

SENATE CORPORATIONS AND TRANSPORTATION  
COMMITTEE SUBSTITUTE FOR  
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 7

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO TAXATION; AUTHORIZING AN OCCUPANCY SURTAX PURSUANT  
TO THE LODGERS' TAX ACT; REQUIRING LOCAL GOVERNMENTS THAT  
IMPOSE THE TAX TO USE THE PROCEEDS TO DEFRAY THE COST OF  
AFFORDABLE HOUSING; MAKING AMENDMENTS TO SECTION 3-38-16 NMSA  
1978 (BEING LAWS 1969, CHAPTER 199, SECTION 4, AS AMENDED) TO  
CONFORM WITH LAWS 2019, CHAPTER 25, SECTION 1.

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

SECTION 1. Section 3-38-14 NMSA 1978 (being Laws 1969,  
Chapter 199, Section 2, as amended) is amended to read:

"3-38-14. DEFINITIONS.--As used in the Lodgers' Tax Act:

A. "gross taxable rent" means the total amount of  
rent paid for lodging, not including the state gross receipts  
tax or local sales taxes;

B. "lodging" means the transaction of furnishing

1 rooms or other accommodations by a vendor to a vendee who for  
2 rent uses, possesses or has the right to use or possess the  
3 rooms or other units of accommodations in or at a taxable  
4 premises;

5 C. "lodgings" means the rooms or other  
6 accommodations furnished by a vendor to a vendee by a taxable  
7 service of [~~lodgings~~] lodging;

8 D. "occupancy tax" means the tax on lodging  
9 authorized by [~~the Lodgers' Tax Act~~] Section 3-38-15 NMSA 1978;

10 E. "occupancy surtax" means the surtax authorized  
11 by Section 3-38-15.1 NMSA 1978;

12 [~~E.~~] F. "person" means a corporation, firm, other  
13 body corporate, partnership, association or individual.

14 "Person" includes an executor, administrator, trustee, receiver  
15 or other representative appointed according to law and acting  
16 in a representative capacity. "Person" does not include the  
17 United States of America, the state of New Mexico, any  
18 corporation, department, instrumentality or agency of the  
19 federal government or the state government or any political  
20 subdivision of the state;

21 [~~F.~~] G. "rent" means the consideration received by  
22 a vendor in money, credits, property or other consideration  
23 valued in money for lodgings subject to [~~an occupancy~~] a tax  
24 authorized in the Lodgers' Tax Act;

25 [~~G.~~] H. "taxable premises" means a hotel,

1 apartment, apartment hotel, apartment house, lodge, lodging  
 2 house, rooming house, motor hotel, guest house, guest ranch,  
 3 ranch resort, guest resort, mobile home, motor court, auto  
 4 court, auto camp, trailer court, trailer camp, trailer park,  
 5 tourist camp, cabin or other premises used for lodging;

6 ~~[H.]~~ I. "tourist" means a person who travels for  
 7 the purpose of business, pleasure or culture to a municipality  
 8 or county imposing an occupancy tax;

9 ~~[I.]~~ J. "tourist-related events" means events that  
 10 are planned for, promoted to and attended by tourists;

11 ~~[J.]~~ K. "tourist-related facilities and  
 12 attractions" means facilities and attractions that are intended  
 13 to be used by or visited by tourists;

14 ~~[K.]~~ L. "tourist-related transportation systems"  
 15 means transportation systems that provide transportation for  
 16 tourists to and from tourist-related facilities and attractions  
 17 and tourist-related events;

18 ~~[L.]~~ M. "vendee" means a natural person to whom  
 19 lodgings are furnished in the exercise of the taxable service  
 20 of lodging; and

21 ~~[M.]~~ N. "vendor" means a person or ~~[his]~~ the  
 22 person's agent furnishing lodgings in the exercise of the  
 23 taxable service of lodging."

24 **SECTION 2.** A new Section 3-38-15.1 NMSA 1978 is enacted  
 25 to read:

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1 "3-38-15.1. [NEW MATERIAL] OCCUPANCY SURTAX.--

2 A. In addition to the occupancy tax, a municipality  
3 or county may impose by ordinance an occupancy surtax for  
4 revenues on single-family rentals. The surtax shall not exceed  
5 two and one-half percent gross taxable rent of single-family  
6 rentals.

7 B. A municipality or county imposing an occupancy  
8 surtax shall use the proceeds from the surtax to defray the  
9 cost of providing affordable housing or to leverage federal  
10 funding for affordable housing.

11 C. As used in this section:

12 (1) "affordable housing" means any housing  
13 that benefits those whose income is at or below eighty percent  
14 of the area median income;

15 (2) "single-family rental" means a single-  
16 family residence offered for rent for a term of less than  
17 thirty days; and

18 (3) "single-family residence" means an  
19 occupied residence, including an apartment, house, guest house,  
20 cottage or condominium, in which at least one room or unit is  
21 rented by an operator through the use of advance reservations.  
22 "Single-family residence" does not include a hotel, motel,  
23 lodging house, bed and breakfast establishment or property  
24 offered as a time-share, as that term is used in the New Mexico  
25 Time Share Act."

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1           SECTION 3. Section 3-38-16 NMSA 1978 (being Laws 1969,  
2 Chapter 199, Section 4, as amended) is amended to read:

3           "3-38-16. EXEMPTIONS.--The occupancy tax and occupancy  
4 surtax shall not apply:

5                   A. if a vendee:

6                           (1) has been a permanent resident of the  
7 taxable premises for a period of at least thirty consecutive  
8 days; or

9                           (2) enters into or has entered into a written  
10 agreement for lodgings at the taxable premises for a period of  
11 at least thirty consecutive days;

12                   B. if the rent paid by a vendee is less than two  
13 dollars (\$2.00) a day;

14                   C. to lodging accommodations at institutions of the  
15 federal government, the state or any political subdivision  
16 thereof;

17                   D. to lodging accommodations at religious,  
18 charitable, educational or philanthropic institutions,  
19 including accommodations at summer camps operated by such  
20 institutions;

21                   E. to clinics, hospitals or other medical  
22 facilities; or

23                   F. to privately owned and operated convalescent  
24 homes or homes for the aged, infirm, indigent or chronically  
25 ill [~~or~~

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underscored material = new  
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1           G. ~~if the vendor does not offer at least three~~  
2 ~~rooms within or attached to a taxable premises for lodging or~~  
3 ~~at least three other premises for lodging or a combination of~~  
4 ~~these within the taxing jurisdiction]."~~

5           SECTION 4. Section 3-38-17 NMSA 1978 (being Laws 1969,  
6 Chapter 199, Section 5, as amended) is amended to read:

7           "3-38-17. COLLECTION OF TAXES.--

8           A. Every vendor providing lodgings in a  
9 municipality or county imposing an occupancy tax or occupancy  
10 surtax shall collect the proceeds thereof on behalf of the  
11 municipality or county and shall act as a trustee therefor.

12           B. The tax and surtax shall be collected from  
13 vendees in accordance with the ordinance imposing the tax and  
14 shall be charged separately from the rent fixed by the vendor  
15 for the lodgings."

16           SECTION 5. Section 3-38-17.1 NMSA 1978 (being Laws 1992,  
17 Chapter 12, Section 2, as amended) is amended to read:

18           "3-38-17.1. AUDIT OF VENDORS.--The governing body of any  
19 municipality or county collecting over two hundred fifty  
20 thousand dollars (\$250,000) in occupancy tax and occupancy  
21 surtax proceeds shall select for annual random audits one or  
22 more vendors to verify the amount of gross taxable rent subject  
23 to the [~~occupancy~~] tax and surtax and to ensure that the full  
24 amount of [~~occupancy~~] tax and surtax on that rent is collected.  
25 The governing body of any municipality or county collecting

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1 less than two hundred fifty thousand dollars (\$250,000) in  
 2 receipts, per annum, of [~~occupancy~~] tax and surtax proceeds  
 3 shall conduct random audits to verify full payment of  
 4 [~~occupancy~~] tax and surtax receipts. Copies of audits  
 5 completed shall be filed annually with the local government  
 6 division of the department of finance and administration."

7 **SECTION 6.** Section 3-38-17.2 NMSA 1978 (being Laws 1996,  
 8 Chapter 58, Section 5) is amended to read:

9 "3-38-17.2. FINANCIAL REPORTING.--

10 A. The governing body of any municipality or county  
 11 imposing and collecting an occupancy tax or occupancy surtax  
 12 shall furnish to the advisory board created pursuant to Section  
 13 3-38-22 NMSA 1978 that portion of any proposed budget, report  
 14 or audit filed or received by the governing body pursuant to  
 15 either Chapter 6, Article 6 NMSA 1978 or the Audit Act that  
 16 relates to the expenditure of [~~occupancy~~] tax and surtax funds  
 17 within ten days of the filing or receipt of such proposed  
 18 budget, report or audit by the local governing body.

19 B. The governing body of any municipality or county  
 20 imposing and collecting an occupancy tax or occupancy surtax  
 21 shall report to the local government division of the department  
 22 of finance and administration on a quarterly basis any  
 23 expenditure of [~~occupancy~~] tax and surtax funds pursuant to  
 24 Sections 3-38-15, 3-38-15.1 and 3-38-21 NMSA 1978 and shall  
 25 furnish a copy of this report to the advisory board when it is

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1 filed with the division."

2 SECTION 7. Section 3-38-17.3 NMSA 1978 (being Laws 1996,  
3 Chapter 58, Section 6) is amended to read:

4 "3-38-17.3. ENFORCEMENT.--

5 A. An action to enforce the provisions of the  
6 Lodgers' Tax Act may be brought by:

7 (1) the attorney general or the district  
8 attorney in the county of jurisdiction; or

9 (2) a vendor who is collecting the proceeds of  
10 an occupancy tax or occupancy surtax in the county of  
11 jurisdiction.

12 B. A district court may issue a writ of mandamus or  
13 order an injunction or other appropriate remedy to enforce the  
14 provisions of the Lodgers' Tax Act.

15 C. The court shall award costs and reasonable  
16 [~~attorneys'~~] attorney fees to the prevailing party in a court  
17 action to enforce the provisions of the Lodgers' Tax Act."

18 SECTION 8. Section 3-38-18 NMSA 1978 (being Laws 1969,  
19 Chapter 199, Section 6, as amended) is amended to read:

20 "3-38-18. COLLECTION OF DELINQUENCIES.--

21 A. The governing body of [~~the~~] a municipality or  
22 county shall, by ordinance, provide that a vendor is liable for  
23 the payment of the proceeds of any occupancy tax or occupancy  
24 surtax that the vendor failed to remit to the municipality or  
25 county, due to [~~his~~] the vendor's failure to collect the tax or

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1 surtax or otherwise, and shall provide for a civil penalty for  
 2 any such failure in an amount equal to the greater of ten  
 3 percent of the amount that was not duly remitted to the  
 4 municipality or county or one hundred dollars (\$100).

5 B. ~~[The]~~ A municipality or county may bring an  
 6 action in law or equity in the district court for the  
 7 collection of any amounts due, including without limitation  
 8 penalties thereon, interest on the unpaid principal at a rate  
 9 ~~[of]~~ not exceeding one percent a month, the costs of collection  
 10 and reasonable ~~[attorneys']~~ attorney fees incurred in  
 11 connection therewith."

12 SECTION 9. Section 3-38-18.1 NMSA 1978 (being Laws 1992,  
 13 Chapter 12, Section 1) is amended to read:

14 "3-38-18.1. LIEN FOR ~~[OCCUPANCY]~~ TAX--PAYMENT--  
 15 CERTIFICATE OF LIENS.--

16 A. The occupancy tax and occupancy surtax imposed  
 17 by a municipality or county ~~[constitutes]~~ constitute a lien in  
 18 favor of that municipality or county upon the personal and real  
 19 property of the vendor providing lodgings in that municipality  
 20 or county. The lien may be enforced as provided in Sections  
 21 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be  
 22 determined from the date of filing.

23 B. Under process or order of court, no person shall  
 24 sell the property of any vendor without first ascertaining from  
 25 the clerk or treasurer of the municipality or county in which

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1 the vendor is located the amount of any occupancy tax or  
2 occupancy surtax due the municipality or county. Any  
3 [~~occupancy~~] tax or surtax due the municipality or county shall  
4 be paid from the proceeds of the sale before payment is made to  
5 the judgment creditor or any other person with a claim on the  
6 sale proceeds.

7 C. The clerk or treasurer of [~~the~~] a municipality  
8 or county shall furnish to any person applying for such a  
9 certificate a certificate showing the amount of all liens in  
10 the records of the municipality or county against any vendor  
11 pursuant to Chapter 3, Article 38 NMSA 1978."

12 SECTION 10. Section 3-38-19 NMSA 1978 (being Laws 1969,  
13 Chapter 199, Section 7, as amended) is amended to read:

14 "3-38-19. PENALTIES.--The governing body of [~~the~~] a  
15 municipality or county shall, by ordinance, provide for  
16 penalties by creating a misdemeanor and imposing a fine of not  
17 more than five hundred dollars (\$500) or imprisonment for not  
18 more than ninety days or both for a violation by any person of  
19 the provisions of the [~~occupancy tax~~] ordinance imposing an  
20 occupancy tax or occupancy surtax for a failure to pay the tax,  
21 to remit the proceeds thereof to the municipality or county or  
22 to account properly for any lodging and the tax or surtax  
23 proceeds pertaining thereto."

24 SECTION 11. Section 3-38-20 NMSA 1978 (being Laws 1969,  
25 Chapter 199, Section 8, as amended) is amended to read:

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1           "3-38-20. ORDINANCE REQUIREMENTS.--The ordinance imposing  
2 an occupancy tax or occupancy surtax or any ordinance  
3 amendatory thereof or supplemental thereto, except as limited  
4 by or otherwise provided in the Lodgers' Tax Act, shall:

5           A. provide a procedure for licensing each vendor  
6 and for refusing a vendor a license after an opportunity has  
7 been given to the vendor of a public hearing thereon by the  
8 governing body of the municipality or county, as the case may  
9 be;

10           B. state the rate or other amount of the occupancy  
11 tax or occupancy surtax; the times, place and method for the  
12 payment of the [~~occupancy~~] tax or surtax proceeds to the  
13 municipality or county; the accounts and other records to be  
14 maintained in connection with the [~~occupancy~~] tax or surtax; a  
15 procedure for making refunds and resolving disputes relating to  
16 the [~~occupancy~~] tax or surtax, including exemptions pertaining  
17 thereto; the procedure for preservation and destruction of  
18 records and their inspection and investigation; vendor audit  
19 requirements; applicable civil and criminal penalties; and a  
20 procedure of liens, distraint and sales to satisfy such liens;  
21 and

22           C. provide other rights, privileges, powers,  
23 immunities and other details relating to any such vendor  
24 licenses, the collection of the occupancy tax or occupancy  
25 surtax and the remittance of the proceeds thereof to the

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1 municipality or county."

2 SECTION 12. Section 3-38-21.1 NMSA 1978 (being Laws 1996,  
3 Chapter 58, Section 8) is amended to read:

4 "3-38-21.1. CONTRACTING FOR SERVICES.--

5 A. The governing body of a municipality or county  
6 may contract for the management of programs and activities  
7 funded with revenue from the occupancy tax [~~authorized in~~  
8 ~~Section 3-38-15 NMSA 1978~~] or the occupancy surtax. The  
9 governing body shall require periodic reports to the governing  
10 body, at least quarterly, listing the expenditures for those  
11 periods. Within ten days of receiving the reports, the  
12 governing body shall furnish copies of them to the advisory  
13 board. Funds provided to the contracting person or  
14 governmental agency shall be maintained in a separate account  
15 established for that purpose and shall not be commingled with  
16 any other money.

17 B. A person or governmental agency with whom a  
18 municipality or county contracts under this section to conduct  
19 an activity authorized by [~~Section~~] Sections 3-38-15.1 and  
20 3-38-21 NMSA 1978 shall maintain complete and accurate  
21 financial records of each expenditure of the occupancy tax or  
22 occupancy surtax revenue made and upon request of the governing  
23 body of the municipality or county shall make such records  
24 available for inspection.

25 C. The occupancy tax and occupancy surtax revenue  
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1 spent for a purpose authorized by the Lodgers' Tax Act may be  
 2 spent for day-to-day operations, supplies, salaries, office  
 3 rental, travel expenses and other administrative costs only if  
 4 those administrative costs are incurred directly for that  
 5 purpose.

6 D. A person or governmental agency with whom a  
 7 local governmental body contracts under this section may  
 8 subcontract with the approval of the governing body of the  
 9 municipality or county. A subcontractor shall be subject to  
 10 the same terms and conditions as the contractor regarding  
 11 separate financial accounts, periodic reports and inspection of  
 12 records."

13 SECTION 13. EFFECTIVE DATE.--The effective date of the  
 14 provisions of this act is July 1, 2019.

underscoring material = new  
 [bracketed material] = delete