

HOUSE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 581

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

AN ACT

RELATING TO TAXATION; CHANGING PROCEDURES FOR ADJUSTING CERTAIN  
DISTRIBUTIONS AND TRANSFERS 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~~

.201197.2

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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 ~~G. 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~~

.201197.2

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, then the following procedures shall be  
23 carried out:

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

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, exclusive of any amended returns that may be attached  
19 to the application.

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

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

1                   (a) decreasing distributions or  
2 transfers to the municipality or county in accordance with a  
3 repayment agreement entered into with the municipality or  
4 county; or

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

12                   (2) if, pursuant to Subsection B of this  
13 section, the secretary determines that the recoverable amount  
14 is more than fifty percent of the average distribution or  
15 transfer of net receipts for that municipality or county, the  
16 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,  
22 subject to approval by the state board of finance; and

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

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1 of the department pursuant to this section, the total net  
2 receipts of a municipality or county for the twelve-month  
3 period beginning with the current month are reduced or are  
4 projected to be reduced to less than fifty percent of the  
5 average distribution or transfer of net receipts, the secretary  
6 may waive recovery of any portion of the recoverable amount,  
7 subject to approval by the state board of finance.

8 F. No later than ninety days from the date notice  
9 pursuant to Subsection D of this section is given, the  
10 department shall provide the municipality or county adequate  
11 opportunity to review an application for a claim for refund  
12 that gave rise to the recoverable amount, exclusive of any  
13 amended returns that may be attached to the application,  
14 pursuant to Section 7-1-8.9 NMSA 1978.

15 G. On or before September 1 of each year beginning  
16 in 2016, the secretary shall report to the state board of  
17 finance and the legislative finance committee the total  
18 recoverable amount waived pursuant to Subparagraph (b) of  
19 Paragraph (2) and Paragraph (3) of Subsection E of this section  
20 for each municipality and county in the prior fiscal year.

21 ~~[F.]~~ H. The secretary is authorized to decrease a  
22 distribution or transfer to a municipality or county upon being  
23 directed to do so by the secretary of finance and  
24 administration pursuant to the State Aid Intercept Act or to  
25 redirect a distribution or transfer to the New Mexico finance



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

24 (1) prior to an adjustment of a distribution  
25 or transfer of net receipts creating a recoverable amount owed

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1 to the department takes precedence over any collection of any  
2 recoverable amount pursuant to Paragraph (2) of Subsection B of  
3 this section, which may be made only from the net amount of the  
4 distribution or transfer remaining after application of the  
5 decrease or redirection pursuant to this subsection; and

6 (2) after an adjustment of a distribution or  
7 transfer of net receipts creating a recoverable amount owed to  
8 the department shall be subordinate to any collection of any  
9 recoverable amount pursuant to Paragraph (2) of Subsection B of  
10 this section.

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

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1 be distributed to the general fund. An amount withheld  
2 pursuant to this subsection shall be distributed to the  
3 municipality or county upon direction of the secretary of  
4 finance and administration.

5 J. As used in this section:

6 (1) "amounts relating to the current month"  
7 means any amounts included in the net receipts of the current  
8 month that represent payment of tax due for the current month,  
9 correction of amounts processed in the current month that  
10 relate to the current month or that otherwise relate to  
11 obligations due for the current month;

12 (2) "amounts relating to prior periods" means  
13 any amounts processed during the current month that adjust  
14 amounts processed in a period or periods prior to the current  
15 month regardless of whether the adjustment is a correction of a  
16 department error or due to the filing of amended returns,  
17 payment of department-issued assessments, filing or approval of  
18 claims for refund, audit adjustments or other cause;

19 (3) "average distribution or transfer amount"  
20 means the following amounts; provided that a distribution or  
21 transfer that is negative shall not be used in calculating the  
22 amounts:

23 (a) the annual average of the total  
24 amount distributed or transferred to a municipality or county  
25 in each of the three twelve-month periods preceding the current

1 month;

2 (b) if a distribution or transfer to a  
3 municipality or county has been made for less than three years,  
4 the total amount distributed or transferred in the year  
5 preceding the current month; or

6 (c) if a municipality or county has not  
7 received distributions or transfers of net receipts for twelve  
8 or more months, the monthly average of net receipts distributed  
9 or transferred to the municipality or county preceding the  
10 current month multiplied by twelve;

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

13 (5) "repayment agreement" means an agreement  
14 between the department and a municipality or county under which  
15 the municipality or county agrees to allow the department to  
16 recover an amount determined pursuant to Paragraph (2) of  
17 Subsection B of this section by decreasing distributions or  
18 transfers to the municipality or county for one or more months  
19 beginning with the distribution or transfer to be made with  
20 respect to a designated month. No interest shall be charged."

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

23 "7-1-8.9. INFORMATION THAT MAY BE REVEALED TO LOCAL  
24 GOVERNMENTS AND THEIR AGENCIES.--

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

1                   [~~A.~~] (1) the officials or employees of a  
 2 municipality of this state authorized in a written request by  
 3 the municipality for a period specified in the request within  
 4 the twelve months preceding the request; provided that the  
 5 municipality receiving the information has entered into a  
 6 written agreement with the department that the information  
 7 shall be used for tax purposes only and specifying that the  
 8 municipality is subject to the confidentiality provisions of  
 9 Section 7-1-8 NMSA 1978 and the penalty provisions of Section  
 10 7-1-76 NMSA 1978:

11                   [~~(1)~~] (a) the names, taxpayer  
 12 identification numbers and addresses of registered gross  
 13 receipts taxpayers reporting gross receipts for that  
 14 municipality under the Gross Receipts and Compensating Tax Act  
 15 or a local option gross receipts tax imposed by that  
 16 municipality. The department may also reveal the information  
 17 described in this [~~paragraph~~] subparagraph quarterly or upon  
 18 such other periodic basis as the secretary and the municipality  
 19 may agree in writing;

20                   (b) a range of taxable gross receipts of  
 21 registered gross receipts paid by taxpayers from business  
 22 locations attributable to that municipality under the Gross  
 23 Receipts and Compensating Tax Act or a local option gross  
 24 receipts tax imposed by that municipality; provided that  
 25 authorization from the federal internal revenue service to

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1 reveal such information has been received. The department may  
2 also reveal the information described in this subparagraph  
3 quarterly or upon such other periodic basis as the secretary  
4 and the municipality may agree in writing; and

5 [~~2~~] (c) information indicating whether  
6 persons shown on a list of businesses located within that  
7 municipality furnished by the municipality have reported gross  
8 receipts to the department but have not reported gross receipts  
9 for that municipality under the Gross Receipts and Compensating  
10 Tax Act or a local option gross receipts tax imposed by that  
11 municipality;

12 [~~B-~~] (2) the officials or employees of a  
13 county of this state authorized in a written request by the  
14 county for a period specified in the request within the twelve  
15 months preceding the request; provided that the county  
16 receiving the information has entered into a written agreement  
17 with the department that the information shall be used for tax  
18 purposes only and specifying that the county is subject to the  
19 confidentiality provisions of Section 7-1-8 NMSA 1978 and the  
20 penalty provisions of Section 7-1-76 NMSA 1978:

21 [~~1~~] (a) the names, taxpayer  
22 identification numbers and addresses of registered gross  
23 receipts taxpayers reporting gross receipts either for that  
24 county in the case of a local option gross receipts tax imposed  
25 on a countywide basis or only for the areas of that county

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

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

21 [~~(2)~~] (c) in the case of a local option  
 22 gross receipts tax imposed by a county on a countywide basis,  
 23 information indicating whether persons shown on a list of  
 24 businesses located within the county furnished by the county  
 25 have reported gross receipts to the department but have not

.201197.2

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

17 ~~(c)~~ (3) officials or employees of a  
18 municipality or county of this state, authorized in a written  
19 request of the municipality or county, for purposes of  
20 inspection, the records of the department pertaining to an  
21 increase or decrease to a distribution or transfer made  
22 pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of  
23 reviewing the basis for the increase or decrease; provided that  
24 the municipality or county receiving the information has  
25 entered into a written agreement with the department that the



1 information shall be used for tax purposes only and specifying  
 2 that the municipality or county is subject to the  
 3 confidentiality provisions of Section 7-1-8 NMSA 1978 and the  
 4 penalty provisions of Section 7-1-76 NMSA 1978. The authorized  
 5 officials or employees may only reveal the information provided  
 6 in this [~~subsection~~] paragraph to another authorized official  
 7 or employee, to an employee of the department, or a district  
 8 court, an appellate court or a federal court in a proceeding  
 9 relating to a disputed distribution and in which both the state  
 10 and the municipality or county are parties.

11 B. The department may require that a municipal or  
 12 county official or employee satisfactorily complete appropriate  
 13 training on protecting confidential information prior to  
 14 receiving the information pursuant to Subsection A of this  
 15 section."

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

18 - 17 -

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