

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILLS 538 & 540 AND
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILLS 13 & 277

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51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO TAXATION; OFFSETTING THE EFFECTS OF REVENUE
REDUCTIONS FROM DECREASING THE CORPORATE INCOME TAX RATE AND
THE USE OF A SINGLE SALES FACTOR BY PHASING OUT CERTAIN LOCAL
GOVERNMENT HOLD HARMLESS PROVISIONS OVER A TEN-YEAR PERIOD AND
REQUIRING COMBINED REPORTING; ALLOWING MUNICIPALITIES AND
COUNTIES THE DISCRETION TO IMPOSE A GROSS RECEIPTS TAX THROUGH
AN ORDINANCE THAT DOES NOT PROVIDE CERTAIN DEDUCTIONS CONTAINED
IN THE GROSS RECEIPTS AND COMPENSATING TAX ACT; DECREASING
CERTAIN CORPORATE INCOME TAX RATES OVER FIVE YEARS; REQUIRING
COMBINED REPORTING FOR CERTAIN UNITARY CORPORATIONS WITH A
RETAIL FACILITY OF MORE THAN THIRTY THOUSAND SQUARE FEET BUT
THAT DO NOT HAVE MANUFACTURING FACILITIES THAT EMPLOY AT LEAST
SEVEN HUNDRED FIFTY EMPLOYEES; PHASING IN USE OF A SINGLE SALES
FACTOR BY CERTAIN TAXPAYERS IN APPORTIONING CORPORATE INCOME TO
THE STATE OVER FIVE YEARS; EXCLUDING CERTAIN SALES FROM BEING

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1 APPORTIONED AS SALES IN NEW MEXICO; PROVIDING A DEFINITION OF
2 "CONSUMABLE" FOR PURPOSES OF THE DEDUCTION OF RECEIPTS FROM
3 SALES TO MANUFACTURERS; CLARIFYING APPLICATION OF THE HIGH-WAGE
4 JOBS TAX CREDIT; DEFINING "BENEFITS" AND "WAGES"; EXTENDING THE
5 CREDIT FOR FIVE YEARS; DECLARING AN EMERGENCY.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 SECTION 1. Section 7-1-6.46 NMSA 1978 (being Laws 2004,
9 Chapter 116, Section 1, as amended) is amended to read:

10 "7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR
11 FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES
12 DEDUCTION.--

13 A. For a municipality that has not elected to
14 impose a gross receipts tax through an ordinance that does not
15 provide a deduction contained in the Gross Receipts and
16 Compensating Tax Act and that has a population of less than ten
17 thousand according to the most recent federal decennial census,
18 a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
19 made to a municipality in an amount, subject to any increase or
20 decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to
21 the sum of:

22 [~~(1) for a municipality having a population of~~
23 ~~less than ten thousand according to the most recent federal~~
24 ~~decennial census and having per capita taxable gross receipts~~
25 ~~for the previous calendar year that are less than the average~~

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1 ~~per capita taxable gross receipts for all municipalities for~~
2 ~~that same calendar year.~~

3 ~~(a)~~ (1) the total deductions claimed pursuant
4 to Section 7-9-92 NMSA 1978 for the month by taxpayers from
5 business locations attributable to the municipality multiplied
6 by the sum of the combined rate of all municipal local option
7 gross receipts taxes in effect in the municipality for the
8 month plus one and two hundred twenty-five thousandths percent;
9 and

10 ~~(b)~~ (2) 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. ~~(c)~~

17 ~~(2)~~ B. For a municipality not described in
18 ~~[Paragraph (1) of this]~~ Subsection A of this section, a
19 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
20 made to the municipality in an amount, subject to any increase
21 or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal
22 to the sum of:

23 ~~(a)~~ (1) the total deductions claimed
24 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
25 from business locations attributable to the municipality

.194316.5

1 multiplied by the sum of the combined rate of all municipal
2 local option gross receipts taxes in effect in the municipality
3 on January 1, 2007 plus one and two hundred twenty-five
4 thousandths percent in the following percentages:

5 (a) prior to July 1, 2015, one hundred
6 percent;

7 (b) on or after July 1, 2015 and prior
8 to July 1, 2016, ninety percent;

9 (c) on or after July 1, 2016 and prior
10 to July 1, 2017, eighty percent;

11 (d) on or after July 1, 2017 and prior
12 to July 1, 2018, seventy percent;

13 (e) on or after July 1, 2018 and prior
14 to July 1, 2019, sixty percent;

15 (f) on or after July 1, 2019 and prior
16 to July 1, 2020, fifty percent;

17 (g) on or after July 1, 2020 and prior
18 to July 1, 2021, forty percent;

19 (h) on or after July 1, 2021 and prior
20 to July 1, 2022, thirty percent;

21 (i) on or after July 1, 2022 and prior
22 to July 1, 2023, twenty percent; and

23 (j) on or after July 1, 2023 and prior
24 to July 1, 2024, ten percent; and

25 ~~(b)~~ (2) the total deductions claimed

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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 in the following percentages:

7 (a) prior to July 1, 2015, one hundred
8 percent;

9 (b) on or after July 1, 2015 and prior
10 to July 1, 2016, ninety percent;

11 (c) on or after July 1, 2016 and prior
12 to July 1, 2017, eighty percent;

13 (d) on or after July 1, 2017 and prior
14 to July 1, 2018, seventy percent;

15 (e) on or after July 1, 2018 and prior
16 to July 1, 2019, sixty percent;

17 (f) on or after July 1, 2019 and prior
18 to July 1, 2020, fifty percent;

19 (g) on or after July 1, 2020 and prior
20 to July 1, 2021, forty percent;

21 (h) on or after July 1, 2021 and prior
22 to July 1, 2022, thirty percent;

23 (i) on or after July 1, 2022 and prior
24 to July 1, 2023, twenty percent; and

25 (j) on or after July 1, 2023 and prior

.194316.5

1 to July 1, 2024, ten percent.

2 ~~[B-]~~ C. The distribution pursuant to ~~[Subsection]~~
3 Subsections A and B of this section is in lieu of revenue that
4 would have been received by the municipality but for the
5 deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978.
6 The distribution shall be considered gross receipts tax revenue
7 and shall be used by the municipality in the same manner as
8 gross receipts tax revenue, including payment of gross receipts
9 tax revenue bonds. A distribution pursuant to this section to
10 a municipality not described in Subsection A of this section or
11 to a municipality that has imposed a gross receipts tax through
12 an ordinance that does not provide a deduction contained in the
13 Gross Receipts and Compensating Tax Act shall not be made on or
14 after July 1, 2024.

15 D. If the reductions made by this 2013 act to the
16 distributions made pursuant to Subsections A and B of this
17 section impair the ability of a municipality to meet its
18 principal or interest payment obligations for revenue bonds
19 that are outstanding prior to July 1, 2013 and that are secured
20 by the pledge of all or part of the municipality's revenue from
21 the distribution made pursuant to this section, then the amount
22 distributed pursuant to this section to that municipality shall
23 be increased by an amount sufficient to meet the required
24 payment; provided that the total amount distributed to that
25 municipality pursuant to this section does not exceed the

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1 amount that would have been due that municipality pursuant to
2 this section as it was in effect on June 30, 2013.

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

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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 2. 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. For a county that has not elected to impose a
10 gross receipts tax through an ordinance that does not provide a
11 deduction contained in the Gross Receipts and Compensating Tax
12 Act and that has a population of less than forty-eight thousand
13 according to the most recent federal decennial census, a
14 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
15 made to a county in an amount, subject to any increase or
16 decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to
17 the sum of:

18 [~~(1) for a county having a population of less~~
19 ~~than forty-eight thousand according to the most recent federal~~
20 ~~decennial census:~~

21 (a)] (1) the total deductions claimed pursuant
22 to Section 7-9-92 NMSA 1978 for the month by taxpayers from
23 business locations within a municipality in the county
24 multiplied by the combined rate of all county local option
25 gross receipts taxes in effect for the month that are imposed

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1 throughout the county;

2 [~~(b)~~] (2) the total deductions claimed
3 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
4 from business locations in the county but not within a
5 municipality multiplied by the combined rate of all county
6 local option gross receipts taxes in effect for the month that
7 are imposed in the county area not within a municipality;

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

14 [~~(d)~~] (4) the total deductions claimed
15 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
16 from business locations in the county but not within a
17 municipality multiplied by the combined rate of all county
18 local option gross receipts taxes in effect for the month that
19 are imposed in the county area not within a municipality. [~~or~~

20 ~~(2)~~] B. For a county not described in [~~Paragraph~~
21 ~~(1) of this~~] Subsection A of this section, a distribution
22 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the
23 county in an amount, subject to any increase or decrease made
24 pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

25 [~~(a)~~] (1) the total deductions claimed

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1 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
2 from business locations within a municipality in the county
3 multiplied by the combined rate of all county local option
4 gross receipts taxes in effect on January 1, 2007 that are
5 imposed throughout the county in the following percentages:

6 (a) prior to July 1, 2015, one hundred
7 percent;

8 (b) on or after July 1, 2015 and prior
9 to July 1, 2016, ninety percent;

10 (c) on or after July 1, 2016 and prior
11 to July 1, 2017, eighty percent;

12 (d) on or after July 1, 2017 and prior
13 to July 1, 2018, seventy percent;

14 (e) on or after July 1, 2018 and prior
15 to July 1, 2019, sixty percent;

16 (f) on or after July 1, 2019 and prior
17 to July 1, 2020, fifty percent;

18 (g) on or after July 1, 2020 and prior
19 to July 1, 2021, forty percent;

20 (h) on or after July 1, 2021 and prior
21 to July 1, 2022, thirty percent;

22 (i) on or after July 1, 2022 and prior
23 to July 1, 2023, twenty percent; and

24 (j) on or after July 1, 2023 and prior
25 to July 1, 2024, ten percent;

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1 ~~(b)~~ (2) the total deductions claimed
2 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers
3 from business locations in the county but not within a
4 municipality multiplied by the combined rate of all county
5 local option gross receipts taxes in effect on January 1, 2007
6 that are imposed in the county area not within a municipality
7 in the following percentages:

8 (a) prior to July 1, 2015, one hundred
9 percent;

10 (b) on or after July 1, 2015 and prior
11 to July 1, 2016, ninety percent;

12 (c) on or after July 1, 2016 and prior
13 to July 1, 2017, eighty percent;

14 (d) on or after July 1, 2017 and prior
15 to July 1, 2018, seventy percent;

16 (e) on or after July 1, 2018 and prior
17 to July 1, 2019, sixty percent;

18 (f) on or after July 1, 2019 and prior
19 to July 1, 2020, fifty percent;

20 (g) on or after July 1, 2020 and prior
21 to July 1, 2021, forty percent;

22 (h) on or after July 1, 2021 and prior
23 to July 1, 2022, thirty percent;

24 (i) on or after July 1, 2022 and prior
25 to July 1, 2023, twenty percent; and

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1 (j) on or after July 1, 2023 and prior
2 to July 1, 2024, ten percent;

3 ~~[(e)]~~ (3) 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 in the following percentages:

9 (a) prior to July 1, 2015, one hundred
10 percent;

11 (b) on or after July 1, 2015 and prior
12 to July 1, 2016, ninety percent;

13 (c) on or after July 1, 2016 and prior
14 to July 1, 2017, eighty percent;

15 (d) on or after July 1, 2017 and prior
16 to July 1, 2018, seventy percent;

17 (e) on or after July 1, 2018 and prior
18 to July 1, 2019, sixty percent;

19 (f) on or after July 1, 2019 and prior
20 to July 1, 2020, fifty percent;

21 (g) on or after July 1, 2020 and prior
22 to July 1, 2021, forty percent;

23 (h) on or after July 1, 2021 and prior
24 to July 1, 2022, thirty percent;

25 (i) on or after July 1, 2022 and prior

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1 to July 1, 2023, twenty percent; and

2 (j) on or after July 1, 2023 and prior
3 to July 1, 2024, ten percent; and

4 ~~[(d)]~~ (4) the total deductions claimed
5 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers
6 from business locations in the county but not within a
7 municipality multiplied by the combined rate of all county
8 local option gross receipts taxes in effect on January 1, 2007
9 that are imposed in the county area not within a municipality
10 in the following percentages:

11 (a) prior to July 1, 2015, one hundred
12 percent;

13 (b) on or after July 1, 2015 and prior
14 to July 1, 2016, ninety percent;

15 (c) on or after July 1, 2016 and prior
16 to July 1, 2017, eighty percent;

17 (d) on or after July 1, 2017 and prior
18 to July 1, 2018, seventy percent;

19 (e) on or after July 1, 2018 and prior
20 to July 1, 2019, sixty percent;

21 (f) on or after July 1, 2019 and prior
22 to July 1, 2020, fifty percent;

23 (g) on or after July 1, 2020 and prior
24 to July 1, 2021, forty percent;

25 (h) on or after July 1, 2021 and prior

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1 to July 1, 2022, thirty percent;

2 (i) on or after July 1, 2022 and prior
3 to July 1, 2023, twenty percent; and

4 (j) on or after July 1, 2023 and prior
5 to July 1, 2024, ten percent.

6 ~~[B-]~~ C. The distribution pursuant to [Subsection]
7 Subsections A and B of this section is in lieu of revenue that
8 would have been received by the county but for the deductions
9 provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The
10 distribution shall be considered gross receipts tax revenue and
11 shall be used by the county in the same manner as gross
12 receipts tax revenue, including payment of gross receipts tax
13 revenue bonds. A distribution pursuant to this section to a
14 county not described in Subsection A of this section or to a
15 county that has imposed a gross receipts tax through an
16 ordinance that does not provide a deduction contained in the
17 Gross Receipts and Compensating Tax Act shall not be made on or
18 after July 1, 2024.

19 D. If the reductions made by this 2013 act to the
20 distributions made pursuant to Subsections A and B of this
21 section impair the ability of a county to meet its principal or
22 interest payment obligations for revenue bonds that are
23 outstanding prior to July 1, 2013 and that are secured by the
24 pledge of all or part of the county's revenue from the
25 distribution made pursuant to this section, then the amount

.194316.5

distributed pursuant to this section to that county shall be increased by an amount sufficient to meet the required payment; provided that the total amount distributed to that county pursuant to this section does not exceed the amount that would have been due that county pursuant to this section as it was in effect on June 30, 2013.

[G.] E. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a county pursuant to the Tax Increment for Development Act."

SECTION 3. Section 7-2A-5 NMSA 1978 (being Laws 1981, Chapter 37, Section 38, as amended) is amended to read:

"7-2A-5. CORPORATE INCOME TAX RATES.--The corporate income tax imposed on corporations by Section 7-2A-3 NMSA 1978 shall be at the rates specified in the following [~~table~~] tables:

A. For taxable years beginning prior to January 1, 2014:

If the net income is:	The tax shall be:
Not over \$500,000	4.8% of net income
Over \$500,000 but not	
over \$1,000,000	\$24,000 plus
	6.4% of excess
	over \$500,000

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1 Over \$1,000,000 \$56,000
2 plus 7.6% of excess
3 over \$1,000,000.

4 B. For taxable years beginning on or after January 1,
5 2014 and prior to January 1, 2015:

6 If the net income is: The tax shall be:

7 Not over \$500,000 4.8% of net income

8 Over \$500,000 but not

9 over \$1,000,000 \$24,000 plus

10 6.4% of excess

11 over \$500,000

12 Over \$1,000,000 \$56,000

13 plus 7.3% of excess

14 over \$1,000,000.

15 C. For taxable years beginning on or after January 1,
16 2015 and prior to January 1, 2016:

17 If the net income is: The tax shall be:

18 Not over \$500,000 4.8% of net income

19 Over \$500,000 but not

20 over \$1,000,000 \$24,000 plus

21 6.4% of excess

22 over \$500,000

23 Over \$1,000,000 \$56,000

24 plus 6.9% of excess

25 over \$1,000,000.

1 D. For taxable years beginning on or after January 1,
2 2016 and prior to January 1, 2017:

<u>If the net income is:</u>	<u>The tax shall be:</u>
3 <u>Not over \$500,000</u>	<u>4.8% of net income</u>
4 <u>Over \$500,000 but not</u>	
5 <u>over \$1,000,000</u>	<u>\$24,000 plus</u>
6	<u>6.4% of excess</u>
7	<u>over \$500,000</u>
8 <u>Over \$1,000,000</u>	<u>\$56,000</u>
9	<u>plus 6.6% of excess</u>
10	<u>over \$1,000,000.</u>
11	

12 E. For taxable years beginning on or after January 1,
13 2017 and prior to January 1, 2018:

<u>If the net income is:</u>	<u>The tax shall be:</u>
14 <u>Not over \$500,000</u>	<u>4.8% of net income</u>
15 <u>Over \$500,000</u>	<u>\$24,000 plus</u>
16	<u>6.2% of excess</u>
17	<u>over \$500,000.</u>
18	

19 F. For taxable years beginning on or after January 1,
20 2018:

<u>If the net income is:</u>	<u>The tax shall be:</u>
21 <u>Not over \$500,000</u>	<u>4.8% of net income</u>
22 <u>Over \$500,000</u>	<u>\$24,000 plus</u>
23	<u>5.9% of excess</u>
24	<u>over \$500,000."</u>
25	

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1 SECTION 4. Section 7-2A-8.3 NMSA 1978 (being Laws 1983,
2 Chapter 213, Section 12, as amended by Laws 1993, Chapter 307,
3 Section 4 and by Laws 1993, Chapter 309, Section 2) is amended
4 to read:

5 "7-2A-8.3. COMBINED RETURNS.--

6 A. A unitary corporation that is subject to taxation
7 under the Corporate Income and Franchise Tax Act and that has
8 not previously filed a combined return pursuant to this section
9 or a consolidated return pursuant to Section 7-2A-8.4 NMSA 1978
10 may elect to file a combined return with other unitary
11 corporations as though the entire combined net income were that
12 of one corporation; provided, however, that for taxable years
13 beginning on or after January 1, 2014, a unitary corporation
14 that provides retail sales of goods in a facility of more than
15 thirty thousand square feet under one roof in New Mexico shall
16 file a combined return with other unitary corporations as
17 though the entire combined net income were that of one
18 corporation. The return filed under this method of reporting
19 shall include the net income of all the unitary corporations.
20 Transactions among the unitary corporations may be eliminated
21 by applying the appropriate rules for reporting income for a
22 consolidated federal income tax return. Any corporation that
23 has filed an income tax return with New Mexico pursuant to
24 Section 7-2A-8.4 NMSA 1978 shall not file pursuant to this
25 section unless the secretary gives prior permission to file on

.194316.5

1 a combined return basis.

2 B. Once corporations have reported net income through
3 a combined return for any taxable year, they shall file
4 combined returns for subsequent taxable years, so long as they
5 remain unitary corporations, unless the corporations elect to
6 file pursuant to Section 7-2A-8.4 NMSA 1978 or unless the
7 secretary grants prior permission for one or more of the
8 corporations to file individually.

9 C. For taxable years beginning on or after January 1,
10 1993, no unitary corporation once included in a combined return
11 may elect, or be granted permission by the secretary, for any
12 subsequent taxable year to separately account pursuant to
13 Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.

14 D. Notwithstanding Subsection A of this section, a
15 unitary corporation shall not be required to file a combined
16 return pursuant to this section if that unitary corporation:

17 (1) has operations in New Mexico at
18 manufacturing facilities; and

19 (2) employs at least seven hundred fifty
20 employees in New Mexico at such manufacturing facilities."

21 SECTION 5. Section 7-4-10 NMSA 1978 (being Laws 1993,
22 Chapter 153, Section 1, as amended) is amended to read:

23 "7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

24 A. Except as provided in Subsection B of this
25 section, all business income shall be apportioned to this state

.194316.5

1 by multiplying the income by a fraction, the numerator of which
2 is the property factor plus the payroll factor plus the sales
3 factor and the denominator of which is three.

4 ~~[B. For taxable years beginning prior to January 1,~~
5 ~~2020, a taxpayer whose principal business activity is~~
6 ~~manufacturing may elect to have business income apportioned to~~
7 ~~this state by multiplying the income by a fraction, the~~
8 ~~numerator of which is the property factor plus the payroll~~
9 ~~factor plus twice the sales factor and the denominator of which~~
10 ~~is four. To elect the method of apportionment provided by this~~
11 ~~subsection, the taxpayer shall notify the department of the~~
12 ~~election, in writing, no later than the date on which the~~
13 ~~taxpayer files the return for the first taxable year to which~~
14 ~~the election will apply. The election will apply to that~~
15 ~~taxable year and to each taxable year thereafter until the~~
16 ~~taxpayer notifies the department, in writing, that the election~~
17 ~~is terminated, except that the taxpayer shall not terminate the~~
18 ~~election until the method of apportioning business income~~
19 ~~provided by this subsection has been used by the taxpayer for~~
20 ~~at least three consecutive taxable years, including a total of~~
21 ~~at least thirty-six calendar months. Notwithstanding any~~
22 ~~provisions of this subsection to the contrary, the taxpayer~~
23 ~~shall use the method of apportionment provided by Subsection A~~
24 ~~of this section for the taxable year unless:~~

25 ~~(1) the taxpayer's corporate income tax~~

1 ~~liability for the taxable year, computed by the same method of~~
2 ~~apportionment used in the preceding taxable year, exceeds the~~
3 ~~corporate income tax liability for the taxpayer's immediately~~
4 ~~preceding taxable year; or~~

5 ~~(2) the sum of the taxpayer's payroll factor and~~
6 ~~property factor for the taxable year exceeds the sum of the~~
7 ~~taxpayer's payroll factor and property factor for the~~
8 ~~taxpayer's base year. For purposes of this paragraph, "base~~
9 ~~year" means the taxpayer's first taxable year beginning on or~~
10 ~~after January 1, 1991.]~~

11 B. A taxpayer whose principal business activity is
12 manufacturing may elect to have business income apportioned to
13 this state:

14 (1) in the taxable year beginning on or after
15 January 1, 2014 and prior to January 1, 2015, by multiplying
16 the income by a fraction, the numerator of which is twice the
17 sales factor plus the property factor plus the payroll factor
18 and the denominator of which is four;

19 (2) in the taxable year beginning on or after
20 January 1, 2015 and prior to January 1, 2016, by multiplying
21 the income by a fraction, the numerator of which is three
22 multiplied by the sales factor plus the property factor plus
23 the payroll factor and the denominator of which is five;

24 (3) in the taxable year beginning on or after
25 January 1, 2016 and prior to January 1, 2017, by multiplying

.194316.5

1 the income by a fraction, the numerator of which is seven
2 multiplied by the sales factor plus one and one-half multiplied
3 by the property factor plus one and one-half multiplied by the
4 payroll factor and the denominator of which is ten;

5 (4) in the taxable year beginning on or after
6 January 1, 2017 and prior to January 1, 2018, by multiplying
7 the income by a fraction, the numerator of which is eight
8 multiplied by the sales factor plus the property factor plus
9 the payroll factor and the denominator of which is ten; and

10 (5) in taxable years beginning on or after
11 January 1, 2018, by multiplying the income by a fraction, the
12 numerator of which is the total sales of the taxpayer in New
13 Mexico during the taxable year and the denominator of which is
14 the total sales of the taxpayer from any location within or
15 outside of the state during the taxable year.

16 C. To elect the method of apportionment provided by
17 Subsection B of this section, the taxpayer shall notify the
18 department of the election, in writing, no later than the date
19 on which the taxpayer files the return for the first taxable
20 year to which the election will apply. The election will apply
21 to that taxable year and to each taxable year thereafter until
22 the taxpayer notifies the department, in writing, that the
23 election is terminated, except that the taxpayer shall not
24 terminate the election until the method of apportioning
25 business income provided by Subsection B of this section has

.194316.5

1 been used by the taxpayer for at least three consecutive
2 taxable years, including a total of at least thirty-six
3 calendar months.

4 ~~[G-]~~ D. For purposes of this section, "manufacturing"
5 means combining or processing components or materials to
6 increase their value for sale in the ordinary course of
7 business, but does not include:

8 (1) construction;

9 (2) farming;

10 (3) power generation, except for electricity
11 generation at a facility other than one for which both location
12 approval and a certificate of convenience and necessity are
13 required prior to commencing construction or operation of the
14 facility, pursuant to the Public Utility Act; or

15 (4) processing natural resources, including
16 hydrocarbons."

17 **SECTION 6.** Section 7-4-17 NMSA 1978 (being Laws 1965,
18 Chapter 203, Section 17) is amended to read:

19 "7-4-17. DETERMINATION OF SALES IN THIS STATE OF TANGIBLE
20 PERSONAL PROPERTY FOR INCLUSION IN SALES FACTOR.--Sales of
21 tangible personal property are in this state if:

22 A. the property is delivered or shipped to a
23 purchaser other than the United States government within this
24 state regardless of the f. o. b. point or other conditions of
25 the sale; or

.194316.5

1 B. the property is shipped from an office, store,
2 warehouse, factory or other place of storage in this state and:

3 (1) the purchaser is the United States
4 government; or

5 (2) the taxpayer:

6 (a) is not taxable in the state of the
7 purchaser; and

8 (b) did not make an election for
9 apportionment of business income pursuant to Subsection B of
10 Section 7-4-10 NMSA 1978."

11 SECTION 7. Section 7-9-46 NMSA 1978 (being Laws 1969,
12 Chapter 144, Section 36, as amended) is amended to read:

13 "7-9-46. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
14 GROSS RECEIPTS--SALES TO MANUFACTURERS.--

15 A. Receipts from selling tangible personal property
16 may be deducted from gross receipts or from governmental gross
17 receipts if the sale is made to a person engaged in the
18 business of manufacturing who delivers a nontaxable transaction
19 certificate to the seller. The buyer delivering the nontaxable
20 transaction certificate must incorporate the tangible personal
21 property as an ingredient or component part of the product that
22 the buyer is in the business of manufacturing.

23 B. Receipts from selling tangible personal property
24 that is a consumable and used in such a way that it is consumed
25 in the manufacturing process of a product, provided that the

1 tangible personal property is not a tool or equipment used to
2 create the manufactured product, to a person engaged in the
3 business of manufacturing that product and who delivers a
4 nontaxable transaction certificate to the seller may be
5 deducted in the following percentages from gross receipts or
6 from governmental gross receipts:

7 (1) twenty percent of receipts received prior to
8 January 1, 2014;

9 (2) forty percent of receipts received in
10 calendar year 2014;

11 (3) sixty percent of receipts received in
12 calendar year 2015;

13 (4) eighty percent of receipts received in
14 calendar year 2016; and

15 (5) one hundred percent of receipts received on
16 or after January 1, 2017.

17 C. The purpose of the deductions provided in this
18 section is to encourage manufacturing businesses to locate in
19 New Mexico and to reduce the tax burden, including reducing
20 pyramiding, on the tangible personal property that is consumed
21 in the manufacturing process and that is purchased by
22 manufacturing businesses in New Mexico.

23 D. The department shall annually report to the
24 revenue stabilization and tax policy committee the aggregate
25 amount of deductions taken pursuant to this section, the number

.194316.5

1 of taxpayers claiming each of the deductions and any other
2 information that is necessary to determine that the deductions
3 are performing the purposes for which they are enacted.

4 E. A taxpayer deducting gross receipts pursuant to
5 this section shall report the amount deducted separately for
6 each deduction provided in this section and attribute the
7 amount of the deduction to the appropriate authorization
8 provided in this section in a manner required by the department
9 that facilitates the evaluation by the legislature of the
10 benefit to the state of these deductions.

11 F. As used in Subsection B of this section,
12 "consumable" means tangible personal property that is
13 incorporated into, destroyed, depleted or transformed in the
14 process of manufacturing a product:

15 (1) including electricity, fuels, water,
16 manufacturing aids and supplies, chemicals, gases, repair
17 parts, spares and other tangibles used to manufacture a
18 product; but

19 (2) excluding tangible personal property used
20 in:

21 (a) the generation of power;

22 (b) the processing of natural resources,
23 including hydrocarbons; and

24 (c) the preparation of meals for immediate
25 consumption on- or off-premises."

1 SECTION 8. Section 7-9G-1 NMSA 1978 (being Laws 2004,
2 Chapter 15, Section 1, as amended) is amended to read:

3 "7-9G-1. HIGH-WAGE JOBS TAX CREDIT--QUALIFYING
4 HIGH-WAGE JOBS.--

5 A. A taxpayer who is an eligible employer may apply
6 for, and the taxation and revenue department may allow, a tax
7 credit for each new high-wage economic-based job. The credit
8 provided in this section may be referred to as the "high-wage
9 jobs tax credit".

10 B. The purpose of the high-wage jobs tax credit is to
11 provide an incentive for urban and rural businesses to create
12 and fill new high-wage jobs in New Mexico.

13 ~~[B.]~~ C. The high-wage jobs tax credit may be claimed
14 and allowed in an amount equal to ten percent of the wages and
15 benefits distributed to an eligible employee in a new high-wage
16 economic-based job, but shall not exceed twelve thousand
17 dollars (\$12,000) per job per qualifying period.

18 ~~[C.]~~ D. The high-wage jobs tax credit may be claimed
19 by an eligible employer for each new high-wage economic-based
20 job performed for the year in which the new high-wage economic-
21 based job is created and for the three ~~[following]~~ consecutive
22 qualifying periods. A taxpayer shall apply for approval of the
23 credit after the close of a qualifying period, but not later
24 than twelve months following the end of the calendar year in
25 which the taxpayer's final qualifying period closes.

.194316.5

1 ~~[D-]~~ E. A new high-wage economic-based job shall not
2 be eligible for a credit pursuant to this section unless the
3 eligible employer's total number of employees with ~~[new]~~ high-
4 wage economic-based jobs on the last day of the qualifying
5 period at the location at which the job is performed or based
6 is at least one more than the number on the day prior to the
7 date the new high-wage economic-based job was created.

8 F. A new high-wage economic-based job shall not be
9 eligible for a credit pursuant to this section if:

10 (1) the new high-wage economic-based job is
11 created due to a business merger or acquisition or other change
12 in business organization;

13 (2) the eligible employee was terminated from
14 employment in New Mexico by another employer involved in the
15 business merger or acquisition or other change in business
16 organization with the taxpayer; and

17 (3) the new high-wage economic-based job is
18 performed by:

19 (a) the person who performed the job or its
20 functional equivalent prior to the business merger or
21 acquisition or other change in business organization; or

22 (b) a person replacing the person who
23 performed the job or its functional equivalent prior to a
24 business merger or acquisition or other change in business
25 organization.

1 G. Notwithstanding the provisions of Subsection F of
2 this section, a new high-wage economic-based job that was
3 created by another employer and for which an application for
4 the high-wage jobs tax credit was received and is under review
5 by the taxation and revenue department prior to the time of the
6 business merger or acquisition or other change in business
7 organization shall remain eligible for the high-wage jobs tax
8 credit for the balance of the qualifying periods. The new
9 employer that results from a business merger or acquisition or
10 other change in business organization may only claim the high-
11 wage jobs tax credit for the balance of the qualifying period
12 for which the qualifying job is otherwise eligible.

13 H. A job shall not be eligible for a credit pursuant
14 to this section if the job is created due to an eligible
15 employer entering into a contract or becoming a subcontractor
16 to a contract with a governmental entity that replaces one or
17 more entities performing functionally equivalent services for
18 the governmental entity unless the job is a new high-wage
19 economic-based job that was not being performed by an employee
20 of the replaced entity.

21 ~~[E.]~~ I. With respect to each new high-wage economic-
22 based job for which an eligible employer seeks the high-wage
23 jobs tax credit, the employer shall certify:

24 (1) the amount of wages and benefits paid to
25 each eligible employee in a new high-wage economic-based job

.194316.5

1 during each qualifying period;

2 (2) the number of weeks the position was
3 occupied during the qualifying period;

4 (3) whether the new high-wage economic-based job
5 was in a municipality with a population of [~~forty~~] sixty
6 thousand or more or with a population of less than [~~forty~~]
7 sixty thousand according to the most recent federal decennial
8 census and whether the job was in the unincorporated area of a
9 county; and

10 (4) the total number of employees employed by
11 the employer at the job location on the day prior to the
12 qualifying period and on the last day of the qualifying period.

13 [~~F.~~] J. To receive a high-wage jobs tax credit with
14 respect to any qualifying period, an eligible employer shall
15 apply to the taxation and revenue department on forms and in
16 the manner prescribed by the department. The application shall
17 include a certification made pursuant to Subsection [~~E~~] I of
18 this section.

19 [~~G.~~] K. The credit provided in this section may be
20 deducted from the modified combined tax liability of a
21 taxpayer. If the credit exceeds the modified combined tax
22 liability of the taxpayer, the excess shall be refunded to the
23 taxpayer.

24 [~~H.~~] L. The economic development department shall
25 report to the appropriate interim legislative committee before

1 November 1 of each year the cost of this tax credit to the
2 state and its impact on company recruitment and job creation.

3 ~~[F.]~~ M. As used in this section:

4 ~~[(1) "benefits" means any employee benefit plan~~
5 ~~as defined in Title 1, Section 3 of the federal Employee~~
6 ~~Retirement Income Security Act of 1974, 29 U.S.C. 1002;]~~

7 (1) "benefits" means all remuneration for work
8 performed that is provided to an employee in whole or in part
9 by the employer, other than wages, including insurance
10 programs, health care, medical, dental and vision plans, life
11 insurance, employer contributions to pensions, such as a
12 401(k), and employer-provided services, such as child care,
13 offered by an employer to the employee. "Benefits" does not
14 include the employer's share of payroll taxes, social security
15 or medicare contributions, federal or state unemployment
16 insurance contributions or workers' compensation;

17 (2) "eligible employee" means an individual who
18 is employed in New Mexico by an eligible employer and who is a
19 resident of New Mexico; "eligible employee" does not include an
20 individual who:

21 (a) bears any of the relationships described
22 in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to
23 the employer or, if the employer is a corporation, to an
24 individual who owns, directly or indirectly, more than fifty
25 percent in value of the outstanding stock of the corporation

.194316.5

1 or, if the employer is an entity other than a corporation, to
2 an individual who owns, directly or indirectly, more than fifty
3 percent of the capital and profits interest in the entity;

4 (b) if the employer is an estate or trust,
5 is a grantor, beneficiary or fiduciary of the estate or trust
6 or is an individual who bears any of the relationships
7 described in Paragraphs (1) through (8) of 26 U.S.C. Section
8 152(a) to a grantor, beneficiary or fiduciary of the estate or
9 trust;

10 (c) is a dependent, as that term is
11 described in 26 U.S.C. Section 152(a)(9), of the employer or,
12 if the taxpayer is a corporation, of an individual who owns,
13 directly or indirectly, more than fifty percent in value of the
14 outstanding stock of the corporation or, if the employer is an
15 entity other than a corporation, of an individual who owns,
16 directly or indirectly, more than fifty percent of the capital
17 and profits interest in the entity or, if the employer is an
18 estate or trust, of a grantor, beneficiary or fiduciary of the
19 estate or trust; or

20 (d) is working or has worked as an employee
21 or as an independent contractor for an entity that directly or
22 indirectly owns stock in a corporation of the eligible employer
23 or other interest of the eligible employer that represents
24 fifty percent or more of the total voting power of that entity
25 or has a value equal to fifty percent or more of the capital

.194316.5

1 and profits interest in the entity;

2 (3) "eligible employer" means an employer that:

3 (a) made more than fifty percent of its
4 sales of goods or services produced in New Mexico to persons
5 outside New Mexico during the [~~most recent twelve months of the~~
6 ~~employer's modified combined tax liability reporting periods~~
7 ~~ending prior to claiming a high-wage jobs tax credit~~]
8 applicable qualifying period; or

9 (b) is certified by the economic development
10 department to be eligible for development training program
11 assistance pursuant to Section 21-19-7 NMSA 1978;

12 (4) "modified combined tax liability" means the
13 total liability for the reporting period for the gross receipts
14 tax imposed by Section 7-9-4 NMSA 1978 together with any tax
15 collected at the same time and in the same manner as the gross
16 receipts tax, such as the compensating tax, the withholding
17 tax, the interstate telecommunications gross receipts tax, the
18 surcharges imposed by Section 63-9D-5 NMSA 1978 and the
19 surcharge imposed by Section 63-9F-11 NMSA 1978, minus the
20 amount of any credit other than the high-wage jobs tax credit
21 applied against any or all of these taxes or surcharges; but
22 "modified combined tax liability" excludes all amounts
23 collected with respect to local option gross receipts taxes;

24 (5) "new high-wage economic-based job" means a
25 new job created in New Mexico by an eligible employer on or

.194316.5

1 after July 1, 2004 and prior to July 1, ~~[2015]~~ 2020 that is
2 occupied for at least forty-eight weeks of a qualifying period
3 by an eligible employee who is paid wages calculated for the
4 qualifying period to be at least:

5 (a) for a new high-wage economic-based job
6 created prior to July 1, 2015: 1) forty thousand dollars
7 (\$40,000) if the job is performed or based in or within ten
8 miles of the external boundaries of a municipality with a
9 population of ~~[forty]~~ sixty thousand or more according to the
10 most recent federal decennial census or in a class H county;
11 and ~~[+b)]~~ 2) twenty-eight thousand dollars (\$28,000) if the job
12 is performed or based in a municipality with a population of
13 less than ~~[forty]~~ sixty thousand according to the most recent
14 federal decennial census or in the unincorporated area, that is
15 not within ten miles of the external boundaries of a
16 municipality with a population of sixty thousand or more, of a
17 county other than a class H county; and

18 (b) for a new high-wage economic-based
19 job created on or after July 1, 2015: 1) sixty thousand
20 dollars (\$60,000) if the job is performed or based in or within
21 ten miles of the external boundaries of a municipality with a
22 population of sixty thousand or more according to the most
23 recent federal decennial census or in a class H county; and 2)
24 forty thousand dollars (\$40,000) if the job is performed or
25 based in a municipality with a population of less than sixty

1 thousand according to the most recent federal decennial census
2 or in the unincorporated area, that is not within ten miles of
3 the external boundaries of a municipality with a population of
4 sixty thousand or more, of a county other than a class H
5 county;

6 (6) "qualifying period" means the period of
7 twelve months beginning on the day an eligible employee begins
8 working in a new high-wage economic-based job or the period of
9 twelve months beginning on the anniversary of the day an
10 eligible employee began working in a new high-wage economic-
11 based job; and

12 (7) "wages" means [~~wages as defined in~~
13 ~~Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c)] all
14 compensation paid by an eligible employer to an eligible
15 employee through the employer's payroll system, including those
16 wages that the employee elects to defer or redirect or the
17 employee's contribution to a 401(k) or cafeteria plan program,
18 but "wages" does not include benefits or the employer's share
19 of payroll taxes."~~

20 SECTION 9. Section 7-19D-4 NMSA 1978 (being Laws 1993,
21 Chapter 346, Section 4) is amended to read:

22 "7-19D-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS
23 OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND REQUIREMENTS
24 OF THE DEPARTMENT.--

25 A. An ordinance imposing a tax [~~under~~] pursuant to
.194316.5

underscored material = new
[bracketed material] = delete

1 the provisions of the Municipal Local Option Gross Receipts
2 Taxes Act shall adopt by reference the same definitions and the
3 same provisions relating to exemptions and deductions as are
4 contained in the Gross Receipts and Compensating Tax Act then
5 in effect and as it may be amended from time to time, except
6 that the ordinance shall not be required to provide a deduction
7 provided pursuant to Section 7-9-46, 7-9-51, 7-9-52, 7-9-52.1,
8 7-9-54.2, 7-9-54.3, 7-9-56, 7-9-56.3, 7-9-57.2, 7-9-60, 7-9-62,
9 7-9-73, 7-9-73.1, 7-9-73.2, 7-9-77.1, 7-9-83, 7-9-86, 7-9-92,
10 7-9-93, 7-9-95, 7-9-99 through 7-9-101, 7-9-103.1, 7-9-103.2,
11 7-9-104, 7-9-106, 7-9-107, 7-9-109 or 7-9-111 through 7-9-114
12 NMSA 1978. Except as provided pursuant to Subsection C of this
13 section, a municipality may continue to enact and repeal an
14 ordinance authorized as provided pursuant to the Municipal
15 Local Option Gross Receipts Taxes Act; provided that the model
16 ordinance establishing the tax base and allowing or prohibiting
17 the deductions shall not be modified for a period of two years,
18 except to conform with the Gross Receipts and Compensating Tax
19 Act.

20 B. The governing body of any municipality imposing a
21 tax [~~under~~] pursuant to provisions of the Municipal Local
22 Option Gross Receipts Taxes Act shall impose the tax by
23 adopting the model ordinance with respect to the tax furnished
24 to the municipality by the department. An ordinance that does
25 not conform substantially to the model ordinance of the

.194316.5

1 department is not valid.

2 C. A municipality that has a population of less than
3 ten thousand according to the most recent federal decennial
4 census shall by January 1, 2014, and every ten years
5 thereafter, elect whether to impose a gross receipts tax
6 through an ordinance that does not provide a deduction
7 contained in the Gross Receipts and Compensating Tax Act. Once
8 that election occurs, that municipality shall maintain the
9 model ordinance without adding or removing a deduction not
10 required to be provided pursuant to Subsection A of this
11 section for a period of ten years, except to conform to the
12 extent necessary with the Gross Receipts and Compensating Tax
13 Act."

14 SECTION 10. Section 7-20E-4 NMSA 1978 (being Laws 1993,
15 Chapter 354, Section 4) is amended to read:

16 "7-20E-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS
17 OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND REQUIREMENTS
18 OF THE DEPARTMENT.--

19 A. An ordinance imposing a tax [~~under~~] pursuant to
20 the provisions of the County Local Option Gross Receipts Taxes
21 Act shall adopt by reference the same definitions and the same
22 provisions relating to exemptions and deductions as are
23 contained in the Gross Receipts and Compensating Tax Act then
24 in effect and as it may be amended from time to time, except
25 that the ordinance shall not be required to provide a deduction

.194316.5

underscored material = new
[bracketed material] = delete

1 provided pursuant to Section 7-9-46, 7-9-51, 7-9-52, 7-9-52.1,
2 7-9-54.2, 7-9-54.3, 7-9-56, 7-9-56.3, 7-9-57.2, 7-9-60, 7-9-62,
3 7-9-73, 7-9-73.1, 7-9-73.2, 7-9-77.1, 7-9-83, 7-9-86, 7-9-92,
4 7-9-93, 7-9-95, 7-9-99 through 7-9-101, 7-9-103.1, 7-9-103.2,
5 7-9-104, 7-9-106, 7-9-107, 7-9-109 or 7-9-111 through 7-9-114
6 NMSA 1978. Except as provided pursuant to Subsection C of this
7 section, a county may continue to enact and repeal an ordinance
8 authorized as provided pursuant to the County Local Option
9 Gross Receipts Taxes Act; provided that the model ordinance
10 establishing the tax base and allowing deductions shall not be
11 modified for a period of two years, except to conform to the
12 extent necessary with the Gross Receipts and Compensating Tax
13 Act.

14 B. The governing body of any county imposing a tax
15 [~~under~~] authorized by the County Local Option Gross Receipts
16 Taxes Act shall impose the tax by adopting the model ordinance
17 with respect to the tax furnished to the county by the
18 department. An ordinance that does not conform substantially
19 to the model ordinance of the department is not valid.

20 C. A county that has a population of less than forty-
21 eight thousand according to the most recent federal decennial
22 census shall by January 1, 2014, and every ten years
23 thereafter, elect whether to impose a gross receipts tax
24 through an ordinance that does not provide a deduction
25 contained in the Gross Receipts and Compensating Tax Act. Once

1 that election occurs, that county shall maintain the model
2 ordinance without adding or removing a deduction not required
3 to be provided pursuant to Subsection A of this section for a
4 period of ten years, except to conform to the extent necessary
5 with the Gross Receipts and Compensating Tax Act."

6 **SECTION 11. APPLICABILITY.--**The provisions of:

7 A. Sections 3 through 6 of this act apply to taxable
8 years beginning on or after January 1, 2014;

9 B. Section 7 of this act apply to gross receipts
10 received on or after July 1, 2013; and

11 C. Section 8 of this act apply to credit claims
12 received on or after the effective date of Section 8 of this
13 act and to reporting periods beginning on or after that date.

14 **SECTION 12. CONTINGENT EFFECTIVE DATE.--**

15 A. The effective date of the provisions of Sections
16 1, 2, 4, 7, 9 and 10 of this act is July 1, 2013.

17 B. The effective date of the provisions of Sections
18 3, 5 and 6 of this act is January 1, 2014; provided that the
19 provisions of Sections 1, 2, 4, 7, 9 and 10 of this act are in
20 effect on July 1, 2013.

21 **SECTION 13. EMERGENCY.--**It is necessary for the public
22 peace, health and safety that this act take effect immediately.