

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILLS 10, 12 & 13

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2010

AN ACT

RELATING TO TAXATION; REPEALING THE GROSS RECEIPTS DEDUCTION FROM RECEIPTS FROM CERTAIN SALES; PROVIDING A CREDIT AGAINST THE STATE SHARE OF GROSS RECEIPTS TAX ON RECEIPTS FROM CERTAIN SALES; ALTERING CERTAIN DISTRIBUTIONS TO MUNICIPALITIES AND COUNTIES; INCREASING THE LOW-INCOME COMPREHENSIVE TAX REBATE; INCREASING THE GROSS RECEIPTS AND COMPENSATING TAXES; DISTRIBUTING ADDITIONAL REVENUE TO THE GENERAL FUND; CLARIFYING NEXUS REGARDING CERTAIN COMPENSATING TAX TRANSACTIONS; PROVIDING FOR STATE AND LOCAL TAXES TO BE INCLUDED IN TAXABLE INCOME FOR STATE INCOME TAX PURPOSES.

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

Section 1. Section 4-61-2 NMSA 1978 (being Laws 1982, Chapter 44, Section 2, as amended) is amended to read:

"4-61-2. DEFINITIONS.--As used in the Small Counties

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1 Assistance Act:

2 A. "adjustment factor" means a fraction, the
3 numerator of which is the net taxable value of the state for
4 the property tax year prior to the year in which the amount of
5 small counties assistance is being determined and the
6 denominator of which is the net taxable value for property tax
7 year 2002; the adjustment factor shall be calculated without
8 reference to assessed value determined pursuant to the Oil and
9 Gas Ad Valorem Production Tax Act, assessed value determined
10 pursuant to the Oil and Gas Production Equipment Ad Valorem Tax
11 Act or taxable value determined pursuant to the Copper
12 Production Ad Valorem Tax Act;

13 B. "ceiling valuation" means:

14 (1) for the 2002 property tax year, one
15 billion four hundred million dollars (\$1,400,000,000); and

16 (2) for each subsequent property tax year, an
17 amount equal to the product obtained by multiplying one billion
18 four hundred million dollars (\$1,400,000,000) by the adjustment
19 factor for the year;

20 C. "demographer" means the bureau of business and
21 economic research at the university of New Mexico;

22 D. "inflation factor" means a fraction whose
23 numerator is the annual implicit price deflator index for state
24 and local government purchases of goods and services, as
25 published in the United States department of commerce monthly

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1 publication entitled "Survey of Current Business" or any
2 successor publication prepared by an agency of the United
3 States and adopted by the department of finance and
4 administration, for the calendar year one year prior to the
5 year in which the distribution is to be made and whose
6 denominator is the annual index for calendar year 2004;
7 provided that, if the inflation factor is calculated to have a
8 value less than one, it shall be deemed to have a value of one;

9 E. "population" means the official population shown
10 by the most recent federal decennial census or, if there is a
11 change in boundaries after the date of the census, "population"
12 for each affected unit shall be the most current estimated
13 population for that unit provided in writing by the
14 demographer; provided that after five years from the first day
15 of the calendar year of the most recent federal decennial
16 census, that census shall not be used, and "population" for the
17 period from that date until the date when the next following
18 official final decennial census population data are available
19 shall be the most current estimated population provided in
20 writing by the demographer;

21 F. "qualifying county" means a county that has:

22 (1) for the property tax year in which any
23 distribution under the Small Counties Assistance Act is made to
24 the county, imposed a property tax rate for general county
25 purposes pursuant to Paragraph (1) of Subsection B of Section

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1 7-37-7 NMSA 1978 as limited by Section 7-37-7.1 NMSA 1978 of at
2 least eight dollars eighty-five cents (\$8.85) per one thousand
3 dollars (\$1,000) of net taxable value;

4 (2) by July 1 of the property tax year in
5 which any distribution under the Small Counties Assistance Act
6 is made to the county, received a written certification from
7 the director of the property tax division of the taxation and
8 revenue department that the county assessor of that county has
9 implemented an acceptable program of maintaining current and
10 correct property values for property taxation purposes as
11 required by Section 7-36-16 NMSA 1978 or has submitted to the
12 director an acceptable plan for the implementation of such a
13 program;

14 (3) on July 1 of the year in which any
15 distribution under the Small Counties Assistance Act is made to
16 the county, a population of not more than forty-eight thousand;

17 (4) imposed county gross receipts tax
18 increments authorized pursuant to Section 7-20E-9 NMSA 1978
19 totaling at least three-eighths percent and has those
20 increments in effect on July 1 of the year in which a
21 distribution is made, provided that this paragraph does not
22 apply to a county if the county's valuation for property
23 taxation purposes does not exceed the product of two hundred
24 thirty million dollars (\$230,000,000) multiplied by the
25 adjustment factor for the year; and

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1 (5) a total valuation for the property tax
2 year preceding the year in which a distribution pursuant to the
3 Small Counties Assistance Act for that county is to be made
4 that is no greater than the ceiling valuation for that property
5 tax year; [~~and~~]

6 G. "tax rate factor" means a fraction, the
7 numerator of which is the average rate imposed in Section 7-9-7
8 NMSA 1978 for the fiscal year one year prior to the fiscal year
9 in which the distribution is to be made and the denominator of
10 which is five percent; and

11 [~~G.~~] H. "total valuation" means the sum for a
12 jurisdiction for a property tax year of the net taxable value
13 determined pursuant to the Property Tax Code, the assessed
14 value determined pursuant to the Oil and Gas Ad Valorem
15 Production Tax Act, the assessed value determined pursuant to
16 the Oil and Gas Production Equipment Ad Valorem Tax Act and the
17 taxable value determined pursuant to the Copper Production Ad
18 Valorem Tax Act."

19 Section 2. Section 4-61-3 NMSA 1978 (being Laws 1982,
20 Chapter 44, Section 3, as amended) is amended to read:

21 "4-61-3. SMALL COUNTIES ASSISTANCE FUND--
22 DISTRIBUTION.--

23 A. The "small counties assistance fund" is created
24 within the state treasury.

25 B. On or before September 1, 2003 and on or before
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1 September 1 of each subsequent year, the demographer shall
2 certify in writing to the department of finance and
3 administration the population of the state and of each county
4 as of June 30 of the year.

5 C. On or before September 15, 2003 and on or before
6 September 15 of each subsequent year, the secretary of finance
7 and administration shall certify to the state treasurer with
8 respect to each qualifying county:

9 (1) its population as certified by the
10 demographer;

11 (2) its total valuation for the preceding
12 property tax year; and

13 (3) the distribution amount calculated for it.

14 D. The distribution amount for each qualifying
15 county shall be determined for 2003 and each subsequent year in
16 accordance with the following table; provided that the bracket
17 amounts in the first two columns of the table shall be adjusted
18 annually after 2003 by the adjustment factor. The bracket
19 amounts in the last column shall be adjusted annually after
20 2005 by the inflation factor and, in 2011 and subsequent years,
21 shall be adjusted by the tax rate factor. The department of
22 finance and administration may round the results of the
23 adjustments made pursuant to this subsection to the nearest one
24 thousand dollars (\$1,000).

25 If the county's total valuation for the preceding property

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1 tax year is:

2 at least:	but less	and the county	then the distribution
3	than:	population is:	amount is:
4 \$ 0	\$100,000,000	under 1,000	\$450,000
5 \$ 0	\$100,000,000	at least 1,000	
6		but under 4,000	\$325,000
7 \$ 0	\$100,000,000	at least 4,000	\$250,000
8 \$100,000,000	\$230,000,000	under 12,000	\$175,000
9 \$100,000,000	\$230,000,000	at least 12,000	\$125,000
10 \$230,000,000	\$1,400,000,000	under 48,000	\$ 75,000.

11 E. If the balance in the small counties assistance
 12 fund as of the preceding August 31 exceeds the sum of the
 13 distributions to be made to qualifying counties pursuant to the
 14 provisions of Subsection D of this section, the department of
 15 finance and administration shall increase the distribution
 16 amount for each county receiving a distribution amount pursuant
 17 to the provisions of Subsection D of this section by:

18 (1) thirty-five thousand dollars (\$35,000) if
 19 the county has imposed and has in effect on July 1 of the year
 20 in which the distribution is to be made a county correctional
 21 facility gross receipts tax at a rate of at least one-eighth
 22 percent;

23 (2) fifteen thousand dollars (\$15,000) if the
 24 county has imposed and has in effect on July 1 of the year in
 25 which the distribution is to be made a county gross receipts

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1 tax increment of one-sixteenth percent; or

2 (3) fifty thousand dollars (\$50,000) if the
3 county has met the requirements of Paragraphs (1) and (2) of
4 this subsection.

5 F. If the balance in the small counties assistance
6 fund as of the preceding August 31 is less than the sum of the
7 distributions determined pursuant to Subsection D of this
8 section plus the distribution increases authorized pursuant to
9 Subsection E of this section, the distribution increases
10 pursuant to Subsection E of this section shall be
11 proportionately reduced.

12 G. If the balance in the small counties assistance
13 fund as of the preceding August 31 is less than the sum of the
14 distributions to be made to qualifying counties, the department
15 of finance and administration shall reduce each qualifying
16 county's calculated distribution by a percentage computed by
17 dividing the amount by which the fund is insufficient by the
18 sum of all the calculated distributions and shall certify the
19 reduced amounts as the qualifying counties' distributions.

20 H. Any interest accruing from the temporary
21 investment of the small counties assistance fund shall be
22 credited to the general fund.

23 I. On or before September 30, 2003 and on or before
24 September 30 of each subsequent year, the state treasurer shall
25 distribute to each county for whom a distribution has been

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1 certified for that year the amount certified for that county
 2 for that year. If the balance in the fund as of the preceding
 3 August 31 exceeds the sum of certified amounts distributed, the
 4 difference shall revert to the general fund.

5 J. If any date specified in Subsection B, C or I of
 6 this section falls on a Saturday, Sunday or legal holiday, any
 7 action required to be performed as provided in those
 8 subsections is timely if performed on the next day that is not
 9 a Saturday, Sunday or legal holiday."

10 Section 3. A new section of the Tax Administration Act is
 11 enacted to read:

12 "[NEW MATERIAL] DISTRIBUTION ADJUSTMENT--TAX
 13 ADMINISTRATION SUSPENSE FUND--CREDIT FOR RECEIPTS OF RETAIL
 14 FOOD STORES.--Distributions from the tax administration
 15 suspense fund to the general fund of net receipts attributable
 16 to the gross receipts tax shall be adjusted for the full cost
 17 of retail food tax credits issued pursuant to the Gross
 18 Receipts and Compensating Tax Act for receipts of retail food
 19 stores from the sale of food."

20 Section 4. Section 7-1-6.16 NMSA 1978 (being Laws 1983,
 21 Chapter 213, Section 27, as amended) is amended to read:

22 "7-1-6.16. COUNTY EQUALIZATION DISTRIBUTION.--

23 A. Beginning on September 15, 1989 and on September
 24 15 of each year thereafter, the department shall distribute to
 25 any county that has imposed or continued in effect during the

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1 state's preceding fiscal year a county gross receipts tax
2 pursuant to Section 7-20E-9 NMSA 1978 an amount equal to:

3 (1) the product of a fraction, the numerator
4 of which is the county's population and the denominator of
5 which is the state's population, multiplied by the annual sum
6 for the county; less

7 (2) the net receipts received by the
8 department during the report year, including any increase or
9 decrease made pursuant to Section 7-1-6.15 NMSA 1978,
10 attributable to the county gross receipts tax at a rate of one-
11 eighth percent; provided that for any month in the report year,
12 if no county gross receipts tax was in effect in the county in
13 the previous month, the net receipts, for the purposes of this
14 section, for that county for that month shall be zero.

15 B. If the amount determined by the calculation in
16 Subsection A of this section is zero or a negative number for a
17 county, no distribution shall be made to that county.

18 C. As used in this section:

19 (1) "annual sum" means for each county the sum
20 of the monthly amounts for those months in the report year that
21 follow a month in which the county had in effect a county gross
22 receipts tax;

23 (2) "monthly amount" means an amount equal to
24 the product of:

25 (a) the net receipts received by the

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1 department in the month attributable to the state gross
2 receipts tax plus [~~five percent of the total amount of~~
3 ~~deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the~~
4 ~~month plus~~] five and one-eighth percent of the total amount of
5 deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the
6 month; and

7 (b) a fraction, the numerator of which
8 is one-eighth percent and the denominator of which is the tax
9 rate imposed by Section 7-9-4 NMSA 1978 in effect on the last
10 day of the previous month;

11 (3) "population" means the most recent
12 official census or estimate determined by the United States
13 census bureau for the unit or, if neither is available, the
14 most current estimated population for the unit provided in
15 writing by the bureau of business and economic research at the
16 university of New Mexico; and

17 (4) "report year" means the twelve-month
18 period ending on the July 31 immediately preceding the date
19 upon which a distribution pursuant to this section is required
20 to be made."

21 Section 5. Section 7-1-6.46 NMSA 1978 (being Laws 2004,
22 Chapter 116, Section 1, as amended) is amended to read:

23 "7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR
24 [~~FOOD DEDUCTION AND~~] HEALTH CARE PRACTITIONER SERVICES
25 DEDUCTION--DISTRIBUTION IN LIEU OF MUNICIPAL DISTRIBUTION FROM
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1 STATE GROSS RECEIPTS TAX--RETAIL FOOD TAX CREDIT

2 DISTRIBUTIONS.--

3 A. For fiscal year 2011, a distribution pursuant to
4 Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an
5 amount, subject to any increase or decrease made pursuant to
6 Section 7-1-6.15 NMSA 1978, equal to the sum of:

7 (1) for a municipality having a population of
8 less than ten thousand according to the most recent federal
9 decennial census and having per capita taxable gross receipts
10 for the previous calendar year that are less than the average
11 per capita taxable gross receipts for all municipalities for
12 that same calendar year:

13 (a) the total [~~deductions claimed~~
14 ~~pursuant to Section 7-9-92 NMSA 1978~~] gross receipts from the
15 sale of food on which the retail food tax credit is claimed for
16 the month by taxpayers from business locations attributable to
17 the municipality multiplied by [~~the sum of the combined rate of~~
18 ~~all municipal local option gross receipts taxes in effect in~~
19 ~~the municipality for the month plus~~] one and two hundred
20 twenty-five thousandths percent; and

21 (b) the total deductions claimed
22 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
23 from business locations attributable to the municipality
24 multiplied by the sum of the combined rate of all municipal
25 local option gross receipts taxes in effect in the municipality

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1 for the month plus one and two hundred twenty-five thousandths
2 percent; or

3 (2) for a municipality not described in
4 Paragraph (1) of this subsection:

5 (a) the total [~~deductions claimed~~
6 ~~pursuant to Section 7-9-92 NMSA 1978~~] gross receipts from the
7 sale of food on which the retail food tax credit is claimed for
8 the month by taxpayers from business locations attributable to
9 the municipality multiplied by [~~the sum of the combined rate of~~
10 ~~all municipal local option gross receipts taxes in effect in~~
11 ~~the municipality on January 1, 2007 plus~~] one and two hundred
12 twenty-five thousandths percent; and

13 (b) the total deductions claimed
14 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
15 from business locations attributable to the municipality
16 multiplied by the sum of the combined rate of all municipal
17 local option gross receipts taxes in effect in the municipality
18 on January 1, 2007 plus one and two hundred twenty-five
19 thousandths percent.

20 B. For fiscal year 2012 and subsequent fiscal
21 years, a distribution pursuant to Section 7-1-6.1 NMSA 1978
22 shall be made to a municipality in an amount, subject to any
23 increase or decrease made pursuant to Section 7-1-6.15 NMSA
24 1978, equal to the sum of:

25 (1) for a municipality having a population of

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1 less than ten thousand according to the most recent federal
2 decennial census and having per capita taxable gross receipts
3 for the previous calendar year that are less than the average
4 per capita taxable gross receipts for all municipalities for
5 that same calendar year:

6 (a) the total gross receipts from the
7 sale of food on which the retail food tax credit is claimed for
8 the month by taxpayers from business locations attributable to
9 the municipality multiplied by one and five-hundredths percent;
10 and

11 (b) the total deductions claimed
12 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
13 from business locations attributable to the municipality
14 multiplied by the sum of the combined rate of all municipal
15 local option gross receipts taxes in effect in the municipality
16 for the month plus one and two hundred twenty-five thousandths
17 percent; or

18 (2) for a municipality not described in
19 Paragraph (1) of this subsection:

20 (a) the total gross receipts from the
21 sale of food on which the retail food tax credit is claimed for
22 the month by taxpayers from business locations attributable to
23 the municipality multiplied by one and five-hundredths percent;
24 and

25 (b) the total deductions claimed

1 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
 2 from business locations attributable to the municipality
 3 multiplied by the sum of the combined rate of all municipal
 4 local option gross receipts taxes in effect in the municipality
 5 on January 1, 2007 plus one and two hundred twenty-five
 6 thousandths percent.

7 ~~[B.]~~ C. The distribution pursuant to Subsection A
 8 of this section is in lieu of revenue that would have been
 9 received by the municipality but for the retail food tax credit
 10 and the ~~[deductions]~~ deduction provided by ~~[Sections 7-9-92~~
 11 ~~and]~~ Section 7-9-93 NMSA 1978. The distribution shall be
 12 considered gross receipts tax revenue and shall be used by the
 13 municipality in the same manner as gross receipts tax revenue,
 14 including payment of gross receipts tax revenue bonds.

15 D. If the reduction made by this 2010 act to the
 16 distribution made pursuant to Subsection B of this section
 17 impairs the ability of a municipality to meet its principal or
 18 interest payment obligations for revenue bonds outstanding
 19 prior to July 1, 2010 that are secured by the pledge of all or
 20 part of the municipality's revenue from the distribution made
 21 pursuant to this section, then the amount distributed pursuant
 22 to this section to that municipality shall be increased by an
 23 amount sufficient to meet any required payment; provided that
 24 the total amount distributed to that municipality pursuant to
 25 this section does not exceed the amount that would have been

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1 due that municipality pursuant to this section as it was in
2 effect on June 30, 2010.

3 [G.] E. For the purposes of this section, "business
4 locations attributable to the municipality" means business
5 locations:

6 (1) within the municipality;

7 (2) on land owned by the state, commonly known
8 as the "state fairgrounds", within the exterior boundaries of
9 the municipality;

10 (3) outside the boundaries of the municipality
11 on land owned by the municipality; and

12 (4) on an Indian reservation or pueblo grant
13 in an area that is contiguous to the municipality and in which
14 the municipality performs services pursuant to a contract
15 between the municipality and the Indian tribe or Indian pueblo
16 if:

17 (a) the contract describes an area in
18 which the municipality is required to perform services and
19 requires the municipality to perform services that are
20 substantially the same as the services the municipality
21 performs for itself; and

22 (b) the governing body of the
23 municipality has submitted a copy of the contract to the
24 secretary.

25 [D.] F. A distribution pursuant to this section may

1 be adjusted for a distribution made to a tax increment
2 development district with respect to a portion of a gross
3 receipts tax increment dedicated by a municipality pursuant to
4 the Tax Increment for Development Act."

5 Section 6. Section 7-1-6.47 NMSA 1978 (being Laws 2004,
6 Chapter 116, Section 2, as amended) is amended to read:

7 "7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR ~~[FOOD~~
8 ~~DEDUCTION AND]~~ HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

9 A. A distribution pursuant to Section 7-1-6.1 NMSA
10 1978 shall be made to a county in an amount, subject to any
11 increase or decrease made pursuant to Section 7-1-6.15 NMSA
12 1978, equal to the sum of:

13 (1) for a county having a population of less
14 than forty-eight thousand according to the most recent federal
15 decennial census:

16 ~~[(a) the total deductions claimed~~
17 ~~pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers~~
18 ~~from business locations within a municipality in the county~~
19 ~~multiplied by the combined rate of all county local option~~
20 ~~gross receipts taxes in effect for the month that are imposed~~
21 ~~throughout the county;~~

22 ~~(b) the total deductions claimed~~
23 ~~pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers~~
24 ~~from business locations in the county but not within a~~
25 ~~municipality multiplied by the combined rate of all county~~

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1 ~~local option gross receipts taxes in effect for the month that~~
2 ~~are imposed in the county area not within a municipality;~~

3 ~~(e)] (a) the total deductions claimed~~
4 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers~~
5 ~~from business locations within a municipality in the county~~
6 ~~multiplied by the combined rate of all county local option~~
7 ~~gross receipts taxes in effect for the month that are imposed~~
8 ~~throughout the county; and~~

9 ~~[(d)] (b) the total deductions claimed~~
10 ~~pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers~~
11 ~~from business locations in the county but not within a~~
12 ~~municipality multiplied by the combined rate of all county~~
13 ~~local option gross receipts taxes in effect for the month that~~
14 ~~are imposed in the county area not within a municipality; or~~

15 (2) for a county not described in Paragraph
16 (1) of this subsection:

17 ~~[(a) the total deductions claimed~~
18 ~~pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers~~
19 ~~from business locations within a municipality in the county~~
20 ~~multiplied by the combined rate of all county local option~~
21 ~~gross receipts taxes in effect on January 1, 2007 that are~~
22 ~~imposed throughout the county;~~

23 ~~(b) the total deductions claimed~~
24 ~~pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers~~
25 ~~from business locations in the county but not within a~~

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1 ~~municipality multiplied by the combined rate of all county~~
 2 ~~local option gross receipts taxes in effect on January 1, 2007~~
 3 ~~that are imposed in the county area not within a municipality;~~

4 ~~(c)]~~ (a) the total deductions claimed
 5 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
 6 from business locations within a municipality in the county
 7 multiplied by the combined rate of all county local option
 8 gross receipts taxes in effect on January 1, 2007 that are
 9 imposed throughout the county; and

10 ~~(d)]~~ (b) the total deductions claimed
 11 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
 12 from business locations in the county but not within a
 13 municipality multiplied by the combined rate of all county
 14 local option gross receipts taxes in effect on January 1, 2007
 15 that are imposed in the county area not within a municipality.

16 B. The distribution pursuant to Subsection A of
 17 this section is in lieu of revenue that would have been
 18 received by the county but for the deductions provided by
 19 ~~[Sections 7-9-92 and]~~ Section 7-9-93 NMSA 1978. The
 20 distribution shall be considered gross receipts tax revenue and
 21 shall be used by the county in the same manner as gross
 22 receipts tax revenue, including payment of gross receipts tax
 23 revenue bonds.

24 C. A distribution pursuant to this section may be
 25 adjusted for a distribution made to a tax increment development

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1 district with respect to a portion of a gross receipts tax
2 increment dedicated by a county pursuant to the Tax Increment
3 for Development Act."

4 Section 7. Section 7-2-2 NMSA 1978 (being Laws 1986,
5 Chapter 20, Section 26, as amended) is amended to read:

6 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
7 Act and unless the context requires otherwise:

8 A. "adjusted gross income" means adjusted gross
9 income as defined in Section 62 of the Internal Revenue Code,
10 as that section may be amended or renumbered;

11 B. "base income":

12 (1) means, for estates and trusts, that part
13 of the estate's or trust's income defined as taxable income and
14 upon which the federal income tax is calculated in the Internal
15 Revenue Code for income tax purposes plus, for taxable years
16 beginning on or after January 1, 1991, the amount of the net
17 operating loss deduction allowed by Section 172(a) of the
18 Internal Revenue Code, as that section may be amended or
19 renumbered, and taken by the taxpayer for that year;

20 (2) means, for taxpayers other than estates or
21 trusts, that part of the taxpayer's income defined as adjusted
22 gross income plus, for taxable years beginning on or after
23 January 1, 1991, the amount of the net operating loss deduction
24 allowed by Section 172(a) of the Internal Revenue Code, as that
25 section may be amended or renumbered, and taken by the taxpayer

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1 for that year;

2 (3) includes, for all taxpayers, any other
3 income of the taxpayer not included in adjusted gross income
4 but upon which a federal tax is calculated pursuant to the
5 Internal Revenue Code for income tax purposes, except amounts
6 for which a calculation of tax is made pursuant to Section 55
7 of the Internal Revenue Code, as that section may be amended or
8 renumbered; "base income" also includes interest received on a
9 state or local bond; and

10 (4) includes, for all taxpayers, an amount
11 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
12 taxable year if:

13 (a) such amount is transferred to
14 another qualified tuition program, as defined in Section 529 of
15 the Internal Revenue Code, not authorized in the Education
16 Trust Act; or

17 (b) a distribution or refund is made for
18 any reason other than: 1) to pay for qualified higher
19 education expenses, as defined pursuant to Section 529 of the
20 Internal Revenue Code; or 2) upon the beneficiary's death,
21 disability or receipt of a scholarship;

22 C. "compensation" means wages, salaries,
23 commissions and any other form of remuneration paid to
24 employees for personal services;

25 D. "department" means the taxation and revenue

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1 department, the secretary or any employee of the department
2 exercising authority lawfully delegated to that employee by the
3 secretary;

4 E. "fiduciary" means a guardian, trustee, executor,
5 administrator, committee, conservator, receiver, individual or
6 corporation acting in any fiduciary capacity;

7 F. "filing status" means "married filing joint
8 returns", "married filing separate returns", "head of
9 household", "surviving spouse" and "single", as those terms are
10 generally defined for federal tax purposes;

11 G. "fiscal year" means any accounting period of
12 twelve months ending on the last day of any month other than
13 December;

14 H. "head of household" means "head of household" as
15 generally defined for federal income tax purposes;

16 I. "individual" means a natural person, an estate,
17 a trust or a fiduciary acting for a natural person, trust or
18 estate;

19 J. "Internal Revenue Code" means the United States
20 Internal Revenue Code of 1986, as amended;

21 K. "lump-sum amount" means for the purpose of
22 determining liability for federal income tax, an amount that
23 was not included in adjusted gross income but upon which the
24 five-year-averaging or the ten-year-averaging method of tax
25 computation provided in Section 402 of the Internal Revenue

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1 Code, as that section may be amended or renumbered, was
2 applied;

3 L. "modified gross income" means all income of the
4 taxpayer and, if any, the taxpayer's spouse and dependents,
5 undiminished by losses and from whatever source, including:

- 6 (1) compensation;
- 7 (2) net profit from business;
- 8 (3) gains from dealings in property;
- 9 (4) interest;
- 10 (5) net rents;
- 11 (6) royalties;
- 12 (7) dividends;
- 13 (8) alimony and separate maintenance payments;
- 14 (9) annuities;
- 15 (10) income from life insurance and endowment
16 contracts;
- 17 (11) pensions;
- 18 (12) discharge of indebtedness;
- 19 (13) distributive share of partnership income;
- 20 (14) income in respect of a decedent;
- 21 (15) income from an interest in an estate or a
22 trust;
- 23 (16) social security benefits;
- 24 (17) unemployment compensation benefits;
- 25 (18) workers' compensation benefits;

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1 (19) public assistance and welfare benefits;

2 (20) cost-of-living allowances; and

3 (21) gifts;

4 M. "modified gross income" excludes:

5 (1) payments for hospital, dental, medical or
6 drug expenses to or on behalf of the taxpayer;

7 (2) the value of room and board provided by
8 federal, state or local governments or by private individuals
9 or agencies based upon financial need and not as a form of
10 compensation;

11 (3) payments pursuant to a federal, state or
12 local government program directly or indirectly to a third
13 party on behalf of the taxpayer when identified to a particular
14 use or invoice by the payer; or

15 (4) payments for credits and rebates pursuant
16 to the Income Tax Act and made for a credit pursuant to Section
17 7-3-9 NMSA 1978;

18 N. "net income" means, for estates and trusts, base
19 income adjusted to exclude amounts that the state is prohibited
20 from taxing because of the laws or constitution of this state
21 or the United States and means, for taxpayers other than
22 estates or trusts, base income adjusted to exclude:

23 (1) an amount equal to the standard deduction
24 allowed the taxpayer for the taxpayer's taxable year by Section
25 63 of the Internal Revenue Code, as that section may be amended

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1 or renumbered;

2 (2) an amount equal to the itemized deductions
3 defined in Section 63 of the Internal Revenue Code, as that
4 section may be amended or renumbered, allowed the taxpayer for
5 the taxpayer's taxable year less the amount excluded pursuant
6 to Paragraph (1) of this subsection and less the amount of
7 state and local income and sales taxes included in the
8 taxpayer's itemized deductions;

9 (3) an amount equal to the product of the
10 exemption amount allowed for the taxpayer's taxable year by
11 Section 151 of the Internal Revenue Code, as that section may
12 be amended or renumbered, multiplied by the number of personal
13 exemptions allowed for federal income tax purposes;

14 (4) income from obligations of the United
15 States of America less expenses incurred to earn that income;

16 (5) other amounts that the state is prohibited
17 from taxing because of the laws or constitution of this state
18 or the United States;

19 (6) for taxable years that began prior to
20 January 1, 1991, an amount equal to the sum of:

21 (a) net operating loss carryback
22 deductions to that year from taxable years beginning prior to
23 January 1, 1991 claimed and allowed, as provided by the
24 Internal Revenue Code; and

25 (b) net operating loss carryover

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1 deductions to that year claimed and allowed; [~~and~~]

2 (7) for taxable years beginning on or after
3 January 1, 1991, an amount equal to the sum of any net
4 operating loss carryover deductions to that year claimed and
5 allowed, provided that the amount of any net operating loss
6 carryover from a taxable year beginning on or after January 1,
7 1991 may be excluded only as follows:

8 (a) in the case of a timely filed
9 return, in the taxable year immediately following the taxable
10 year for which the return is filed; or

11 (b) in the case of amended returns or
12 original returns not timely filed, in the first taxable year
13 beginning after the date on which the return or amended return
14 establishing the net operating loss is filed; and

15 (c) in either case, if the net operating
16 loss carryover exceeds the amount of net income exclusive of
17 the net operating loss carryover for the taxable year to which
18 the exclusion first applies, in the next four succeeding
19 taxable years in turn until the net operating loss carryover is
20 exhausted; in no event shall a net operating loss carryover be
21 excluded in any taxable year after the fourth taxable year
22 beginning after the taxable year to which the exclusion first
23 applies; and

24 (8) for taxable years beginning on or after
25 January 1, 2011, an amount equal to the amount included in

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1 adjusted gross income that represents a refund of state and
2 local income and sales taxes that were deducted for federal tax
3 purposes in taxable years beginning on or after January 1,
4 2010;

5 O. "net operating loss" means any net operating
6 loss, as defined by Section 172(c) of the Internal Revenue
7 Code, as that section may be amended or renumbered, for a
8 taxable year as further increased by the income, if any, from
9 obligations of the United States for that year less related
10 expenses;

11 P. "net operating loss carryover" means the amount,
12 or any portion of the amount, of a net operating loss for any
13 taxable year that, pursuant to Paragraph (6) or (7) of
14 Subsection N of this section, may be excluded from base income;

15 Q. "nonresident" means every individual not a
16 resident of this state;

17 R. "person" means any individual, estate, trust,
18 receiver, cooperative association, club, corporation, company,
19 firm, partnership, limited liability company, joint venture,
20 syndicate or other association; "person" also means, to the
21 extent permitted by law, any federal, state or other
22 governmental unit or subdivision or agency, department or
23 instrumentality thereof;

24 S. "resident" means an individual who is domiciled
25 in this state during any part of the taxable year or an

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1 individual who is physically present in this state for one
2 hundred eighty-five days or more during the taxable year; but
3 any individual, other than someone who was physically present
4 in the state for one hundred eighty-five days or more during
5 the taxable year, who, on or before the last day of the taxable
6 year, changed the individual's place of abode to a place
7 without this state with the bona fide intention of continuing
8 actually to abide permanently without this state is not a
9 resident for the purposes of the Income Tax Act for periods
10 after that change of abode;

11 T. "secretary" means the secretary of taxation and
12 revenue or the secretary's delegate;

13 U. "state" means any state of the United States,
14 the District of Columbia, the commonwealth of Puerto Rico, any
15 territory or possession of the United States or any political
16 subdivision of a foreign country;

17 V. "state or local bond" means a bond issued by a
18 state other than New Mexico or by a local government other than
19 one of New Mexico's political subdivisions, the interest from
20 which is excluded from income for federal income tax purposes
21 under Section 103 of the Internal Revenue Code, as that section
22 may be amended or renumbered;

23 W. "surviving spouse" means "surviving spouse" as
24 generally defined for federal income tax purposes;

25 X. "taxable income" means net income less any lump-

1 sum amount;

2 Y. "taxable year" means the calendar year or fiscal
3 year upon the basis of which the net income is computed under
4 the Income Tax Act and includes, in the case of the return made
5 for a fractional part of a year under the provisions of the
6 Income Tax Act, the period for which the return is made; and

7 Z. "taxpayer" means any individual subject to the
8 tax imposed by the Income Tax Act."

9 Section 8. Section 7-2-14 NMSA 1978 (being Laws 1972,
10 Chapter 20, Section 2, as amended) is amended to read:

11 "7-2-14. LOW-INCOME COMPREHENSIVE TAX REBATE.--

12 A. Except as otherwise provided in Subsection B of
13 this section, any resident who files an individual New Mexico
14 income tax return and who is not a dependent of another
15 individual may claim a tax rebate for a portion of state and
16 local taxes to which the resident has been subject during the
17 taxable year for which the return is filed. The tax rebate may
18 be claimed even though the resident has no income taxable under
19 the Income Tax Act. A husband and wife who file separate
20 returns for a taxable year in which they could have filed a
21 joint return may each claim only one-half of the tax rebate
22 that would have been allowed on a joint return.

23 B. No claim for the tax rebate provided in this
24 section shall be filed by a resident who was an inmate of a
25 public institution for more than six months during the taxable

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1 year for which the tax rebate could be claimed or who was not
2 physically present in New Mexico for at least six months during
3 the taxable year for which the tax rebate could be claimed.

4 C. For the purposes of this section, the total
5 number of exemptions for which a tax rebate may be claimed or
6 allowed is determined by adding the number of federal
7 exemptions allowable for federal income tax purposes for each
8 individual included in the return who is domiciled in New
9 Mexico plus two additional exemptions for each individual
10 domiciled in New Mexico included in the return who is sixty-
11 five years of age or older plus one additional exemption for
12 each individual domiciled in New Mexico included in the return
13 who, for federal income tax purposes, is blind plus one
14 exemption for each minor child or stepchild of the resident who
15 would be a dependent for federal income tax purposes if the
16 public assistance contributing to the support of the child or
17 stepchild was considered to have been contributed by the
18 resident.

19 D. The tax rebate provided for in this section may
20 be claimed in the amount shown in the following table:

21	Modified gross	And the total number						
22	income is:	of exemptions is:						
23		But Not					6 or	
24	Over	Over	1	2	3	4	5	More
25								

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underscoring material = new
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1	500	1,000	135	195	250	310	350	415
2	1,000	1,500	135	195	250	310	350	435
3	1,500	2,000	135	195	250	310	350	450
4	2,000	2,500	135	195	250	310	350	450
5	2,500	3,000	135	195	250	310	350	450
6	3,000	3,500	135	195	250	310	350	450
7	3,500	4,000	135	195	250	310	355	450
8	4,000	4,500	135	195	250	310	355	450
9	4,500	5,000	125	190	240	305	355	450
10	5,000	5,500	115	175	230	295	355	430
11	5,500	6,000	105	155	210	260	315	410
12	6,000	7,000	90	130	170	220	275	370
13	7,000	8,000	80	115	145	180	225	295
14	8,000	9,000	70	105	135	170	195	240
15	9,000	10,000	65	95	115	145	175	205
16	10,000	11,000	60	80	100	130	155	185
17	11,000	12,000	55	70	90	110	135	160
18	12,000	13,000	50	65	85	100	115	140
19	13,000	14,000	50	65	85	100	115	140
20	14,000	15,000	45	60	75	90	105	120
21	15,000	16,000	40	55	70	85	95	110
22	16,000	17,000	35	50	65	80	85	105
23	17,000	18,000	30	45	60	70	80	95
24	18,000	19,000	25	35	50	60	70	80
25	19,000	20,000	20	30	40	50	60	65

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1	20,000	21,000	15	25	30	40	50	55
2	21,000	22,000	10	20	25	35	40	45.]
3	<u>\$ 0</u>	<u>\$ 1,000</u>	<u>\$ 145</u>	<u>\$ 210</u>	<u>\$ 270</u>	<u>\$ 335</u>	<u>\$ 380</u>	<u>\$ 455</u>
4	<u>1,001</u>	<u>2,000</u>	<u>145</u>	<u>210</u>	<u>270</u>	<u>335</u>	<u>380</u>	<u>490</u>
5	<u>2,001</u>	<u>3,000</u>	<u>145</u>	<u>210</u>	<u>270</u>	<u>335</u>	<u>385</u>	<u>490</u>
6	<u>3,001</u>	<u>4,000</u>	<u>145</u>	<u>210</u>	<u>270</u>	<u>335</u>	<u>385</u>	<u>490</u>
7	<u>4,001</u>	<u>5,000</u>	<u>145</u>	<u>210</u>	<u>270</u>	<u>335</u>	<u>385</u>	<u>490</u>
8	<u>5,001</u>	<u>6,000</u>	<u>125</u>	<u>190</u>	<u>250</u>	<u>320</u>	<u>385</u>	<u>490</u>
9	<u>6,001</u>	<u>7,000</u>	<u>100</u>	<u>145</u>	<u>190</u>	<u>245</u>	<u>305</u>	<u>410</u>
10	<u>7,001</u>	<u>8,000</u>	<u>90</u>	<u>130</u>	<u>165</u>	<u>205</u>	<u>255</u>	<u>335</u>
11	<u>8,001</u>	<u>9,000</u>	<u>80</u>	<u>120</u>	<u>155</u>	<u>195</u>	<u>225</u>	<u>280</u>
12	<u>9,001</u>	<u>10,000</u>	<u>75</u>	<u>110</u>	<u>135</u>	<u>170</u>	<u>205</u>	<u>245</u>
13	<u>10,001</u>	<u>11,000</u>	<u>70</u>	<u>95</u>	<u>120</u>	<u>155</u>	<u>185</u>	<u>225</u>
14	<u>11,001</u>	<u>12,000</u>	<u>65</u>	<u>85</u>	<u>110</u>	<u>135</u>	<u>165</u>	<u>200</u>
15	<u>12,001</u>	<u>13,000</u>	<u>60</u>	<u>80</u>	<u>105</u>	<u>125</u>	<u>145</u>	<u>180</u>
16	<u>13,001</u>	<u>14,000</u>	<u>60</u>	<u>80</u>	<u>105</u>	<u>125</u>	<u>145</u>	<u>180</u>
17	<u>14,001</u>	<u>15,000</u>	<u>55</u>	<u>75</u>	<u>95</u>	<u>115</u>	<u>135</u>	<u>160</u>
18	<u>15,001</u>	<u>16,000</u>	<u>50</u>	<u>75</u>	<u>90</u>	<u>110</u>	<u>125</u>	<u>150</u>
19	<u>16,001</u>	<u>17,000</u>	<u>45</u>	<u>70</u>	<u>85</u>	<u>105</u>	<u>115</u>	<u>145</u>
20	<u>17,001</u>	<u>18,000</u>	<u>40</u>	<u>60</u>	<u>80</u>	<u>95</u>	<u>110</u>	<u>135</u>
21	<u>18,001</u>	<u>19,000</u>	<u>35</u>	<u>50</u>	<u>70</u>	<u>85</u>	<u>100</u>	<u>120</u>
22	<u>19,001</u>	<u>20,000</u>	<u>30</u>	<u>45</u>	<u>60</u>	<u>75</u>	<u>90</u>	<u>105</u>
23	<u>20,001</u>	<u>21,000</u>	<u>25</u>	<u>40</u>	<u>50</u>	<u>65</u>	<u>80</u>	<u>95</u>
24	<u>21,001</u>	<u>22,000</u>	<u>20</u>	<u>35</u>	<u>45</u>	<u>60</u>	<u>70</u>	<u>85</u>
25	<u>22,001</u>	<u>23,000</u>	<u>10</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>	<u>70</u>

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underscored material = new
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1 23,001 24,000 10 20 30 40 50 60.

2 E. If a taxpayer's modified gross income is
3 zero, the taxpayer may claim a credit in the amount shown in
4 the first row of the table appropriate for the taxpayer's
5 number of exemptions.

6 F. The tax rebates provided for in this section
7 may be deducted from the taxpayer's New Mexico income tax
8 liability for the taxable year. If the tax rebates exceed the
9 taxpayer's income tax liability, the excess shall be refunded
10 to the taxpayer.

11 G. For purposes of this section, "dependent"
12 means "dependent" as defined by Section 152 of the Internal
13 Revenue Code of 1986, as that section may be amended or
14 renumbered, but also includes any minor child or stepchild of
15 the resident who would be a dependent for federal income tax
16 purposes if the public assistance contributing to the support
17 of the child or stepchild was considered to have been
18 contributed by the resident."

19 Section 9. Section 7-9-4 NMSA 1978 (being Laws 1966,
20 Chapter 47, Section 4, as amended) is amended to read:

21 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
22 "GROSS RECEIPTS TAX".--

23 A. For the privilege of engaging in business, an
24 excise tax equal to five and one-eighth percent of gross
25 receipts is imposed on any person engaging in business in New

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1 Mexico.

2 B. The tax imposed by this section shall be
3 referred to as the "gross receipts tax".

4 Section 10. Section 7-9-7 NMSA 1978 (being Laws 1966,
5 Chapter 47, Section 7, as amended) is amended to read:

6 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
7 "COMPENSATING TAX".--

8 A. For the privilege of using tangible property
9 in New Mexico, there is imposed on the person using the
10 property an excise tax equal to five and one-eighth percent of
11 the value of tangible property that was:

12 (1) manufactured by the person using
13 the property in the state;

14 (2) acquired as the result of a
15 transaction with a person located outside this state [~~as the~~
16 ~~result of a transaction~~] that would have been subject to the
17 gross receipts tax had [~~it occurred within this state~~] the
18 tangible personal property been acquired from a person with
19 nexus with New Mexico; or

20 (3) acquired as the result of a
21 transaction [~~which~~] that was not initially subject to the
22 compensating tax imposed by Paragraph (2) of this subsection or
23 the gross receipts tax but which transaction, because of the
24 buyer's subsequent use of the property, should have been
25 subject to the compensating tax imposed by Paragraph (2) of

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1 this subsection or the gross receipts tax.

2 B. For the purpose of Subsection A of this
3 section, value of tangible property shall be the adjusted basis
4 of the property for federal income tax purposes determined as
5 of the time of acquisition or introduction into this state or
6 of conversion to use, whichever is later. If no adjusted basis
7 for federal income tax purposes is established for the
8 property, a reasonable value of the property shall be used.

9 C. For the privilege of using services rendered
10 in New Mexico, there is imposed on the person using such
11 services an excise tax equal to five percent of the value of
12 the services at the time they were rendered. The services, to
13 be taxable under this subsection, must have been rendered as
14 the result of a transaction [~~which~~] that was not initially
15 subject to the gross receipts tax but which transaction,
16 because of the buyer's subsequent use of the services, should
17 have been subject to the gross receipts tax.

18 D. The tax imposed by this section shall be
19 referred to as the "compensating tax"."

20 Section 11. A new section of the Gross Receipts and
21 Compensating Tax Act is enacted to read:

22 "[NEW MATERIAL] RETAIL FOOD TAX CREDIT--RECEIPTS OF
23 RETAIL FOOD STORES.--

24 A. A retail food store that is a taxpayer may
25 claim a credit for each reporting period against the taxpayer's

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1 gross receipts tax due for that reporting period in an amount
2 equal to five and one-eighth percent of the taxpayer's gross
3 receipts for that reporting period that are from the sale of
4 food and are not exempt from gross receipts taxation and are
5 not deductible pursuant to another provision of the Gross
6 Receipts and Compensating Tax Act.

7 B. The credit that may be claimed by a taxpayer
8 pursuant to this section may be referred to as the "retail food
9 tax credit".

10 C. The retail food tax credit shall be reported
11 separately from any other credits claimed in the same reporting
12 period by the taxpayer against the taxpayer's gross receipts
13 tax liability.

14 D. A retail food store claiming the credit
15 provided by this section shall, on all sales of food with
16 respect to which the credit will be claimed, adjust the amount
17 of gross receipts tax passed on to the purchaser of the food to
18 reflect the full value of the credit.

19 E. For the purposes of this section:

20 (1) "food" means any food or food
21 product for home consumption that meets the definition of food
22 in 7 USCA 2012(k)(1) for purposes of the federal supplemental
23 nutrition assistance program; and

24 (2) "retail food store" means an
25 establishment that sells food for home preparation and

1 consumption and that meets the definition of retail food store
 2 in 7 USCA 2012(p)(1) for purposes of the federal supplemental
 3 nutrition assistance program, whether or not the establishment
 4 participates in the supplemental nutrition assistance program."

5 Section 12. TEMPORARY PROVISION.--For the 2010 taxable
 6 year, a taxpayer is deemed to have complied with the provisions
 7 of Section 7-2-12.2 NMSA 1978 if the taxpayer has made the
 8 required annual payments of estimated taxes due for taxable
 9 year 2010 based on the definition of net income in Section
 10 7-2-2 NMSA 1978 applicable prior to January 1, 2010.

11 Section 13. REPEAL.--Section 7-9-92 NMSA 1978 (being
 12 Laws 2004, Chapter 116, Section 5) is repealed.

13 Section 14. APPLICABILITY.--

14 A. The distribution adjustment made pursuant to
 15 Section 3 of this act applies to retail food tax credits
 16 claimed pursuant to Section 11 of this act against gross
 17 receipts received on or after July 1, 2010.

18 B. The distributions pursuant to Sections 5 and
 19 6 of this act apply to deductions for health care practitioner
 20 services taken from the gross receipts tax that are
 21 attributable to gross receipts received on or after July 1,
 22 2010 and to retail food tax credits claimed pursuant to Section
 23 11 of this act against gross receipts received on or after July
 24 1, 2010.

25 C. The provisions of Sections 7 and 8 of this

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1 act apply to taxable years beginning on or after January 1,
2 2010.

3 Section 15. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2010.

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underscoring = new
~~[bracketed material]~~ = delete