

AN ACT

RELATING TO TAXATION; CREATING WATER AND SANITATION DISTRICT AUTHORITY TO IMPOSE A GROSS RECEIPTS TAX; PROVIDING FOR VOTER APPROVAL; PROVIDING FOR COLLECTION, ADMINISTRATION, ENFORCEMENT AND DISTRIBUTION OF THE TAX; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Water and Sanitation District Act is enacted to read:

"DEFINITION--GROSS RECEIPTS.--As used in the Water and Sanitation District Act:

A. "gross receipts" means the total amount of money or the value of other consideration received from selling property in a district, from leasing property employed in a district, from selling services performed outside a district, the product of which is initially used in a district, or from performing services in a district. In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged;

B. "gross receipts" includes:

(1) any receipts from sales of tangible personal property handled on consignment;

(2) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(3) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;

(4) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services;

(5) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with the New Mexico florist that are filled and delivered outside New Mexico by an out-of-state florist; and

(6) the receipts of a home service provider from providing mobile telecommunications services to customers whose place of primary use is in a district if:

(a) the mobile telecommunications services originate and terminate in the same state, regardless of where the services originate, terminate or pass through; and

(b) the charges for mobile telecommunications services are billed by or for a customer's home service provider and are deemed provided by the home service provider. For the purposes of this section, "home service provider", "mobile telecommunications services", "customer" and "place of primary use" have the meanings given in the federal Mobile Telecommunications Sourcing Act; and

C. "gross receipts" excludes:

- (1) cash discounts allowed and taken;
- (2) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;
- (3) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;
- (4) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

- (5) a water and sanitation district gross

receipts tax;

(6) any type of time-price differential;

(7) amounts received solely on behalf of another in a disclosed agency capacity; and

(8) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made pursuant to orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist."

Section 2. A new section of the Water and Sanitation District Act is enacted to read:

"GROSS RECEIPTS--CERTAIN CONTRACTS.--When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential."

Section 3. A new section of the Water and Sanitation District Act is enacted to read:

"WATER AND SANITATION DISTRICT GROSS RECEIPTS TAX--

AUTHORITY TO IMPOSE--USE OF PROCEEDS.--

A. A board may impose by resolution an excise tax not to exceed a rate of twenty-five hundredths percent of the gross receipts of any person engaging in business within the board's district for the privilege of engaging in business in that district. The excise tax imposed may be referred to as the "water and sanitation district gross receipts tax".

B. A board shall use the proceeds from the water and sanitation gross receipts tax to:

(1) purchase, acquire, establish and construct waterworks to supply water for domestic, commercial and industrial purposes by any available means to persons within and without the boundaries of the board's district;

(2) purchase, acquire, establish and construct sanitary sewers or a system or systems of sewage, garbage or refuse disposal;

(3) purchase, acquire, establish and construct streets and street improvements, including, without limitation, grades, regrades, gravel, oiling, surfacing, macadamizing, paving, crosswalks, sidewalks, driveway approaches, curbs, gutters, culverts, drains, sewers, manholes, inlets, outlets, retaining walls, bridges, overpasses, tunnels, underpasses, approaches, artificial lights and lighting equipment, parkways, grade separators, traffic separators and traffic control equipment and all

appurtenances and incidentals or any combination thereof, including real and other property;

(4) establish or construct park and recreational improvements; and

(5) pay revenue bonds issued pursuant to the Water and Sanitation District Act.

C. A resolution by a board to impose the water and sanitation district gross receipts tax shall not go into effect until after an election is held on the question of imposing the tax for the purpose for which the revenue is dedicated and the majority of the voters in the board's district vote in favor of imposing the tax. The board shall adopt a resolution calling for an election within seventy-five days of the date the resolution to impose the tax is adopted. The question shall be submitted to the voters of the board's district as a separate question at a general election or at a special election called for that purpose by the board. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If the majority of the voters voting on the question approve the question of imposing the water and sanitation district gross receipts tax, the board's resolution to impose the tax shall become effective. If the question of imposing the water and sanitation district gross receipts tax fails, the governing body shall not again propose the

imposition of the tax for a period of one year from the date of the election."

Section 4. A new section of the Water and Sanitation District Act is enacted to read:

"WATER AND SANITATION DISTRICT GROSS RECEIPTS TAX--LEVY AND COLLECTION.--To levy and collect the water and sanitation gross receipts tax, a board shall, in each year, determine the amount of money necessary to be raised by the tax in that board's district. The board shall consider other sources of revenue of the district and fix a water and sanitation district gross receipts tax rate in accordance with the Water and Sanitation District Act that with other revenues will raise the amount required by the district annually to supply funds to purchase, acquire, establish and construct the works and equipment of the district. The board shall, on or before July 1 of each year, certify to the taxation and revenue department the water and sanitation district gross receipts tax rate fixed for the board's district."

Section 5. A new section of the Water and Sanitation District Act is enacted to read:

"WATER AND SANITATION DISTRICT GROSS RECEIPTS TAX--COLLECTION BY TAXATION AND REVENUE DEPARTMENT--APPLICABLE EXEMPTIONS AND DEDUCTIONS--DISTRIBUTION OF PROCEEDS.--

A. The taxation and revenue department shall collect the water and sanitation district gross receipts tax

at the rate certified by the district pursuant to the Water and Sanitation District Act in the same manner and at the same time it collects the state gross receipts tax. The exemptions and deductions applied to gross receipts for the purpose of determining the gross receipts tax due pursuant to the Gross Receipts and Compensating Tax Act apply to gross receipts for the purpose of determining the water and sanitation gross receipts tax due pursuant to the Water and Sanitation District Act.

B. The taxation and revenue department shall distribute to each district for which it is collecting the water and sanitation district gross receipts tax the amount of the tax collected for the district less any disbursements for tax credits, refunds and the payment of interest applicable to the water and sanitation gross receipts tax imposed by the district. Transfer of the tax to a district shall be made within the month following the month in which the tax is collected."

Section 6. A new section of the Water and Sanitation District Act is enacted to read:

"WATER AND SANITATION DISTRICT GROSS RECEIPTS TAX--  
ADMINISTRATION.--

A. The taxation and revenue department shall interpret Sections 1 through 4 of this 2005 act.

B. The taxation and revenue department shall

administer and enforce the collection of the water and sanitation district gross receipts tax, and the Tax Administration Act applies to the administration and enforcement of the tax."

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006. \_\_\_\_\_