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SENATE BILL 12

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

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TAXATION; REPEALING THE GROSS RECEIPTS DEDUCTION FOR RECEIPTS FROM THE SALE OF FOOD; PROVIDING A CREDIT AGAINST THE STATE SHARE OF GROSS RECEIPTS TAX ON RECEIPTS FROM THE SALE OF FOOD; ALTERING CERTAIN DISTRIBUTIONS TO COUNTIES; ALTERING AND DELAYING CERTAIN DISTRIBUTIONS TO MUNICIPALITIES; INCREASING THE GROSS RECEIPTS AND COMPENSATING TAXES BY ONE-FOURTH PERCENT; CLARIFYING NEXUS REGARDING CERTAIN COMPENSATING TAX TRANSACTIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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 Assistance Act:

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

12 B. "ceiling valuation" means:

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

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

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

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

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

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

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

21 (1) for the property tax year in which any
22 distribution under the Small Counties Assistance Act is made to
23 the county, imposed a property tax rate for general county
24 purposes pursuant to Paragraph (1) of Subsection B of Section
25 7-37-7 NMSA 1978 as limited by Section 7-37-7.1 NMSA 1978 of at
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1 least eight dollars eighty-five cents (\$8.85) per one thousand
2 dollars (\$1,000) of net taxable value;

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

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

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

25 (5) a total valuation for the property tax

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

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

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

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

20 "4-61-3. SMALL COUNTIES ASSISTANCE FUND--
21 DISTRIBUTION.--

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

24 B. On or before September 1, 2003 and on or before
25 September 1 of each subsequent year, the demographer shall

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1 certify in writing to the department of finance and
2 administration the population of the state and of each county
3 as of June 30 of the year.

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

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

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

12 (3) the distribution amount calculated for it.

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

24 If the county's total valuation for the preceding property
25 tax year is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 "7-1-6.16. COUNTY EQUALIZATION DISTRIBUTION.--

22 A. Beginning on September 15, 1989 and on September
23 15 of each year thereafter, the department shall distribute to
24 any county that has imposed or continued in effect during the
25 state's preceding fiscal year a county gross receipts tax

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1 pursuant to Section 7-20E-9 NMSA 1978 an amount equal to:

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

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

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

17 C. As used in this section:

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

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

24 (a) the net receipts received by the
25 department in the month attributable to the state gross

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

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

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

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

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

22 "7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR
23 [~~FOOD DEDUCTION AND~~] HEALTH CARE PRACTITIONER SERVICES
24 DEDUCTION--DISTRIBUTION IN LIEU OF MUNICIPAL DISTRIBUTION FROM
25 STATE GROSS RECEIPTS TAX--RETAIL FOOD TAX CREDIT

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1 DISTRIBUTIONS.--

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

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

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

20 (b) the total deductions claimed
21 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
22 from business locations attributable to the municipality
23 multiplied by the sum of the combined rate of all municipal
24 local option gross receipts taxes in effect in the municipality
25 for the month plus one and two hundred twenty-five thousandths
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1 percent; or

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

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

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

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

24 (1) for a municipality having a population of
25 less than ten thousand according to the most recent federal

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1 decennial census and having per capita taxable gross receipts
2 for the previous calendar year that are less than the average
3 per capita taxable gross receipts for all municipalities for
4 that same calendar year:

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

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

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

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

24 (b) the total deductions claimed
25 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers

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1 from business locations attributable to the municipality
2 multiplied by the sum of the combined rate of all municipal
3 local option gross receipts taxes in effect in the municipality
4 on January 1, 2007 plus one and two hundred twenty-five
5 thousandths percent.

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

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

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1 effect on June 30, 2010.

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

5 (1) within the municipality;

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

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

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

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

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

24 ~~[D.]~~ F. A distribution pursuant to this section may
25 be adjusted for a distribution made to a tax increment

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

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

6 "7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR ~~[FOOD~~
7 ~~DEDUCTION AND]~~ HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

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

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

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

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

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1 ~~are imposed in the county area not within a municipality;~~

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

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

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

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 on January 1, 2007 that are~~
21 ~~imposed 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 on January 1, 2007~~
2 ~~that 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 on January 1, 2007 that are
8 imposed 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 on January 1, 2007
14 that are imposed in the county area not within a municipality.

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

23 C. A distribution pursuant to this section may be
24 adjusted for a distribution made to a tax increment development
25 district with respect to a portion of a gross receipts tax

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1 increment dedicated by a county pursuant to the Tax Increment
2 for Development Act."

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

5 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
6 "GROSS RECEIPTS TAX".--

7 A. For the privilege of engaging in business, an
8 excise tax equal to five and one-fourth percent of gross
9 receipts is imposed on any person engaging in business in New
10 Mexico.

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

13 Section 8. Section 7-9-7 NMSA 1978 (being Laws 1966,
14 Chapter 47, Section 7, as amended) is amended to read:

15 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
16 "COMPENSATING TAX".--

17 A. For the privilege of using tangible property in
18 New Mexico, there is imposed on the person using the property
19 an excise tax equal to five and one-fourth percent of the value
20 of tangible property that was:

21 (1) manufactured by the person using the
22 property in the state;

23 (2) acquired as the result of a transaction
24 with a person located outside this state [~~as the result of a~~
25 ~~transaction~~] that would have been subject to the gross receipts

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1 tax had [~~it occurred within this state~~] the tangible personal
2 property been acquired from a person with nexus with New
3 Mexico; or

4 (3) acquired as the result of a transaction
5 [~~which~~] that was not initially subject to the compensating tax
6 imposed by Paragraph (2) of this subsection or the gross
7 receipts tax but which transaction, because of the buyer's
8 subsequent use of the property, should have been subject to the
9 compensating tax imposed by Paragraph (2) of this subsection or
10 the gross receipts tax.

11 B. For the purpose of Subsection A of this section,
12 value of tangible property shall be the adjusted basis of the
13 property for federal income tax purposes determined as of the
14 time of acquisition or introduction into this state or of
15 conversion to use, whichever is later. If no adjusted basis
16 for federal income tax purposes is established for the
17 property, a reasonable value of the property shall be used.

18 C. For the privilege of using services rendered in
19 New Mexico, there is imposed on the person using such services
20 an excise tax equal to five percent of the value of the
21 services at the time they were rendered. The services, to be
22 taxable under this subsection, must have been rendered as the
23 result of a transaction [~~which~~] that was not initially subject
24 to the gross receipts tax but which transaction, because of the
25 buyer's subsequent use of the services, should have been

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1 subject to the gross receipts tax.

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

4 Section 9. A new section of the Gross Receipts and
5 Compensating Tax Act is enacted to read:

6 "[NEW MATERIAL] RETAIL FOOD TAX CREDIT--RECEIPTS OF RETAIL
7 FOOD STORES.--

8 A. A retail food store that is a taxpayer may claim
9 a credit for each reporting period against the taxpayer's gross
10 receipts tax due for that reporting period in an amount equal
11 to five and one-fourth percent of the taxpayer's gross receipts
12 for that reporting period that are from the sale of food and
13 are not exempt from gross receipts taxation and are not
14 deductible pursuant to another provision of the Gross Receipts
15 and Compensating Tax Act.

16 B. The credit that may be claimed by a taxpayer
17 pursuant to this section may be referred to as the "retail food
18 tax credit".

19 C. The retail food tax credit shall be reported
20 separately from any other credits claimed in the same reporting
21 period by the taxpayer against the taxpayer's gross receipts
22 tax liability.

23 D. A retail food store claiming the credit provided
24 by this section shall, on all sales of food with respect to
25 which the credit will be claimed, adjust the amount of gross

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underscored material = new
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1 receipts tax passed on to the purchaser of the food to reflect
2 the full value of the credit.

3 E. For the purposes of this section:

4 (1) "food" means any food or food product for
5 home consumption that meets the definition of food in 7 USCA
6 2012(k)(1) for purposes of the federal supplemental nutrition
7 assistance program; and

8 (2) "retail food store" means an establishment
9 that sells food for home preparation and consumption and that
10 meets the definition of retail food store in 7 USCA 2012(p)(1)
11 for purposes of the federal supplemental nutrition assistance
12 program, whether or not the establishment participates in the
13 supplemental nutrition assistance program."

14 Section 10. REPEAL.--Section 7-9-92 NMSA 1978 (being Laws
15 2004, Chapter 116, Section 5) is repealed.

16 Section 11. APPLICABILITY.--

17 A. The distribution adjustment made pursuant to
18 Section 3 of this act applies to retail food tax credits
19 claimed pursuant to Section 9 of this act against gross
20 receipts received on or after July 1, 2010.

21 B. The distributions pursuant to Sections 5 and 6
22 of this act apply to deductions for health care practitioner
23 services taken from the gross receipts tax that are
24 attributable to gross receipts received on or after July 1,
25 2010 and to retail food tax credits claimed pursuant to Section

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

1 9 of this act against gross receipts tax from gross receipts
2 received on or after July 1, 2010.

3 Section 12. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2010.