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

L. "overpayment" means an amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by a person to the department or withheld from the person in excess of tax due from the person to the state at the time of the payment or at the time the amount withheld is credited against tax due;

M. "paid" includes the term "paid over";

N. "pay" includes the term "pay over";

O. "payment" includes the term "payment over";

P. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; and "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or

employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

Q. "property" means property or rights to property;

R. "property or rights to property" means any tangible property, real or personal, or any intangible property of a taxpayer;

S. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

T. "secretary or the secretary's delegate" means the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

U. "security" means money, property or rights to property or a surety bond;

V. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States;

W. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under provision of any law made subject to

administration and enforcement according to the provisions of the Tax Administration Act and, unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto; "tax" also means any amount of any abatement of tax made or any credit, rebate or refund paid or credited by the department under any law subject to administration and enforcement under the provisions of the Tax Administration Act to any person contrary to law and includes, unless the context requires otherwise, the amount of any interest or civil penalty relating thereto;

X. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; and

Y. "tax return preparer" means a person who prepares for others for compensation or who employs one or more persons to prepare for others for compensation any return of income tax, a substantial portion of any return of income tax, any claim for refund with respect to income tax or a substantial portion of any claim for refund with respect to income tax; provided that a person shall not be a "tax return preparer" merely because such person:

(1) furnishes typing, reproducing or other mechanical assistance;

(2) is an employee who prepares an income tax return or claim for refund with respect to an income tax return of the employer, or of an officer or employee of the employer, by whom the person is regularly and continuously employed; or

(3) prepares as a trustee or other fiduciary an income tax return or claim for refund with respect to income tax for any person."

Section 2. Section 7-1-6.12 NMSA 1978 (being Laws 1983, Chapter 211, Section 17, as amended) is amended to read:

"7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAXES--REVENUES FROM LOCAL OPTION COMPENSATING TAXES.--

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section 7-1-6.41 NMSA

1978.

B. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option compensating tax imposed by that municipality in an amount, subject to any increase or decrease pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option compensating tax imposed by that municipality."

Section 3. Section 7-1-6.13 NMSA 1978 (being Laws 1983, Chapter 211, Section 18, as amended) is amended to read:

"7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION GROSS RECEIPTS TAXES--REVENUES FROM LOCAL OPTION COMPENSATING TAXES.--

A. Except as provided in Subsection C of this section, a transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of



Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option compensating tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option compensating tax imposed by that county.

C. In lieu of a distribution pursuant to Subsection A of this section to a class B county with a population, as shown in the last federal decennial census, of more than twenty-five thousand and a net taxable value in the 2002 property tax year of less than two hundred million dollars (\$200,000,000), the department shall make a distribution of the following amounts to the largest municipality in that county for the purpose of maintaining and operating a hospital:

(1) amounts attributable to the second one-eighth percent increment of the local option gross receipts tax; and

(2) amounts attributable to the special county hospital gross receipts tax."

Section 4. Section 7-1-6.15 NMSA 1978 (being Laws 1983, Chapter 211, Section 20, as amended) 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 of gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section 7-1-6.36 NMSA 1978;

(2) any transfer to a municipality with respect to any local option gross receipts tax or local option compensating tax imposed by that municipality;

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

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

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

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

(7) any distribution to a municipality or a county of cigarette taxes pursuant to Sections 7-1-6.11, 7-12-15 and 7-12-16 NMSA 1978;

(8) any distribution to a county from the county government road fund pursuant to Section 7-1-6.26 NMSA

1978;

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

(10) any distribution to a municipality, county, school district or special district of oil and gas ad valorem production tax reduced as a result of a refund requested in December 1998 with respect to production of carbon dioxide.

B. If the secretary determines that any prior distribution or transfer to a political subdivision was erroneous, the secretary shall increase or decrease the next distribution or transfer amount for that political subdivision after the determination, except as provided in Subsection C, D or E of this section, by the amount necessary to correct the error. Subject to the provisions of Subsection E of this section, the secretary shall notify the political subdivision of the amount of each increase or decrease.

C. No decrease shall be made to current or future distributions or transfers to a political subdivision for any excess distribution or transfer made to that political subdivision more than one year prior to the calendar year in which the determination of the secretary was made.

D. The secretary, in lieu of recovery from the next distribution or transfer amount, may recover an excess distribution or transfer of one hundred dollars (\$100) or more

to the political subdivision in installments from current and future distributions or transfers to that political subdivision pursuant to an agreement with the officials of the political subdivision whenever the amount of the distribution or transfer decrease for the political subdivision exceeds ten percent of the average distribution or transfer amount for that political subdivision for the twelve months preceding the month in which the secretary's determination is made; provided that for the purposes of this subsection, the "average distribution or transfer amount" shall be the arithmetic mean of the distribution or transfer amounts within the twelve months immediately preceding the month in which the determination is made.

E. Except for the provisions of this section, if the amount by which a distribution or transfer would be adjusted pursuant to Subsection B of this section is one hundred dollars (\$100) or less, no adjustment or notice need be made.

F. The secretary is authorized to decrease a distribution to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act or to redirect a distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or

county and the New Mexico finance authority. Upon direction to decrease a distribution or notice to redirect a distribution to a municipality or county, the secretary shall decrease or redirect the next designated distribution, and succeeding distributions as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other debt obligations of the municipality or county to the New Mexico finance authority."

Section 5. A new section of the Tax Administration Act is enacted to read:

"LOCATION OF USE.--

A. For compensating tax and local option compensating tax purposes, use of property occurs in the jurisdiction in which:

(1) the buyer's place of business is located if the buyer is engaging in business in New Mexico and uses the property in furtherance of that business;

(2) the buyer's principal office is located if the buyer is the state or a local government or an agency or instrumentality of the state or a local government; or

(3) the buyer's residence is located if the buyer is not engaging in business in New Mexico or does not use the property in furtherance of business.

B. The department shall promulgate regulations to determine where use will be attributed when the buyer has more than one business location or residence in New Mexico."

Section 6. Section 7-9-9 NMSA 1978 (being Laws 1966, Chapter 47, Section 9, as amended) is amended to read:

"7-9-9. LIABILITY OF USER FOR PAYMENT OF COMPENSATING TAX AND LOCAL OPTION COMPENSATING TAX.--Any person in New Mexico using property on the value of which compensating tax and local option compensating tax is payable but has not been paid is liable to the state for payment of the compensating tax and applicable local option compensating tax, but this liability is discharged if the buyer has paid the compensating tax and applicable local option compensating tax to the seller for payment over to the department."

Section 7. Section 7-19-12 NMSA 1978 (being Laws 1979, Chapter 397, Section 3, as amended) is amended to read:

"7-19-12. AUTHORIZATION TO IMPOSE SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX AND SUPPLEMENTAL MUNICIPAL COMPENSATING TAX--AUTHORIZATION FOR ISSUANCE OF SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS BONDS--ELECTION REQUIRED.--

A. The majority of the members elected to the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business in the municipality. This tax is to be referred to as the "supplemental municipal gross receipts tax". The rate of the tax shall not exceed one percent of the gross receipts of the person engaging in business and shall be imposed in one-fourth percent increments if less than one percent.

B. An ordinance imposing a tax authorized by Subsection A of this section shall also impose a tax for the privilege of using property in the municipality if the use or service is subject to the compensating tax. This tax shall be referred to as the "supplemental municipal compensating tax". The rate of the tax imposed pursuant to this subsection shall be the same as the rate of tax imposed pursuant to Subsection A of this section. If, at the time this 2005 act becomes effective, a municipality has in effect any amount of supplemental municipal gross receipts tax, a supplemental municipal compensating tax is hereby imposed at the same rate, effective on the effective date of this 2005 act.

C. The governing body of a municipality enacting an ordinance imposing the taxes authorized in Subsections A and B of this section shall submit the question of imposing the taxes and the question of the issuance of supplemental municipal gross receipts bonds in an amount not to exceed nine million dollars (\$9,000,000), for which the revenue from the supplemental municipal gross receipts tax and supplemental municipal compensating tax is dedicated, to the qualified electors of the municipality at a regular or special election.

D. The questions referred to in Subsection C of this section shall be submitted to a vote of the qualified electors of the municipality as two separate ballot questions, which shall be substantially in the following form:

(1) "Shall the municipality be authorized to issue supplemental municipal gross receipts bonds in an amount of not exceeding \_\_\_\_\_ dollars for the purpose of constructing and equipping and otherwise acquiring a municipal water supply system?

For \_\_\_\_\_ Against \_\_\_\_\_"; and

(2) "Shall the municipality impose an excise tax for the privilege of engaging in business in the municipality which shall be known as the "supplemental municipal gross receipts tax" and an excise tax on the use of property in the municipality, which shall be known as the "supplemental municipal compensating tax", both of which shall



be imposed at a rate of \_\_\_\_\_ percent, the proceeds of which are dedicated to the payment of supplemental municipal gross receipts bonds?

For \_\_\_\_\_ Against \_\_\_\_\_".

E. Only those voters who are registered electors who reside within the municipality shall be permitted to vote on these two questions. The procedures for conducting the election shall be substantially the same as the applicable provisions in Sections 3-30-1, 3-30-6 and 3-30-7 NMSA 1978 relating to municipal debt.

F. If at an election called pursuant to this section a majority of the voters voting on each of the two questions vote in the affirmative on each question, the ordinance imposing the supplemental municipal gross receipts tax and supplemental municipal compensating tax shall be approved. If at such election a majority of the voters voting on such questions fails to approve any of the questions, the ordinance imposing the taxes shall be disapproved and the questions required to be submitted by Subsection C of this section shall not be submitted to the voters for a period of one year from the date of the election.

G. Any ordinance enacted under the provisions of this section shall include an effective date of either July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date of the election. A

certified copy of any ordinance imposing a supplemental municipal gross receipts tax and supplemental municipal compensating tax shall be mailed to the department within five days after the ordinance is adopted by the approval by the electorate. Any ordinance repealing the imposition of a tax under the provisions of the Supplemental Municipal Gross Receipts Tax Act shall become effective on either July 1 or January 1, after the expiration of at least three months from the date the ordinance is repealed by the governing body.

H. Nothing in this section is intended to or does alter the effectiveness or validity of any actions taken in accordance with Subsection G of Section 80 of Chapter 20 of Laws 1986."

Section 8. Section 7-19-13 NMSA 1978 (being Laws 1979, Chapter 397, Section 4) is amended to read:

"7-19-13. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND REQUIREMENTS OF THE DEPARTMENT.--

A. Any ordinance imposing a supplemental municipal gross receipts tax and supplemental municipal compensating tax shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act then in effect and as it may be amended from time to time.

B. The governing body of any municipality imposing

or increasing the supplemental municipal gross receipts tax and supplemental municipal compensating tax shall adopt the language of the model ordinance furnished to the municipality by the department for the portion of the ordinance relating to the taxes."

Section 9. Section 7-19-14 NMSA 1978 (being Laws 1979, Chapter 397, Section 5, as amended) is amended to read:

"7-19-14. SPECIFIC EXEMPTIONS.--

A. No supplemental municipal gross receipts tax shall be imposed on the gross receipts arising from:

(1) transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

(2) a business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978.

B. Exempted from the supplemental municipal compensating tax is the use of tangible personal property if that property is not available from New Mexico sources and is used by the railroad, airline, mining, oil and natural gas, dairy and cheese manufacturing, electric and gas utilities or telecommunications and cable industries."

Section 10. Section 7-19-15 NMSA 1978 (being Laws 1979,

Chapter 397, Section 6, as amended) is amended to read:

"7-19-15. COLLECTION BY DEPARTMENT--TRANSFER OF  
PROCEEDS--DEDUCTIONS.--

A. The department shall collect the supplemental municipal gross receipts tax in the same manner and at the same time it collects the state gross receipts tax. The department shall collect the supplemental municipal compensating tax in the same manner and at the same time it collects the compensating tax.

B. The department shall withhold an administrative fee pursuant to Section 7-1-6.41 NMSA 1978. The department shall transfer to each municipality for which it is collecting a supplemental municipal gross receipts tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the supplemental municipal gross receipts tax. The department shall transfer to each municipality for which it is collecting a supplemental municipal compensating tax the amount of the tax collected less any disbursements for tax credits, refunds and payment of interest applicable to the supplemental municipal compensating tax. Transfer of the taxes to a municipality shall be made within the month following the month in which the taxes are collected."

Chapter 397, Section 7) is amended to read:

"7-19-16. INTERPRETATION OF ACT--ADMINISTRATION AND ENFORCEMENT OF TAXES.--

A. The department shall interpret the provisions of the Supplemental Municipal Gross Receipts Tax Act.

B. The department shall administer and enforce the collection of the supplemental municipal gross receipts tax and the supplemental municipal compensating tax, and the Tax Administration Act applies to the administration and enforcement of the taxes."

Section 12. Section 7-19-18 NMSA 1978 (being Laws 1979, Chapter 397, Section 9, as amended) is amended to read:

"7-19-18. SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX AND SUPPLEMENTAL MUNICIPAL COMPENSATING TAX--USE OF PROCEEDS-- RESTRICTION.--

A. The proceeds from the supplemental municipal gross receipts tax and supplemental municipal compensating tax shall be deposited in a special improvement account of the municipality and shall be used only for:

(1) the payment of the principal of, interest on, any prior redemption premiums due in connection with and other expenses related to the supplemental municipal gross receipts bonds issued pursuant to the Supplemental Municipal Gross Receipts Tax Act;

(2) the funding of any reserves and other

accounts in connection with such bonds;

(3) refunding bonds; and

(4) to the extent not needed for those purposes, the improvement of the municipality's water system.

B. When any issue of supplemental municipal gross receipts bonds is fully paid, the supplemental municipal gross receipts tax and supplemental municipal compensating tax shall cease to be imposed for that issue, but may continue to be imposed for bonds enacted and approved pursuant to Section 7-19-12 NMSA 1978 and thereafter issued, or for refunding bonds issued pursuant to Section 7-19-17.1 NMSA 1978. Any money remaining in a special improvement account after the obligations for supplemental municipal gross receipts bonds and refunding bonds are fully paid may be transferred to any other fund of the municipality."

Section 13. A new section of the Municipal Local Option Gross Receipts Taxes Act is enacted to read:

"MATCHING LOCAL OPTION COMPENSATING TAX.--

A. An ordinance imposing, increasing or repealing a local option gross receipts tax authorized by the Municipal Local Option Gross Receipts Taxes Act shall also impose, increase or repeal a tax for the privilege of using property in the municipality if the use of the property is subject to the compensating tax. The rate of the municipal tax on use imposed, increased or repealed shall be the same as the rate

of the local option gross receipts tax imposed, increased or repealed.

B. If, at the time this 2005 act becomes effective, a municipality has in effect a local option gross receipts tax authorized by the Municipal Local Option Gross Receipts Taxes Act, a municipal tax on use is hereby imposed at the same rate, effective on the effective date of this 2005 act, except that the rate of the municipal tax on use matching the municipal gross receipts tax shall be equal to the rate of the municipal gross receipts tax for the municipality.

C. The municipal taxes on use authorized or imposed by this section may be referred to generally as "municipal local option compensating taxes". Each tax may be referred to individually by reference to the local option gross receipts tax with which it is associated."

Section 14. Section 7-19D-5 NMSA 1978 (being Laws 1993, Chapter 346, Section 5, as amended) is amended to read:

"7-19D-5. SPECIFIC EXEMPTIONS.--

A. No tax authorized by the provisions of the Municipal Local Option Gross Receipts Taxes Act shall be imposed on the gross receipts arising from:

(1) transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

(2) a business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978.

B. Exempted from each municipal local option compensating tax is the use of tangible personal property if that property is not available from New Mexico sources and is used by the railroad, airline, mining, oil and natural gas, dairy and cheese manufacturing, electric and gas utilities or telecommunications and cable industries."

Section 15. Section 7-19D-7 NMSA 1978 (being Laws 1993, Chapter 346, Section 7, as amended) is amended to read:

"7-19D-7. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect each local option gross receipts tax imposed pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the state gross receipts tax. The department shall collect the municipal local option compensating taxes imposed pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the compensating tax.

B. Except as provided in Subsection C of this section, the department shall withhold an administrative fee



pursuant to Section 7-1-6.41 NMSA 1978. The department shall transfer to each municipality for which it is collecting a local option gross receipts tax pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act the amount of each tax collected for that municipality, less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The department shall transfer to each municipality for which it collects a municipal local option compensating tax pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act the amount of each tax collected for that municipality less any disbursements for tax credits, refunds and payment of interest applicable to the tax. The transfer to the municipality shall be made within the month following the month in which the tax is collected.

C. With respect to the municipal gross receipts tax imposed by a municipality pursuant to Section 7-19D-9 NMSA 1978, the department shall withhold the administrative fee pursuant to Section 7-1-6.41 NMSA 1978 only on that portion of the municipal gross receipts tax arising from a municipal gross receipts tax rate in excess of one-half percent."

Section 16. A new section of the Local Hospital Gross Receipts Tax Act is enacted to read:

"MATCHING LOCAL HOSPITAL COMPENSATING TAX.--Any ordinance imposing, increasing or repealing a local hospital

gross receipts tax authorized by the Local Hospital Gross Receipts Tax Act shall also impose, increase or repeal a tax for the privilege of using property in the county if the use of the property is subject to the compensating tax. This tax may be referred to as the "local hospital compensating tax". The rate of the local hospital compensating tax imposed, increased or repealed shall be the same as the rate of local hospital gross receipts tax imposed, increased or repealed. If, at the time this 2005 act becomes effective, a county has in effect a local hospital gross receipts tax, a local hospital compensating tax is hereby imposed at the same rate, effective on the effective date of this 2005 act."

Section 17. Section 7-20C-5 NMSA 1978 (being Laws 1991, Chapter 176, Section 5, as amended) is amended to read:

"7-20C-5. SPECIFIC EXEMPTIONS.--

A. No local hospital gross receipts tax shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

B. Exempted from the local hospital compensating tax is the use of tangible personal property if that property is not available from New Mexico sources and is used by the railroad, airline, mining, oil and natural gas, dairy and cheese manufacturing, electric and gas utilities or

telecommunications and cable industries."

Section 18. Section 7-20C-6 NMSA 1978 (being Laws 1991, Chapter 176, Section 6, as amended) is amended to read:

"7-20C-6. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect the local hospital gross receipts tax in the same manner and at the same time it collects the state gross receipts tax. The department shall collect the local hospital compensating tax in the same manner and at the same time it collects the compensating tax.

B. The department shall withhold an administrative fee pursuant to Section 7-1-6.41 NMSA 1978. Except as provided in Subsection C of this section, the department shall transfer to each county for which it is collecting the local hospital gross receipts tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The department shall transfer to each county for which it is collecting the local hospital compensating tax the amount of the tax collected less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. Transfer to a county shall be made within the month following the month in which the tax is collected.

C. In lieu of a transfer pursuant to Subsection B

of this section to a class B county with a population, as shown in the last federal decennial census, of more than twenty-five thousand and a net taxable value in the 2002 property tax year of less than two hundred million dollars (\$200,000,000), the department shall make the transfer to the largest municipality in that county for the purpose of maintaining and operating a hospital."

Section 19. A new section of the County Local Option Gross Receipts Taxes Act is enacted to read:

"MATCHING LOCAL OPTION COMPENSATING TAX.--

A. Any ordinance imposing, increasing or repealing a local option gross receipts tax authorized by the County Local Option Gross Receipts Taxes Act to be imposed on a countywide basis shall also impose, increase or repeal a tax for the privilege of using property in the county if the use of the property is subject to the compensating tax. The rate of county tax on use imposed, increased or repealed shall be the same as the rate of the local option gross receipts tax imposed, increased or repealed.

B. Any ordinance imposing, increasing or repealing a local option gross receipts tax authorized by the County Local Option Gross Receipts Taxes Act to be imposed only in the county area shall also impose, increase or repeal a tax for the privilege of using property in the county area. The rate of county area tax on use imposed, increased or repealed

shall be the same as the rate of the local option gross receipts tax imposed, increased or repealed.

C. If, at the time this 2005 act becomes effective, a county has in effect a local option gross receipts tax authorized to be imposed on a countywide basis, a county tax on use of property in the county is hereby imposed at the same rate, effective on the effective date of this 2005 act. If, at the time this 2005 act becomes effective, a county has in effect a local option gross receipts tax authorized to be imposed only in the county area, a county tax on use of property in the county area is hereby imposed at the same rate, effective on the effective date of this 2005 act.

D. The county taxes on use authorized or imposed by this section may be referred to generally as "county local option compensating taxes". Each tax may be referred to individually by reference to the local option gross receipts tax with which it is associated."

Section 20. Section 7-20E-5 NMSA 1978 (being Laws 1993, Chapter 354, Section 5, as amended) is amended to read:

"7-20E-5. SPECIFIC EXEMPTIONS.--

A. No tax authorized under the provisions of the County Local Option Gross Receipts Taxes Act shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the

county to another point outside the county.

B. Exempted from each county local option compensating tax is the use of tangible personal property if that property is not available from New Mexico sources and is used by the railroad, airline, mining, oil and natural gas, dairy and cheese manufacturing, electric and gas utilities or telecommunications and cable industries."

Section 21. Section 7-20E-7 NMSA 1978 (being Laws 1993, Chapter 354, Section 7, as amended) is amended to read:

"7-20E-7. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect each county local option gross receipts tax imposed pursuant to the provisions of the County Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the state gross receipts tax. The department shall collect each county local option compensating tax imposed pursuant to the provisions of the County Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the compensating tax.

B. The department shall withhold an administrative fee pursuant to Section 7-1-6.41 NMSA 1978. The department shall transfer to each county for which it is collecting a county local option gross receipts tax pursuant to the provisions of the County Local Option Gross Receipts Taxes Act the amount of each county local option gross receipts tax

collected for that county less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The department shall transfer to each county for which it is collecting a county local option compensating tax pursuant to the provisions of the County Local Option Gross Receipts Taxes Act the amount of each local option compensating tax collected for that county less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The transfer shall be made within the month following the month in which the tax is collected."

Section 22. Section 7-20F-3 NMSA 1978 (being Laws 1993, Chapter 303, Section 3, as amended) is amended to read:

"7-20F-3. COUNTY CORRECTIONAL FACILITY GROSS RECEIPTS TAX AND COUNTY CORRECTIONAL FACILITY COMPENSATING TAX-- AUTHORITY TO IMPOSE--RATE--ORDINANCE REQUIREMENTS-- REFERENDUM.--

A. The majority of the members elected to the county board may enact an ordinance imposing on a countywide basis an excise tax not to exceed a rate of one-eighth percent of the gross receipts of any person engaging in business in the county, including all municipalities within the county.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county correctional facility gross receipts tax".

C. An ordinance imposing a county correctional facility gross receipts tax shall also impose a tax on the use of property in the county if the use of the property is subject to the compensating tax. This tax may be referred to as the "county correctional facility compensating tax". The rate of the county correctional facility compensating tax imposed shall be the same as the rate of the county correctional facility gross receipts tax imposed. If, at the time this 2005 act becomes effective, a county has in effect a county correctional facility gross receipts tax, a county correctional facility compensating tax is hereby imposed at the same rate, effective on the effective date of this 2005 act.

D. Any ordinance imposing a county correctional facility gross receipts tax and county correctional facility compensating tax pursuant to this section shall:

(1) impose the taxes in any number of increments of one-sixteenth percent not to exceed an aggregate amount of one-eighth percent; provided that the rates of the two taxes are the same;

(2) specify that the imposition of the taxes will begin on either July 1 or January 1, whichever occurs first after the expiration of at least three months from the date that the department is notified personally or by mail by the county of adoption of the ordinance; and



(3) dedicate the revenue from the county correctional facility gross receipts tax and county correctional facility compensating tax:

(a) for the purpose of operating, maintaining, constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional or a county correctional facility or the grounds of a judicial-correctional or county correctional facility, including acquiring and improving parking lots, landscaping or any combination of the foregoing;

(b) for the purpose of transporting or extraditing prisoners; or

(c) to payment of principal and interest on revenue bonds or refunding bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

E. An ordinance imposing a county correctional facility gross receipts tax and county correctional facility compensating tax pursuant to this section shall be subject to optional referendum selection by the governing body, as provided in Subsection A of Section 7-20E-3 NMSA 1978.

F. If the county has pledged the revenue from imposition of the county correctional facilities gross receipts tax and county correctional facility compensating tax to the repayment of bonds or other indebtedness, revenue

produced by the imposition of a county correctional facility gross receipts tax and county correctional facility compensating tax that is in excess of the annual principal and interest due on bonds secured by a pledge of the county correctional facility gross receipts tax and county correctional facility compensating tax may be accumulated in a debt service reserve account until an amount equal to the maximum amount permitted pursuant to the provisions of the United States treasury regulations is accumulated in the debt service reserve account. After the debt service reserve account requirements have been met, the excess revenue shall be accumulated in an extraordinary mandatory redemption fund and annually used to redeem the bonds prior to their stated maturity date.

G. If the county has pledged the revenue from imposition of the county correctional facility gross receipts tax and county correctional facility compensating tax to the repayment of bonds or other indebtedness, when all outstanding bonds have been paid, whether from the debt service reserve, the redemption fund or maturity, the ordinance shall be repealed if the county correctional facility gross receipts tax revenue and county correctional facility compensating tax revenue is no longer required for the purposes for which it may be used pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

H. The repeal of an ordinance imposing a county correctional facility gross receipts tax and county correctional facility compensating tax shall state that the repeal shall be effective on January 1 or July 1, whichever occurs first following the date the department is notified personally or by mail by the county of the repeal."

Section 23. Section 7-20F-5 NMSA 1978 (being Laws 1993, Chapter 303, Section 5) is amended to read:

"7-20F-5. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect the county correctional facility gross receipts tax in the same manner and at the same time it collects the state gross receipts tax. The department shall collect the county correctional facility compensating tax in the same manner and at the same time it collects the compensating tax.

B. The department shall remit to each county for which it is collecting a county correctional facility gross receipts tax and county correctional facility compensating tax the amount of the taxes collected less any disbursement for tax credits, refunds and the payment of interest applicable to the taxes. Transfer to a county shall be made within the month following the month in which the taxes are collected."

Section 24. Section 7-20F-6 NMSA 1978 (being Laws 1993, Chapter 303, Section 6, as amended) is amended to read:

"7-20F-6. SPECIFIC EXEMPTIONS.--

A. No county correctional facility gross receipts tax shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

B. Exempted from the county correctional facility compensating tax is the use of tangible personal property if that property is not available from New Mexico sources and is used by the railroad, airline, mining, oil and natural gas, dairy and cheese manufacturing, electric and gas utilities or telecommunications and cable industries."

Section 25. Section 7-20F-7 NMSA 1978 (being Laws 1993, Chapter 303, Section 7) is amended to read:

"7-20F-7. REVENUE BONDS--AUTHORITY TO ISSUE--ORDINANCE AUTHORIZING ISSUE--PLEDGE OF REVENUE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to the County Correctional Facility Gross Receipts Tax Act for the purposes specified in that act. Revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act may be referred to as "county correctional facility gross receipts tax revenue bonds".

B. A county board, by majority vote, may adopt an ordinance providing for issuance of revenue bonds pursuant to

the provisions of the County Correctional Facility Gross Receipts Tax Act, the principal and interest of which shall be paid from the revenue derived by the county from the county correctional facility gross receipts tax, the county correctional facility compensating tax and any other revenue that the county may dedicate to the payment of the revenue bonds.

C. Revenue bonds or refunding revenue bonds issued as authorized pursuant to the County Correctional Facility Gross Receipts Tax Act are:

(1) not general obligations of the county;  
and

(2) collectible only from the county correctional facility gross receipts tax, the county correctional facility compensating tax and, if authorized, other properly pledged revenues, and each bond shall be payable solely from the properly pledged revenues and the bondholders shall not look to any other county fund for the payment of the interest and principal of the bonds."

Section 26. APPLICABILITY.--The provisions of this act are applicable to use of tangible personal property on or after July 1, 2005.

Section 27. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006. \_\_\_\_\_