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HOUSE BILL 581

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

George Dodge, Jr.

AN ACT

RELATING TO TAXATION; CHANGING PROCEDURES FOR ADJUSTING CERTAIN DISTRIBUTIONS AND TRANSFER TO MUNICIPALITIES AND COUNTIES; ALLOWING THE TAXATION AND REVENUE DEPARTMENT TO, IN CERTAIN CIRCUMSTANCES, REVEAL TO LOCAL GOVERNMENTS A RANGE OF GROSS RECEIPTS TAXES PAID BY TAXPAYERS FROM BUSINESS LOCATIONS ATTRIBUTABLE TO THOSE LOCAL GOVERNMENTS.

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

SECTION 1. Section 7-1-6.15 NMSA 1978 (being Laws 1983, Chapter 211, Section 20, as amended) is amended to read:

"7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO MUNICIPALITIES OR COUNTIES.--

A. The provisions of this section apply to:

(1) any distribution to a municipality [~~of gross receipts taxes~~] pursuant to Section 7-1-6.4 [~~NMSA 1978 or~~ .198312.3

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1 ~~of interstate telecommunications gross receipts tax pursuant to~~
2 ~~Section], 7-1-6.36 or 7-1-6.46 NMSA 1978;~~

3 (2) any transfer to a municipality with
4 respect to any local option gross receipts tax imposed by that
5 municipality;

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

8 (4) any distribution to a county pursuant to
9 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

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

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

15 [~~(7)~~] ~~any distribution to a municipality or a~~
16 ~~county of cigarette taxes pursuant to Sections 7-1-6.11,~~
17 ~~7-12-15 and 7-12-16 NMSA 1978;~~

18 ~~(8)]~~ (7) any distribution to a county from the
19 county government road fund pursuant to Section 7-1-6.26 NMSA
20 1978;

21 [~~(9)~~] (8) any distribution to a municipality
22 of gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

23 [~~(10)~~] (9) any distribution to a municipality
24 of compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

25 [B. ~~If the secretary determines that any prior~~

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1 ~~distribution or transfer to a political subdivision was~~
2 ~~erroneous, the secretary shall increase or decrease the next~~
3 ~~distribution or transfer amount for that political subdivision~~
4 ~~after the determination, except as provided in Subsection C, D~~
5 ~~or E of this section, by the amount necessary to correct the~~
6 ~~error. Subject to the provisions of Subsection E of this~~
7 ~~section, the secretary shall notify the political subdivision~~
8 ~~of the amount of each increase or decrease.~~

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

14 ~~D. The secretary, in lieu of recovery from the next~~
15 ~~distribution or transfer amount, may recover an excess~~
16 ~~distribution or transfer of one hundred dollars (\$100) or more~~
17 ~~to the political subdivision in installments from current and~~
18 ~~future distributions or transfers to that political subdivision~~
19 ~~pursuant to an agreement with the officials of the political~~
20 ~~subdivision whenever the amount of the distribution or transfer~~
21 ~~decrease for the political subdivision exceeds ten percent of~~
22 ~~the average distribution or transfer amount for that political~~
23 ~~subdivision for the twelve months preceding the month in which~~
24 ~~the secretary's determination is made; provided that for the~~
25 ~~purposes of this subsection, the "average distribution or~~

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1 ~~transfer amount" shall be the arithmetic mean of the~~
2 ~~distribution or transfer amounts within the twelve months~~
3 ~~immediately preceding the month in which the determination is~~
4 ~~made.~~

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

10 B. Before making a distribution or transfer
11 specified in Subsection A of this section to a municipality or
12 county for the month, amounts comprising the net receipts shall
13 be segregated into two mutually exclusive categories. One
14 category shall be for amounts relating to the current month,
15 and the other category shall be for amounts relating to prior
16 periods. The total of each category for a municipality or
17 county shall be reported each month to that municipality or
18 county. If the total of the amounts relating to prior periods
19 is less than zero and its absolute value exceeds the greater of
20 one hundred dollars (\$100) or an amount equal to twenty percent
21 of the average distribution or transfer amount for that
22 municipality or county, whichever is greater, then the
23 following procedures shall be carried out:

24 (1) all negative amounts relating to any
25 period prior to the three calendar years preceding the year of

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1 the current month, net of any positive amounts in that same
2 time period for the same taxpayers to which the negative
3 amounts pertain, shall be excluded from the total relating to
4 prior periods. Except as provided in Paragraph (2) of this
5 subsection, the net receipts to be distributed or transferred
6 to the municipality or county shall be adjusted to equal the
7 amount for the current month plus the revised total for prior
8 periods; and

9 (2) if the revised total for prior periods
10 determined pursuant to Paragraph (1) of this subsection is
11 negative and its absolute value exceeds the greater of one
12 hundred dollars (\$100) or an amount equal to twenty percent of
13 the average distribution or transfer amount for that
14 municipality or county, the revised total for prior periods
15 shall be excluded from the distribution or transfers and the
16 net receipts to be distributed or transferred to the
17 municipality or county shall be equal to the amount for the
18 current month.

19 C. The department shall recover from a municipality
20 or county the amount excluded by Paragraph (2) of Subsection B
21 of this section. This amount may be referred to as the
22 "recoverable amount".

23 D. Prior to or concurrently with the distribution
24 or transfer to the municipality or county of the adjusted net
25 receipts, the department shall notify the municipality or

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1 county whose distribution or transfer has been adjusted
2 pursuant to Paragraph (2) of Subsection B of this section:

3 (1) that the department has made such an
4 adjustment, that the department has determined that a specified
5 amount is recoverable from the municipality or county and that
6 the department intends to recover that amount from future
7 distributions or transfers to the municipality or county;

8 (2) that the municipality or county has ninety
9 days from the date notice is made to enter into a mutually
10 agreeable repayment agreement with the department;

11 (3) that if the municipality or county takes
12 no action within the ninety-day period, the department will
13 recover the amount from the next six distributions or transfers
14 following the expiration of the ninety days; and

15 (4) that the municipality or county may
16 inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application
17 for a claim for refund that gave rise to the recoverable
18 amount.

19 E. No earlier than ninety days from the date notice
20 pursuant to Subsection D of this section is given, the
21 department shall begin recovering the recoverable amount from a
22 municipality or county as follows:

23 (1) the department may collect the recoverable
24 amount by:

25 (a) decreasing distributions or

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1 transfers to the municipality or county in accordance with a
2 repayment agreement entered into with the municipality or
3 county; or

4 (b) except as provided in Paragraphs (2)
5 and (3) of this subsection, if the municipality or county fails
6 to act within the ninety days, decreasing the amount of the
7 next six distributions or transfers to the municipality or
8 county following expiration of the ninety-day period in
9 increments as nearly equal as practicable and sufficient to
10 recover the amount;

11 (2) if, pursuant to Subsection B of this
12 section, the secretary determines that the adjusted
13 distribution or transfer of net receipts to a municipality or
14 county is less than fifty percent of the average distribution
15 or transfer of net receipts for that municipality or county,
16 the secretary:

17 (a) shall recover only up to fifty
18 percent of the average distribution or transfer of net receipts
19 for that municipality or county; and

20 (b) may, in the secretary's discretion,
21 waive recovery of any portion of the recoverable amount; and

22 (3) if, after application of a refund claim,
23 audit adjustment, correction of a mistake by the department or
24 other adjustment of a prior period, but prior to any recovery
25 of the department pursuant to this section, the total net

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1 receipts of a municipality or county for one or more periods
2 following the current month are reduced or are projected to be
3 reduced to less than fifty percent of the average distribution
4 or transfer of net receipts, the secretary may waive recovery
5 of any portion of the recoverable amount subject to review by
6 the attorney general.

7 F. No later than ninety days from the date notice
8 pursuant Subsection D of this section is given, the department
9 shall provide the municipality or county adequate opportunity
10 to review department records concerning the recoverable amount
11 pursuant to Section 7-1-8.9 NMSA 1978.

12 [~~F.~~] G. The secretary is authorized to decrease a
13 distribution or transfer to a municipality or county upon being
14 directed to do so by the secretary of finance and
15 administration pursuant to the State Aid Intercept Act or to
16 redirect a distribution or transfer to the New Mexico finance
17 authority pursuant to an ordinance or a resolution passed by
18 the county or municipality and a written agreement of the
19 municipality or county and the New Mexico finance authority.
20 Upon direction to decrease a distribution or transfer or notice
21 to redirect a distribution or transfer to a municipality or
22 county, the secretary shall decrease or redirect the next
23 designated distribution or transfer, and succeeding
24 distributions or transfers as necessary, by the amount of the
25 state distributions intercept authorized by the secretary of

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1 finance and administration pursuant to the State Aid Intercept
2 Act or by the amount of the state distribution intercept
3 authorized pursuant to an ordinance or a resolution passed by
4 the county or municipality and a written agreement with the New
5 Mexico finance authority. The secretary shall transfer the
6 state distributions intercept amount to the municipal or county
7 treasurer or other person designated by the secretary of
8 finance and administration or to the New Mexico finance
9 authority pursuant to written agreement to pay the debt service
10 to avoid default on qualified local revenue bonds or meet other
11 local revenue bond, loan or other debt obligations of the
12 municipality or county to the New Mexico finance authority. A
13 decrease to or redirection of a distribution or transfer
14 pursuant to this subsection that arose:

15 (1) prior to an adjustment of a distribution
16 or transfer of net receipts creating a recoverable amount owed
17 to the department takes precedence over any collection of any
18 recoverable amount pursuant to Paragraph (2) of Subsection B of
19 this section, which may be made only from the net amount of the
20 distribution or transfer remaining after application of the
21 decrease or redirection pursuant to this subsection; and

22 (2) after an adjustment of a distribution or
23 transfer of net receipts creating a recoverable amount owed to
24 the department shall be subordinate to any collection of any
25 recoverable amount pursuant to Paragraph (2) of Subsection B of

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1 this section.

2 [~~G.~~] H. Upon the direction of the secretary of
3 finance and administration pursuant to Section 9-6-5.2 NMSA
4 1978, the secretary shall temporarily withhold the balance of a
5 distribution to a municipality or county, net of any decrease
6 or redirected amount pursuant to Subsection G of this section
7 and any recoverable amount pursuant to Paragraph (2) of
8 Subsection B of this section, that has failed to submit an
9 audit report required by the Audit Act or a financial report
10 required by Subsection F of Section 6-6-2 NMSA 1978. The
11 amount to be withheld, the source of the withheld distribution
12 and the number of months that the distribution is to be
13 withheld shall be as directed by the secretary of finance and
14 administration. A distribution withheld pursuant to this
15 subsection shall remain in the tax administration suspense fund
16 until distributed to the municipality or county and shall not
17 be distributed to the general fund. An amount withheld
18 pursuant to this subsection shall be distributed to the
19 municipality or county upon direction of the secretary of
20 finance and administration.

21 I. As used in this section:

22 (1) "amounts relating to the current month"
23 means any amounts included in the net receipts of the current
24 month that represent payment of tax due for the current month,
25 correction of amounts processed in the current month or that

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1 otherwise relate to obligations due for the current month;

2 (2) "amounts relating to prior periods" means
3 any amounts processed during the current period that adjust
4 amounts processed in a period or periods prior to the current
5 month regardless of whether the adjustment is a correction of a
6 department error or due to the filing of amended returns,
7 payment of department-issued assessments, filing or approval of
8 claims for refund, audit adjustments or other cause;

9 (3) "average distribution or transfer amount"
10 means the following amounts; provided that a distribution or
11 transfer that is negative shall not be used in calculating the
12 amounts:

13 (a) the average of the total amount
14 distributed or transferred to a municipality in each of the
15 three years preceding the current month;

16 (b) if a distribution or transfer to a
17 municipality has been made for less than three years, the total
18 amount distributed or transferred in the year preceding the
19 current month; or

20 (c) if a distribution or transfer to a
21 municipality has been made for less than twelve months, the
22 total amount distributed or transferred to the municipality
23 preceding the current month;

24 (4) "current month" means the month for which
25 the distribution or transfer is being prepared; and

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1 (5) "repayment agreement" means an agreement
2 between the department and a municipality or county under which
3 the municipality or county agrees to allow the department to
4 recover an amount determined pursuant to Paragraph (2) of
5 Subsection B of this section by decreasing distributions or
6 transfers to the municipality or county for one or more months
7 beginning with the distribution or transfer to be made with
8 respect to a designated month. No interest shall be charged."

9 SECTION 2. Section 7-1-8.9 NMSA 1978 (being Laws 2009,
10 Chapter 243, Section 11) is amended to read:

11 "7-1-8.9. INFORMATION THAT MAY BE REVEALED TO LOCAL
12 GOVERNMENTS AND THEIR AGENCIES.--

13 A. An employee of the department may reveal to:

14 [~~A.~~] (1) the officials or employees of a
15 municipality of this state authorized in a written request by
16 the municipality for a period specified in the request within
17 the twelve months preceding the request:

18 [~~(1)~~] (a) the names, taxpayer
19 identification numbers and addresses of registered gross
20 receipts taxpayers reporting gross receipts for that
21 municipality under the Gross Receipts and Compensating Tax Act
22 or a local option gross receipts tax imposed by that
23 municipality. The department may also reveal the information
24 described in this [~~paragraph~~] subparagraph quarterly or upon
25 such other periodic basis as the secretary and the municipality

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1 may agree in writing;

2 (b) a range of taxable gross receipts of
3 registered gross receipts paid by taxpayers from business
4 locations attributable to that municipality under the Gross
5 Receipts and Compensating Tax Act or a local option gross
6 receipts tax imposed by that municipality; provided that
7 authorization from the federal internal revenue service to
8 reveal such information has been received. The department may
9 also reveal the information described in this subparagraph
10 quarterly or upon such other periodic basis as the secretary
11 and the municipality may agree in writing; and

12 [~~2~~] (c) information indicating whether
13 persons shown on a list of businesses located within that
14 municipality furnished by the municipality have reported gross
15 receipts to the department but have not reported gross receipts
16 for that municipality under the Gross Receipts and Compensating
17 Tax Act or a local option gross receipts tax imposed by that
18 municipality;

19 [~~B-~~] (2) the officials or employees of a
20 county of this state authorized in a written request by the
21 county for a period specified in the request within the twelve
22 months preceding the request:

23 [~~1~~] (a) the names, taxpayer
24 identification numbers and addresses of registered gross
25 receipts taxpayers reporting gross receipts either for that

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1 county in the case of a local option gross receipts tax imposed
2 on a countywide basis or only for the areas of that county
3 outside of any incorporated municipalities within that county
4 in the case of a county local option gross receipts tax imposed
5 only in areas of the county outside of any incorporated
6 municipalities. The department may also reveal the information
7 described in this paragraph quarterly or upon such other
8 periodic basis as the secretary and the county may agree in
9 writing;

10 (b) a range of taxable gross receipts of
11 registered gross receipts paid by taxpayers from business
12 locations attributable either to that county in the case of a
13 local option gross receipts tax imposed on a countywide basis
14 or only to the areas of that county outside of any incorporated
15 municipalities within that county in the case of a county local
16 option gross receipts tax imposed only in areas of the county
17 outside of any incorporated municipalities; provided that
18 authorization from the federal internal revenue service to
19 reveal such information has been received. The department may
20 also reveal the information described in this subparagraph
21 quarterly or upon such other periodic basis as the secretary
22 and the county may agree in writing;

23 [+2] (c) in the case of a local option
24 gross receipts tax imposed by a county on a countywide basis,
25 information indicating whether persons shown on a list of

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1 businesses located within the county furnished by the county
2 have reported gross receipts to the department but have not
3 reported gross receipts for that county under the Gross
4 Receipts and Compensating Tax Act or a local option gross
5 receipts tax imposed by that county on a countywide basis; and
6 ~~(3)~~ (d) in the case of a local option
7 gross receipts tax imposed by a county only on persons engaging
8 in business in that area of the county outside of incorporated
9 municipalities, information indicating whether persons on a
10 list of businesses located in that county outside of the
11 incorporated municipalities but within that county furnished by
12 the county have reported gross receipts to the department but
13 have not reported gross receipts for that county outside of the
14 incorporated municipalities within that county under the Gross
15 Receipts and Compensating Tax Act or a local option gross
16 receipts tax imposed by the county only on persons engaging in
17 business in that county outside of the incorporated
18 municipalities; and

19 ~~(6)~~ (3) officials or employees of a
20 municipality or county of this state, authorized in a written
21 request of the municipality or county, for purposes of
22 inspection, the records of the department pertaining to an
23 increase or decrease to a distribution or transfer made
24 pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of
25 reviewing the basis for the increase or decrease.

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B. The department may require that a municipal or county official or employee satisfactorily complete appropriate training on protecting confidential information prior to receiving the information pursuant to Subsection A of this section. The authorized officials or employees may only reveal the information provided in this subsection to another authorized official or employee, to an employee of the department, or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.